



Institutional Reform Paper Series

ATENEO SCHOOL OF GOVERNMENT WITH SUPPORT OF
KONRAD-ADENAUER-STIFTUNG

ISLAM AND THE *SHARI'A* IN A PROPOSED BANGSAMORO FEDERAL ISLAMIC STATE

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EXECUTIVE SUMMARY

One of the proposed solutions to the ongoing Moro rebellion is the creation of a separate Bangsamoro state which will still be under the aegis of Philippine national sovereignty. Some commentators however have made reservations on the feasibility of such a proposal, citing among others, the tension between an Islamic way of life and a Western-style constitutional democracy with church-state separation to which the Philippines subscribes. Since the role of Islam in the ongoing negotiations and in the proposed state has gone largely unnoticed, this paper seeks to fill the gap in scholarship and thus, contribute to the larger debate.

In this paper, I sought to address two core issues. First, it justifies the proposal of a single Islamic federal state (a Bangsamoro Federal Islamic state) under the rubric of a secular constitution from within Islamic legal tradition and discourse. The justifications permitting this arrangement are largely discussed using the historicity and contingency lenses of Islam, as derived from classical Islamic legal scholarship. Second, it discusses salient issues under Islamic law that will arise in the proposed arrangement such as the treatment of women and non-Muslims, the relation of Shari'a and civil courts, and Islamic governance in general.

This paper is derived from the author's LL.M. written work requirement at Harvard Law School. The author thanks Prof. Noah Feldman and Mr. Ori Aronson for their generous comments on the drafts of the earlier versions of this paper. Although there are nuances in the definitions of these terms, the author uses Shari'a and Islamic law interchangeably throughout this paper.

1. INTRODUCTION

One of the primary characteristics of the longstanding Moro rebellion in the Philippines is that of assertion of a separate identity. To be specific, they seek to assert a Moro identity, chiefly defined by their adherence to Islam. As with most modern societies, Philippine laws and institutions were created presupposing a certain degree of homogeneity of the society it purports to bind. Most of the time, it seeks to assimilate, rather than accommodate, and thus ignores a legitimate demand for recognition of cultural and religious difference.

Writing in the context of an Iraq faced with the daunting prospect of building a nation out of fragmented tribal alliances, commentators made the following observation which could easily apply to the Philippine situation:

“When it comes to managing national and religious diversity, democracies have two broad choices: integration or accommodation. **Integrationist states seek to construct a single overarching public identity.** They believe that conflict results from group-based partisanship and recommend a state that is impartial, meritocratic and that promotes equal citizenship through a bill of individual rights. They also frown on any form of autonomy that is based on groups. **Accommodationist democratic states recognize dual or multiple public identities through consociation.** Consociation accommodates groups by, among others, involving all sizable communities in executive institutions provided they wish to participate. While integrationists mostly believe that identities are malleable, transformable, soft or fluid, consociationalists think that, in certain contexts – they may be resilient, durable and hard. From the latter’s perspective, political prudence and morality require considering the special interests, needs and fears of groups so that they regard the state as fit for them.”¹ (emphasis supplied)

Although this is certainly not a Muslim-Christian war, at the heart of the conflict one will find an issue that nobody has tried to seriously address despite its glaring obviousness. It was frequently framed as a choice between following the Qur’an or the Philippine Constitution in the public consciousness,² and yet the impact and role of Islam has only been marginally addressed in the ongoing peace negotiations. The long-standing

belief that there is an inherent tension between an Islamic way of life that Filipino Muslims aspire for and a Western-style constitutional democracy with church-state separation to which the Philippines as a liberal democracy subscribes, has gone largely unnoticed.

The core issue in this conflict is to find a political and lasting solution to the Bangsamoro problem, which is stated to mean “establishing a system of life and governance suitable and acceptable to the Bangsamoro people.”³ Navigating this overarching issue involves three salient matters which will inevitably have to be addressed.

First, any realistic solution will involve a compromise between the Philippine government’s insistence on absolute unitary sovereignty and the MILF’s initial demand for independent statehood. Phrasing it as a suitable system for Bangsamoro aspirations renders it flexible enough to accommodate a variety of configurations while preserving territorial integrity of the Philippine state. The historical claim of the Moros that they were a separate peoples with their own lands to begin with must be given due consideration.

Second, it appeals that only a highly-autonomous region within Philippine territorial integrity but one which is markedly different from the current autonomous arrangement will suffice.

Lastly, since the conflict is partly based on identity, there is also a demand for rule in accordance with the tenets of the Islamic Shari’a. While often mentioned, the literature on this aspect is lacking. As such, this will be the major focus of this paper.

A Bangsamoro Federal Islamic State

My proposal for a Bangsamoro Federal Islamic State (BFIS) is an attempt to address all these issues while providing justifications by drawing from within the Islamic tradition. It recognizes that Islam has a special role in the resolution of this decades-long conflict. This, I feel, is a major lacuna in current peacemaking efforts. Above all else, it seeks to answer the question: Even if we are to write a new constitution, can this arrangement be allowed, much less, justified under Islam? In classical Islamic tradition, Muslims cannot be made subservient to a secular authority.⁴

Federal arrangements have long been the institutional arrangement of choice in post-conflict and divided societies.⁵ The kind of federalism

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this paper suggests is the type that Daniel Elazar has termed religious federalism,⁶ the object of which is not merely to carve out separate political and territorial entities but more importantly to allow for religious diversity to flourish within a single nation-state.

While federal systems have become a recent worldwide trend, the novelty of the proposed BFIS is that it will be a singular asymmetric federal region comprising of several Muslim-majority provinces within a federal secular republic.

The advantage of this setup is that it would provide the necessary focus, not to mention, much-needed scarce resources on the Moro region which would otherwise be divided among many provinces-cum-federal states in a conventional federal setup.

There are several envisioned objections to this setup at the outset. From the Muslims, one plausible objection would be that the Qur'an, as God's revealed word, cannot be subjected to the Philippine Constitution, a man-made text. Framing the question this way, however, makes it appear as if being Muslim makes it impossible for one to be Filipino.

This paper is an attempt to respond to the challenge that these two are irreconcilable.⁷ My principal claim is that from the vantage point of Islam, there is no irreconcilable contradiction in a constitutional configuration that features an Islamic state within a larger secular republic. Scholars have long been engaged in the task of finding compatibilities between Islam and democracy.⁸ They do so by identifying concepts and strands of thought from each system, which gives a plausible conclusion of one not necessarily being antithetical to another. Islam's democratic roots are almost always attributed to the existence of concepts such as *shura* (consultation), *ijma* (consensus) and *ijtihad* (independent effort) from within its sources and literature. A good deal of scholarship therefore dealt with investigating, and perhaps removing the exclusivist paradigm that causes the fragile tension which inevitably occurs whenever any comprehensive doctrine attempts to claim monopoly over most, if not all aspects of the public sphere. Khaled Abou El Fadl, for instance, states that democracy and Islam, as defined by their underlying moral values and the attitudinal commitments of their adherents, does not require the abandonment of one to pursue the other.⁹ Noah Feldman makes the same argument and characterizes the two as universal, flexible and mobile ideas, and therefore they can easily be reconciled with each other if one looks at their essences.¹⁰

I will identify these conceptual spaces which the Islamic tradition affords and which gives justification for an Islamic political entity to be

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accommodated in a secular state, and ultimately under a secular authority. I will do so by proposing a new re-reading of Islamic precepts. The lessons from this exercise may find resonance in the future where significant Muslim minorities might elect to establish for themselves an autonomous state within a larger secular republic. It is also possible that such a scenario might not be replicated anywhere else at all. But as this paper will later argue, this only proves that Islam as a universal and flexible idea can adapt across cultures and still remain authentic to itself.

This paper is divided into two parts. In the first part, I will justify the concept of an Islamic state within a larger secular republic using what I term as the historicity and contingency lenses of Islam. In applying these lenses, I put emphasis on the aims and interests of Islam, and thus, avoid a literalist, ahistorical reading of the basic sources. Using these lenses, I will construct an outline of plausible justifications for a proposed Bangsamoro federal Islamic state under a secular Philippine constitution. The latter part of the paper will discuss some of the salient issues that will arise in the proposed BFIS such as treatment of non-Muslim minorities, relationship between Shari'a courts and the civil court system and Islamic governance, as viewed from within Islamic discourse. The aim is to make such an arrangement a realistic option, and thus, contribute to the larger debate that will benefit its ultimate stakeholders - the Filipinos who will have to harmoniously coexist with one another.

2. RESPONDING TO THE CHALLENGE - AN ISLAMIC STATE IN A FEDERAL REPUBLIC

From the reformist point of view, Islam has two characteristics: its historicity and contingency.

Historicity refers to the nature of Islam as dynamic and not static, as one meant to evolve according to the changing needs of the times. This does not negate the divine nature of revelation but paradoxically in fact, precisely affirms it, by making it applicable for all times and places. The Qur'anic injunctions for instance, on social affairs and familial obligations were adopted at a certain point in time when these practices were the norm. For instance, the infamous amputation of hands as punishment for the crime of theft as inscribe in the Qur'an was a common form of punishment in seventh-century Arabia. But these may not necessarily be applicable in modern times. Nasr Abu Zaid, an Iranian scholar, goes so far to say that, "if we elevate historical aspects

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of the Qur'an to divine status, we violate the World of God. God's Word becomes twisted when we freeze it in a specific time and space."¹¹

Contingency, on the other hand, refers to the contextualized nature of Islam, which necessarily means it must be flexible as it travels from one location to another. It also means that Islam can never remain as an abstract doctrine and should not be studied as such. It can only be understood as it is practiced in concrete situations. This thesis finds support in the various kinds of practices one would find throughout the Islamic world. Noah Feldman states this flexibility is evident in "Islam's capacity to maintain its core beliefs while adapting to the languages, family structures, economic systems and cultural values of peoples all over the world and over an extended period of time."¹²

While the heart of Islam is in the Middle East, Muslims everywhere else have hybrid Islamic practices as a result of Islam's assimilation of local culture upon its arrival and spread throughout these regions. Although the central creed remains the same, the ways of approaching it and following it differ from one locale to another. This lends credence to Islam's universality and mobility.

To understand Islam in Southeast Asia then, one must examine it in its local and regional context. From this perspective, the diffusion of Islam into the region looks richly distinctive.

2.1 Islam in a Secular State

The Islamic world, like Islam the religion itself, is not a monolith. Although much of the literature on Islam in the modern world have been set in the context of Muslim states in the Arab world, a significant number of today's Muslims live in secular states, particularly in Asia.¹³ Thus, to the extent that the questions are shaped by its accompanying context, the challenges these Muslims face require us to look beyond this unitary characterization of the Islamic identity from an Arab Middle East viewpoint and draw out conclusions unique to this particular setting.¹⁴

A secular state, contrary to popular notions, does not automatically imply strict separation of church and state. It is not, by any measure, an essential feature of a constitutional democracy. Outside of the United States, France and Turkey, where the strict separation/secularist model is at work, other democracies showcase various arrangements. In countries such as England, Norway or Finland, there is an established state Church while the state sovereign is also the head of the church. In India, Israel and South Africa, there is selective accommodation of religion, usually in

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the realm of personal and family laws. Despite these idiosyncrasies, it is undeniable that these are democratic secular societies. In such countries, Muslim minorities have largely benefitted from being able to both live in a secular state and thus be able to profess their beliefs in their own ways and traditions out of conviction and free choice. They can opt to go to Shari'a courts to have their disputes adjudicated and send their children to Islamic schools. In these places, Islamic culture is not relegated to the periphery of the national life but is in fact a valuable thread that runs through the social fabric. This affirms that the secular nature of the state does not prevent the expression of a particular religious identity.

The question then turns to the justifiability of this arrangement from an Islamic viewpoint.

2.2 Islamic citizenship in a secular state

There are two dimensions to the question of permissibility of Islam in a secular state from within Islamic legal discourse.

The first is simply citizenship in a secular, liberal state by a Muslim.¹⁵

In *Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies*, Andrew March enumerated the traditional objections to this arrangement, drawn from classical sources and presently advanced by fundamentalist thinkers. These are largely hinged on the following arguments:¹⁶

- (1) Muslims must not be subject to non-Muslim laws;
- (2) Islam and Muslims must not be put in a position of inferiority to non-Muslims;
- (3) Muslims must avoid aiding or increasing the strength of non-Muslims;
- (4) Muslims are forbidden from forming bonds of friendship or solidarity with non-Muslims;
- (5) Muslims are required to avoid environments of sin or indecency;
- (6) in non-Muslim environments, it will be more difficult to prevent sin or the loss of religiosity in subsequent generations.

March equally drew on classical sources to refute these arguments and to establish that “not only is it permitted to reside in a non-Muslim polity but also it is permitted to do so while being subject to and obeying non-Muslim law,”¹⁷ to perform obligations of citizenship such as loyalty to the state¹⁸ and even to perform military duties.¹⁹ His inquiry was precipitated by a concern for “the possibility that Muslim jurists will insist on religious freedom for Muslim communities through some form of communal autonomy

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with substate institutions of authority competent to enforce Islamic family, commercial and certain criminal codes.”²⁰

As March himself admitted however, the Islamic political imagination can certainly include a call for some communal autonomy within non-Muslim states. Perhaps with the situation of Muslim minorities in Europe as a backdrop, he posits that a liberal conception of Islamic citizenship is sufficient. I argue however that this may not suffice for the Philippine case. The overarching theme of the Moro struggle is a battle against forced assimilation. For centuries, they have tried to divorce themselves from an imagined nation they never considered as their own, without success. It appears that only by taking into account this Islamic identity, as reflected in laws and social institutions, would one actually take the first step towards solving the problem. Highlighting the nature of Islam as historical and contingent will help find an adequate justification, and subsequently an equally adequate institutional response.

2.3 Islamic state in a Secular Republic

The second dimension is an Islamic political entity under the rubric of secular authority.

The Qur’an does not prescribe a particular form of government. One rationale could plausibly be that Islam’s suitability for all times and places require that matters which are susceptible to evolution must be left for the human agent to shape, within the framework that God has dictated as expressed in the Shari’a.

As such, Islamic governments throughout history, while acknowledging the supremacy of the Shari’a, have accommodated themselves to all kinds of political systems. There is nothing in the divine texts that renders a federal arrangement under a secular constitution impermissible. It is the circumstances, location and culture of a particular Muslim community which plays an operative role in determining under what arrangement they will be able to live out their Islamic ideals and way of life. Thus, any form of government that allows its citizens to manifest their Islamic identity, in an Islamic polity which espouses the Shari’a and promotes the values identified by the Qur’an as central to an Islamic state, identified by Abou El Fadl as follows: ²¹ (1) pursuing justice through social cooperation and mutual assistance; (2) establishing a non-autocratic, consultative method of governance; and (3) institutionalizing mercy and compassion in social interactions, can be considered an Islamic one. The Shari’a is to be the path that will facilitate the human mission to realize justice on earth. ²²

The previous discussion on the historicity and contingency of Islam is useful in that makes it possible to create a framework that is responsive to the universal demands of modern times and specifically, to the needs of the Moro people. Without this kind of understanding, it is doubtful whether Islam could continue to be applied to Muslims in different countries where Islam had spread and where their diverse social, economic and cultural circumstances would have effected changes in the political system.²³ Reading Islamic law in this way also allows for an Islamic political entity which is governed by Islamic law but also establishes equal citizenship rights for Muslims and non-Muslims, equality between men and women, freedom of belief and political pluralism. For instance, there is no reason to claim that the secular setup in India, Malaysia, Nigeria or Turkey does any violence to the Islamic beliefs of the Muslim members of its population. The same setup is true with Nangroe Aceh Darussalam in relation to the secular and unitary Indonesian state. These various arrangements are products of cultural, historical and political developments.

It also allows what Rachid Ghannouchi calls as “participation in non-Islamic government.”²⁴ Ghannouchi cites the example of *bilf al-fudul*²⁵ (alliance of *al-fudul*) in concluding that “the community of believers may participate in an alliance aimed at preventing injustice and oppression, at serving the interests of mankind, at protecting human rights, at recognizing the authority of the people and at rotating power-holding through a system of elections. The faithful can pursue all these noble objectives even with those who do not share the same faith or ideology.”²⁶

If participation in a non-Islamic government not based on Shari’a is permissible, then how can a federal Islamic state, uniquely governed by laws based on Shari’a, although subject to the national secular constitution, be any less so?

Even in the pre-modern juristic discourse on the position of Muslim minorities in non-Muslim lands, the resulting implication is that if Muslims can reside in a non-Muslim polity where they will be able to manifest Islam, then Muslims are permitted to remain in that society.²⁷ The proposed BFIS finds support in Islamic traditions and holds out hope that one can both be devout Muslim and loyal citizen in the age of nation-states.

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3. SOME ISLAMIC LAW ISSUES IN A PROPOSED BANGSAMORO FEDERAL ISLAMIC STATE

3.1 *Shari'a Issues in the Proposed BFIS*

What makes an Islamic state Islamic is the application of Shari'a or Islamic law. This is presumably part of what the MILF meant when they stated that a comprehensive approach to the Bangsamoro problem involves establishing "a system of life and governance suitable and acceptable to the Bangsamoro people."²⁸ This is also consistent with their previous calls for an independent Islamic state.

Given the perception that Moros are discriminated against even in Mindanao and are deprived of opportunities for self-advancement, the BFIS is an attempt to equate political borders with cultural and religious ones, thus providing a meaningful context for political and economic choices.²⁹

The most popular conception of Shari'a, however, is limited to its high-profile injunctions such as the veiling of women or harsh criminal penalties. Indeed, the mere mention of an Islamic state conjures fearsome imagery of theocratic rule, of harsh and unequal laws, and especially discriminatory treatment of women and non-Muslims.³⁰ In fact, when the 1996 Final Peace Agreement providing for the creation of the autonomous regions was signed, Christian residents feared the imposition of these 'repressive' laws on non-Muslims.³¹ The stereotype of an Islamic state for most Filipinos is that of Saudi Arabia, where the Wahhabist brand of Islam is practiced and where a great number of Filipino overseas workers are employed. Stories of amputation and death by beheading abound in Filipino popular consciousness. This presumably contributed to the resulting lack of support from the Christian majority and was also one of the principal reasons why the autonomous arrangement did not work.³²

True, classical *hadd* penalties are severe. Theft, for instance, is punished with amputation of the hand. Adultery is punished with death by stoning. What gets lost in the cacophony are the *fiqh* injunctions that an Islamic state should not claim immediate and scrupulous enforcement of crimes meriting *hadd* punishment until it has fulfilled its obligations

towards the community of ensuring social justice and civil rights.³³ Moreover, the application of these penalties has usually been limited by extraordinarily strict rules of evidence. For instance, fornication (*zina*) can only be punished after testimonies by four upright male Muslims, who have personally witnessed the sexual act taking place. Otherwise, a voluntary confession is necessary.³⁴ An explanation given for this is that since *hudud* crimes are deemed offenses against God and since God is omnipotent and merciful, then He does not need to have all His claims satisfied. Another explanation is that these harsh penalties are simply meant to be threats to enforce acceptable social behavior.³⁵

These and other concerns are certain to come up in the creation of the BFIS. But I argue that it is simply a matter of harmonizing what traditional Islamic doctrine allows with the exigencies presented by the modern-day Filipino Muslim situation, the ultimate goal of which is a space to manifest their Islamic identity. I consider some of these issues in the following sections.

3.1.1 Freedom of belief and treatment of non-Muslim minorities

It is important to point out at the outset that enshrining Islam as the official religion of the region does not necessarily mean second-class citizenship for non-Muslims or forced coercion in an Islamic culture and way of life.³⁶

Dhimmi status for non-Muslims

The concept of *dhimmis* in classical Islam has been the subject of many writings.³⁷ Critics have labeled it as proof that Islam treats non-Muslims as lower in stature than its own adherents.³⁸

Dhimma refers to a covenant of protection between Muslims and non-Muslims who live in a single community. According to this covenant, a non-Muslim enjoys all rights and privileges in a particular society including a guarantee of security in person and property, except for holding posts of a religious nature in exchange for the payment of *jizya* (poll tax).³⁹

If non-Muslims engage in defending a community alongside fellow Muslim citizens, then they are exempt from paying the *jizya*. The expansion of Islam during its formative years followed a narrative of war and conquest. Understandably, the distinction between *dar-al-harb* (abode of war) and *dar-al-Islam* (abode of Islam) still held significance.⁴⁰

It is simply a matter of harmonizing what traditional Islamic doctrine allows with the exigencies presented by the modern-day Filipino Muslim situation, the ultimate goal of which is a space to manifest their Islamic identity.

There is no need for any coerced unity. In the same vein, even the act of leaving the Islamic faith is also, under the modernist school of thought, a matter of freedom of belief.

In such a setting, non-Muslim peoples, specifically Christians and Jews, residing in lands acquired through Muslim conquest receive the status of *dhimmi* upon payment of the *jizya*. While they did not enjoy the same rights accorded to Muslims, they were not given the same obligations. The criticism against *dhimmitude* fails to take note of this practical and historical context. Moreover, it can also be argued that the notion of citizenship is wholly a modern-day construct.⁴¹ Thus it cannot be considered “second-class citizenship” even by modern standards. Since the *umma* both functioned as a religious and political community, and therefore membership was exclusively based on adherence to Islam as prerequisite, non-Muslims did not qualify. But citizenship as derived from the constitution, rather than religion, has now become the basis of rights. A more apt contemporary analogy would be of that between citizens and resident aliens.

On this note, it is helpful to look at contemporary examples for guidance. The Malaysian constitution, for instance, specifies Islam as the religion of the state, but other religions are equally recognized and protected.⁴² Like all other constitutions, it is ultimately a contract that will serve not only its Muslim constituents, but non-Muslims as well. This is especially important in the BFIS since there are not only Christians but also a considerable population of *lumads* (indigenous peoples in Mindanao) who will have to coexist with the Moros.⁴³ In fact, today, no Muslim country recognizes *dhimmi* status any longer.⁴⁴

Freedom of Religion & Apostasy

Likewise it is a well-known Qur’anic injunction that “there shall be no compulsion in religion.”⁴⁵

Religious liberty and diversity finds strong textual support in the Qur’an and the Sunnah. One of the verses clearly states, “If your Lord had wished, all of those on earth would have surely believed. Do you then coerce people until they become believers?”⁴⁶ Or another which states, “If your Lord had wished, He would have made people into one nation.”⁴⁷

More than a few also speak positively of diversity of tribes, sects, nations and peoples, including natural differences in the intellectual and physical capabilities of human beings.⁴⁸ The bottomline is that there is no need for any coerced unity. In the same vein, even the act of leaving the Islamic faith is also, under the modernist school of thought, a matter of freedom of belief. Mohamed Adil writes that “a mere renunciation from the religion of Islam without contemptuous attack on the religion of Islam is free from worldly punishment as he will be punished in the

hereafter.”⁴⁹ The rationale for this is that the right to freedom of religion in Islam is absolute, as humankind is bestowed with a choice whether to accept or reject Islam. The onus is on the believer if he chooses to reject the guidance offered by the Qur’an, since it will be his own misfortune to bear the suffering once he has gone astray.

Built-in Protection in the Federal Constitution

Moreover, although a federal state with autonomous powers in certain areas, the BFIS is still subject to the Philippine Constitution, which would guarantee individual freedoms including freedom of belief. Islamic rights and duties will be qualified by constitutional provisions. A federal Bill of Rights would still apply to both Muslims and non-Muslims throughout the country, and ensure that certain individual rights are protected. The Supreme Court shall be the final guardian of these rights. This is the same setup followed in the Malaysian Constitution which guarantees this freedom although its federal states are free to implement Shari’a in accordance to their specific needs.⁵⁰ In India, another secular country, the constitutional freedom of religion also ensures that Muslims can either stay as Muslim or embrace another religion without being punished for it.

Perhaps the greatest source of optimism comes from within the Moro community itself. In a roundtable discussion facilitated last year by the U.S. Institute of Peace, young Moro leaders from all over the country agreed that “a Moro homeland ruled by Islam should include rights for minorities, protection of non-Muslims, women’s rights, the rule of law, participation by youth and a potential religious advisory council who will offer advice to the Bangsamoro Chief Executive.”⁵¹ This is indeed a hopeful vision for the BFIS.

3.2 Shari’a courts in the BFIS

Muslim courts and judges are integral to a society governed by Islamic law. Thus, even in the classical period, as a matter of practical necessity, Muslims residing in non-Muslim territories acknowledged the reality that Muslim judges may be appointed by non-Muslims.⁵²

Shari’a courts already exist in the current Philippine judicial structure. It was provided for in the Philippine Code of Muslim Personal Laws⁵³ (CMPL) which was decreed by President Marcos in 1977, as part of his unilateral implementation of the Tripoli agreement, and in pursuant to the mandate of the 1973 Constitution to “consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies.”⁵⁴

Moreover, although a federal state with autonomous powers in certain areas, the BFIS is still subject to the Philippine Constitution, which would guarantee individual freedoms including freedom of belief.

If the jurisdiction of these Shari'a courts is modified to include criminal jurisdiction, the new federal setup would involve minimal changes to the judicial structure currently in place.

It recognized the legal system of Muslims as part of the law of the land, established Shari'a courts and codified the rules for civil and family relations. These courts have jurisdiction over family and personal status law for Filipino Muslims, only in the Muslim communities in ten provinces and six cities.⁵⁵

Under the Code, there are two kinds of Shari'a Courts: (1) the Shari'a District Courts and (2) the Shari'a Circuit Courts.⁵⁶ Shari'a District Courts have exclusive original jurisdiction over cases involving offenses defined and punished under the CMPL and all civil actions and proceedings between parties who are Muslims or have been married according to the provisions of the Code. These actions and proceedings involve disputes relating to marriage, divorce, breach of contract to marry, customary dower, disposition and distribution of property upon divorce, maintenance and support, restitution of marital rights, and all cases involving disputes related to communal properties. The District Court also exercises appellate jurisdiction over decisions by the Shari'a Circuit court.⁵⁷ Its decisions are final and not subject to any appeal except on purely questions of law which is directly appealable to the Supreme Court. Shari'a courts are part of the Philippine court system, and are subject to the administrative supervision of the Supreme Court.⁵⁸

Admittedly, most of the problems identified with this setup involve matters of implementation.

In a recent survey⁵⁹ conducted on the state of the Shari'a law in the Philippines, some of the major concerns included: 1) the wide gap between the actual number of existing Shari'a courts compared with the number mandated by law; 2) low-level of awareness on the nature and function of Shari'a courts among the Muslim community; and 3) failure of local government units to appropriate funds for local Shari'a courts. A federal setup could theoretically address fiscal independence for these courts, and enable the growth of support institutions for the training and education of its personnel.

If the jurisdiction of these Shari'a courts is modified to include criminal jurisdiction, the new federal setup would involve minimal changes to the judicial structure currently in place. Decisions of Shari'a Circuit Courts as courts of first instance would be appealable to the Shari'a District Courts. A federal Shari'a court could be established which would hear appeals from both lower courts. Decisions of the federal Shari'a court would not be appealable to the Supreme Court, but its judges can still remain subject to the administrative powers of the Supreme Court for disciplinary purposes, pursuant to the present setup in place.

Qualifications of Shari'a Judges

For obvious reasons, Shari'a court judgeships may be restricted to Muslims. As to other qualifications, the CMPL currently prescribes that the general qualifications of regular court judges in the country apply to Shari'a court judges, in addition to knowledge of Islamic law and jurisprudence.⁶⁰ Shari'a District Court judges in particular require that the applicant must have passed the regular bar examinations and have been engaged in the practice of law in the Philippines for at least ten years. This excludes the *ulama* who, even after having served as judge in the Circuit Court, is still ineligible for appointment unless they have passed the regular bar examinations. For Shari'a Circuit Courts, the CMPL requires only membership in the Shari'a bar which is achieved by passing an examination in Shari'a and Islamic jurisprudence. These examinations are open to holders of a law degree or graduates of Islamic law and jurisprudence from recognized universities. Moreover, high school graduates (*thanaawi*) from any institute (*ma'had*) in the country can take the examination provided he or she has completed a 45-day Shari'a training seminar conducted by the Office on Muslim Affairs. Compared to the legal training and qualifications of Shari'a judges in other Muslim countries, these qualifications do not seem to indicate sufficient intention to elevate the quality and prestige of the Philippine Islamic judiciary.

Lastly, the CMPL does not bar a Muslim woman from being appointed as a judge.⁶¹ This, I believe, is a good idea to preserve for the new BFIS judiciary. Islamic history is full of stories of women wielding major powers and responsibilities. It is also certainly in keeping with advancing progressive rights for Muslim women. This also seems to be a welcome trend in judiciaries in Middle Eastern countries. In Egypt, thirty-one female judges were appointed to the Egyptian judiciary last year alone.⁶² In 2003, a woman was also sworn in its Supreme Constitutional Court as the nation's first female judge.⁶³ Although some critics framed it as an affront to Islam, most people, including the influential sheiks at al-Azhar, held that there was nothing in the Qur'an which prevents them from serving in such capacities. In conservative Emirates, the president appointed a woman, Juwan Al-Dhahiri, to sit on Abu Dhabi's Judiciary Department as its first-ever female judge very recently.⁶⁴ Indonesia has permitted women to serve as Islamic court judges since 1964⁶⁵ while Singapore recently followed suit this year.

It is clear that many challenges remain in the process of modernizing the Islamic judiciary. Apart from jurisdiction and qualification of judges, the other key issue that will have to be addressed is the education component for such a system to be effective and practicable. This includes improved quality of legal education of the

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members of the Shari'a bar, greater awareness of Islam and Islamic law beyond the traditional *madaris*,⁶⁶ and the upgrading of the Islamic system of education in general.

That this is going to be one of, if not the most crucial institution in the BFIS, brings up an urgent imperative to learn from the shortcomings of the present system in order to construct a more responsive judiciary.

3.3 Islamic Governance

The overarching significance of an Islamic state is to view the state as an instrument in the realization of the teachings and values that Islam proclaims.⁶⁷ The goals of Shari'a (*maqasid al-sharia*) are twofold: to establish and live out one's faith and to secure one's well-being on earth.⁶⁸

The late Hashim Salamat has always maintained that the establishment of a genuine Islamic system of government is one of the main aims of the MILF armed movement.⁶⁹ Indeed, it is essential to a system or way of life that will fulfill Bangsamoro aspirations.

But what is it exactly? If Islam does not require a particular form of government, what model could we turn to for the BFIS? It might be helpful to identify first what values an Islamic state, and consequently, an Islamic government, seeks to promote. The concurrent bases and aims of an Islamic government are the principles of consultation, justice and equality. The first society at Medina provides a helpful window into the dynamics of the early Muslim community, and is still looked upon by many contemporary thinkers as a model for Islamic communities. In that society, Muslim, Jewish and pagan Arab tribes coexisted peacefully through an agreement, the Constitution of Medina, which provided for the rights and obligations of the different tribes. The document, while not a political constitution in the modern sense of the word, offers justification that plural coexistence is possible, if not mandated, by a practice sanctioned by the Prophet himself.⁷⁰

Since the Qur'an left room for much latitude on the matter of political affairs, rulers are permitted to adopt the most effective means for the realization of Muslim well-being, keeping in the mind these goals. Whatever the form adopted, the principle of *shura* (consultation) is considered the most important element in Islamic governance.⁷¹ But while it is a principle derived from the Qur'an, it does not ordain a specific form of governance. What it simply presupposes is that the government is representative of the people's choice,⁷² and therefore it is the mechanism

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by which democratic governance, in the form of consultation between the leader and the people, is realized. The Qur’anic mandate of participatory politics lends legitimacy to the Islamic government, and rules out any justification for arbitrary or despotic rule. The legislative assembly or the *majlis-i-shura* is then tasked to enact laws which have not been regulated in terms of law by the Qur’an or the Sunnah, in other words, to provide for the demands of everyday life in accordance to the needs of society.

One way to operationalize this in the BFIS is for a State Assembly (perhaps patterned after the present ARMM Regional Legislative Assembly) to function as a *majlis-i-shura*. Keeping in mind the demographic landscape of Mindanao,⁷³ at least in the areas being considered for inclusion in the BFIS,⁷⁴ it would also be a good idea to set a fixed number of seats for minority representation in the State Assembly, for Christians and *lumads*.

3.4 Comprehensive Shari’a: Beyond Islamic Family Law

Given the amount of Qur’anic verses regulating it, family and personal status laws are considered a prime locus of Islamic identity.⁷⁵ As such, in most countries, including non-Muslim majority countries, this is where Islamic law finds the most common application.

In order to give fruition to what is termed as the “Bangsamoro way of life,” presumably to be governed according to Islamic ideals, however, it would also be helpful to consider expanding the scope of Islamic law to be applied in this region.

For one, Islamic micro-finance and other Shari’a-compliant commercial practices would be helpful in reviving the moribund economy of the region.

This suggestion is not without precedent. R.A. 9054 gave the ARMM the power not only to establish Shari’a courts in addition to those provided under the CMPL but also to determine the direction of Shari’a implementation in the Philippines. It also mandated the ARMM Regional Legislative Assembly, in consultation with the Supreme Court, and consistent with the Constitution to formulate a Shari’a based legal system which encompasses not only personal status law but also includes Islamic commercial, criminal and election laws.⁷⁶ To date, all of these have not been implemented.

However, I would caution that it would perhaps be more productive to postpone such expansion until after a more thorough and exhaustive

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study on the implications and consequences of such a move. Needless to say, this can be done even after the BFIS has been constituted.

3.5 On State-enforced Shari'a and the Future of BFIS

The consensus that has emerged from the debates and discussions on the relationship between state-enacted/positive law and the Shari'a is that there will always be a need for codified law but that it must operate within the boundaries set by Shari'a.⁷⁷

Codification necessarily requires the fixing of these norms, devoid of context and history, and absent any historical institutions that made it work in the past. Any effort therefore to fix Islamic values in a statute must be carefully considered in order not to lose an idea of the world it was first conceived in. The extent to which the liberal multicultural society can recognize and respect distinctiveness of Muslims and their embrace of Shari'a depends on what both Muslims and non-Muslims understand Shari'a to be.⁷⁸ To come up with some strands of common understanding would therefore be crucial and this is where codified Shari'a might be most useful. In fact, this is the trend nowadays with most Islamic countries. In order to meet the exigencies of contemporary times therefore,⁷⁹ codification is one major way of going about the reformation process because it seeks to crystallize what that particular society of Muslims understands the essence of Islam to be.

To this end, the BFIS is an opportunity to showcase to Filipinos Muslims and non-Muslims, and perhaps even to the world at large, that a Shari'a based society can exist within a liberal, democratic constitutional framework, and where cross-cutting religious and national identities, respectful of each, can exist through a constitutional and governmental structure attuned to their needs.

4. CONCLUSION

The reconciliation of these ideological and abstract contradictions is merely the first step towards forging a lasting solution to this decades-long conflict. My hope, however, is that it contributed somewhat to the understanding of an often-cited, but never elaborated on federal Bangsamoro Islamic state option.⁸⁰

The first question that would come to the mind of any sensible reader would be: how realistic is it? My answer is that liberal or reformist Islam in the Philippine context is not an illusion. The Islam that produces rejectionist viewpoints is the same Islam that produces modernist perspectives. Within the Islamic tradition itself, there are conceptual spaces that provides for the kind of society in which Muslims and non-Muslims have the same rights, obligations and freedoms.

Islam is not simply an abstract system of political and social regulation. Understanding it this way frees up space for cultures and nations to lay the foundations of collective identity in their own contexts. And yet, despite the historicity and contingency of the Islamic tradition, it nevertheless points to the timeless divine and therefore serves as inspiration and guidance.⁸¹ This allows the possibility of convergence with other religious traditions and principles of morality beyond cultural boundaries and opens the way towards spheres respectful of equal and peaceful coexistence.

More importantly, just as we try to find these conceptual spaces in Islam for it to accommodate the demands of modernity, so must liberal democracy find spaces for Islam. It is simply unjust that the Filipino Muslim must be unwittingly made to choose between the obligations of citizenship and the demands of faith.⁸²

A genuine recognition of and commitment to diversity is essential to any state that purports to be democratic and republican. The importance of identity, religious identity in particular, is especially most striking in an age of porous borders and mobile citizens. It provides an

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In the end, the claim I make is that Filipino Muslims need not choose between the state and the *umma*. They can be both believer and citizen at the same time. The rest of the Filipino nation must give them the opportunity to do so.

essential backdrop for meaningful self and group choices as they chart their own futures. To insist on homogeneity when there is none, on integration rather than accommodation, is to disregard an important source of dignity and autonomy for the affected communities.

The tragic history of the Moro peoples has shown how indifference to their Islamic identity throughout time has contributed to their marginalized social and economic status today. Though difference necessarily connotes a particularist worldview, the reality is that human beings need to live together in mutual respect and cooperation to achieve the goals of a just society. What I have attempted to do in this paper is to allow this possibility by finding strands of thought useful or compatible with the ethical imperatives of both Islam and democracy in the context of Philippine society. It appears to me that this lack of attention to the religious undertones in the ongoing peace negotiations does not help in addressing the core issues in this conflict.

To be certain, the federal proposal will translate to peace overnight. Long-drawn conflicts have a multitude of reasons for its continuing existence. At the end of the day, the efficacy of any institution boils down to the people who make it work. Hence, this paper attempts to offer a paradigm shift in the way we understand possible solutions to the conflict, by suggesting solutions outside the existing constitutional structure, and in the way we understand religious traditions, through a plausible discourse on how there are no inherent contradictions in Islam in a liberal democracy. The alternative is to continue with a constricted set of options, and to enjoy mere pockets of peace in a sea of war.

In the end, the claim I make is that Filipino Muslims need not choose between the state and the *umma*. They can be both believer and citizen at the same time. The rest of the Filipino nation must give them the opportunity to do so.

ENDNOTES

¹ John McGarry and Brendan O’Leary, *Iraq’s 2005 Constitution: Liberation consociation as political prescription*, INT. J. CONSTITUTIONAL LAW, Vol. 5, No. 4, 2007, 670 (2007).

² See e.g. Saaduddin Alauya, *Impact of Religion on the Negotiation by and between the Government and the MILF*, in MUSLIM PERSPECTIVES ON THE MINDANAO CONFLICT (Carmen Abubakar ed., 2003); SOLIMAN SANTOS, *MORO ISLAMIC CHALLENGE* (2001).

³ Nathan Quimpo, *Options in the Pursuit of a Just, Comprehensive and Stable Peace in the Southern Philippines*, Asian Survey, Vol. 41, No. 2 (Mar-April 2001) 271-289;
A View from the MILF: Interview with Mohagher Iqbal, April 1999, at <http://www.c-r.org/our-work/accord/philippines-mindanao/mohagher-iqbal-interview.php>.

⁴ For a general discussion on objections to Muslims under non-Muslim authority in the classical Islamic period, see Khaled Abou El Fadl, *Islamic Law and Muslim minorities: A Juristic Discourse on Muslim Minorities from Second/Eighth to the Eleventh/Seventeenth Century*, ISLAM. LAW. SOC., Vol. 1, No. 2. (1994), pp. 141-187.

⁵ There is extensive literature on this subject. See e.g. DANIEL ELAZAR, *FEDERALISM AND THE WAY TO PEACE* (1994); Will Kymlicka, *Federalism and Secession: At Home and Abroad*, 13 CAN. J.L. & JURIS., 207, 213 (2000);

⁶ Daniel Elazar, *Religious Diversity and Federalism*, 53 INT’L SOC. SCI. J. 61, 63 (2001)

⁷ Santos, *supra* note 3 at 13-20.

⁸ See e.g. JOHN ESPOSITO & JOHN VOLL, *ISLAM AND DEMOCRACY* (1996); RICHARD BULLIET, ED., *UNDER SIEGE: ISLAM AND DEMOCRACY* (1994); NOAH FELDMAN, *AFTER JIHAD: AMERICA AND THE STRUGGLE FOR ISLAMIC DEMOCRACY* (2003); KHALED ABOU EL FADL, *ISLAM AND THE CHALLENGE OF DEMOCRACY* (2004).

⁹ Abou El Fadl, *supra* note 9 at 4.

¹⁰ Feldman, *supra* note 9 at 57.

¹¹ Nasr Abu Zaid, *The Nexus of Theory and Practice*, in *NEW VOICES OF ISLAM*, 155 (Mehran Kamrava, ed., 2007).

¹² Feldman, *supra* note 9 at 35. He makes the same characterization of democracy.

¹³ The country with the biggest Muslim population is Indonesia with more than two hundred million Muslims.

¹⁴ Though Southeast Asian Islam has around three hundred million believers, it is not uncommon for scholars to identify Islam with the Middle East and to regard Southeast Asia as at best, intellectually and institutionally derivative of Middle Eastern Islam. See ROBERT HEFNER AND PATRICIA HORVATICH EDs., *ISLAM IN AN ERA OF NATION STATES: POLITICS & RELIGIOUS RENEWAL IN MUSLIM SOUTHEAST ASIA* (1997).

¹⁵ Prof. Andrew March offers Islamic doctrines of citizenship to justify Muslim citizenship in a non-Muslim liberal state. See Andrew March, *Islamic Foundations for a Social Contract in non-Muslim Liberal Democracies*, 101 *AM. POLI. SCI. REV.* 235 (2007).

¹⁶ *Id.* at 240.

¹⁷ *Id.* at 243, *citing* Rashid Rida who wrote: “Migration is not required for those who are able to practice their religion free from seduction away from it, that is, coerced abandonment of religion or the prohibition on performing religious duties.”

¹⁸ *Id.* at 244. March cites Tariq Ramadan who wrote: “contracts determine our status, fix our duties and rights and direct the nature and scope of our actions. Once agreed, the terms of a covenant should be respected and if there is a point which seems to work against Muslim rights – or even their conscience as believers – this has to be discussed and negotiated because Muslims are unilaterally not allowed to breach a treaty.” See also Q 16:91, “Fulfill God’s covenant when you have entered into it and break not your oaths after asserting them, for you thereby make God your guarantor.”

¹⁹ *Id.* at 246.

²⁰ *Id.* at 243. He states that although the Islamic political imagination can certainly include a call for some communal autonomy within non-Muslim states, for some theorists the weaker condition of a liberal conception of free practice as sufficient.

²¹ *Id.*; Maududi also recounts that the Qur’an lays down this directive as the purpose of an Islamic state: “Muslims are those who, if we give them power in the land, establish the system of *salat* and *zakat*, enjoin right and virtue and forbid wrong and evil.”; Q: 22:41.

²² The oft-cited rationale is that a just life for a Muslim is only possible under the Shari'a, which in turn is only possible in an Islamic polity dedicated to the Shari'a.

²³ See MUHAMMAD SALIM AWWA, ON THE POLITICAL SYSTEM OF THE ISLAMIC STATE (1980).

²⁴ Rachid Ghannouchi, *Participation in Non-Islamic Government*, in LIBERAL ISLAM: A SOURCEBOOK, 89 (CHARLES KURZMAN, ED. 1998).

²⁵ *Id.* This was an agreement among several pre-Islamic Arab tribes to support the wronged, maintain close relations with relatives and take good care of them. The Prophet stressed that any good and noble contract made in *jabiliya* (pre-Islamic era/also called the Age of Ignorance) is automatically endorsed by Islam.

²⁶ *Id.* at 93.

²⁷ See Abou El Fadl, *supra* note 9.

²⁸ Santos, *supra* 3 at 11.

²⁹ Will Kymlicka says that it is only through membership in their own societal culture which enables meaningful individual self-choice. A person selects from a range of options determined by his cultural heritage and this provides salience to his choices. See Will Kymlicka, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (1995)

³⁰ For this very reason, Ahmed Gaili argues that religion-based federalism does not offer protection to the minority from majoritarian tyranny in the Sudanese context. See Ahmed T. Gaili, Note, *Federalism and the Tyranny of Religious Majorities: Challenges to Islamic Federalism in Sudan*, 45 HARV. INT. LAW J. 503 (2004).

³¹ The stereotype of an Islamic state for most Filipinos is that of Saudi Arabia, where the Wahhabist brand of Islam is practiced and where a great number of Filipino overseas workers are employed. Stories of amputation and death by beheading as told by countless overseas workers abound in Filipino popular consciousness. See e.g. *Filipino, Yemeni, beheaded for Saudi murders: 33 other OFWs on death row*, June 13, 2007, PHILIPPINE DAILY INQUIRER, at http://globalnation.inquirer.net/news/news/view_article.php?article_id=71122#

³² See Benedicto Bacani, *The Mindanao Peace Talks: Another Opportunity to Resolve the Moro Conflict in the Philippines*, February 2005, U.S. Institute of Peace Special Report No. 131, at <http://www.usip.org/pubs/specialreports/sr131.pdf>

³³ Walif Saif, *Sharia and Modernity*, in RELIGION, LAW AND SOCIETY: A CHRISTIAN-MUSLIM DISCUSSION (Tarek Mitri, ed., 1995), 11.

³⁴ JANIN HUNT, *ISLAMIC LAW: THE SHARIA FROM MUHAMMAD'S TIME TO THE PRESENT*, 44 (2006).

³⁵ *Id.*

³⁶ *Cf.* Abdullahi An-Naim, *Religious Minorities under Islamic Law and the Limits of Cultural Relativism*, 9 *HUM. RIGHT Q.* 1, (February 1987): 1-18.

³⁷ *See e.g.* Nasim Hasan Shah, *The Concept of Al-Dhimmah and the rights and duties of Dhimmis in an Islamic State*, *JOURNAL OF MUSLIM MINORITY AFFAIRS*, Vol. 9, Issue 2, July 1998, pp.217-222; Bert Breiner, *Islamic Sharia and the status of non-Muslims*, *RELIGION LAW AND SOCIETY: A CHRISTIAN-MUSLIM DISCUSSION* (Tarek Mitri, ed., 1995); ABDUL RAHMAN AWANG, *THE STATUS OF THE DHIMMI IN ISLAMIC LAW* (1994); DAVID LITTMAN, *PROTECTED PEOPLES UNDER ISLAM* (1976).

³⁸ *See e.g.* ROBERT SPENCER, *MYTH OF ISLAMIC TOLERANCE: HOW ISLAMIC LAW TREATS NON-MUSLIMS* (2005).

³⁹ *See* HUGH KENNEDY, *THE PROPHET AND THE AGE OF THE CALIPHATES: THE ISLAMIC NEAR EAST FROM THE SIXTH TO THE ELEVENTH CENTURY* (2004).

⁴⁰ *See generally* Abou El Fadl, *supra* note 3.

⁴¹ Classical Islam, strictly speaking, did not know citizenship. *See* Nawaf A. Salam, *The Emergence of Citizenship in Islamdom*, *ARAB LAW Q.*, Vol. 12, part 2, 1997, pp. 125-147.

⁴² MALAYSIAN CONST., Part I, Section 3 (3) – Islam is the religion of the federation but other religions may be practiced in peace and harmony in any part of the Federation.

⁴³ Santos, *supra* note 9 at 44.

⁴⁴ In Saudi Arabia, all citizens are required to be Muslims. The public practice of non-Muslim religions is prohibited so the concept of *dhimmitude* is likewise non-existent.

⁴⁵ Q: 2:256.

⁴⁶ Q: 10:99.

⁴⁷ Q:5:48.

⁴⁸ ABDULAZIZ SACHEDINA, *THE ROOTS OF DEMOCRATIC PLURALISM IN ISLAM*, 86 (2000).

⁴⁹ Mohamed Adil, *Freedom of Religion and Law of Apostasy in Malaysia*, *ASIAN JOURNAL OF COMPARATIVE LAW*, Vol. 2, Issue 1, Article 6 (2007).

⁵⁰ For instance, the state of Negeri Sembilan even allows Muslims to officially convert from Islam upon application to the Shari'a court and after consultation with a Mufti.

⁵¹ Special Report, Young Moro Leaders Forum, United States Institute of Peace, June 11, 2007, at http://www.usip.org/philippines/reports/yml_forums.pdf.

⁵² Abou El Fadl, *supra* note 3 at 151.

⁵³ Presidential Decree (P.D.) No. 1083.

⁵⁴ During the Martial Law period from 1972-1983, presidential decrees operated with the same force as bills passed as laws by Congress.

⁵⁵ P.D. 1083, Art. 137.

⁵⁶ P.D. 1083, Art. 144.

⁵⁷ P.D. 1083, Arts. 138 and 150.

⁵⁸ PHIL. CONST., Art. VIII, Sec. 6.

⁵⁹ See ISABELITA SOLAMO-ANTONIO, *THE SHARI'A COURTS IN THE PHILIPPINES: WOMEN, MEN & MUSLIM PERSONAL LAWS* (2003).

⁶⁰ P.D. 1083, Art. 140.

⁶¹ P.D. 1083, Art. 140.

⁶² *Egypt appoints 31 female judges despite conservative opposition*, March 14, 2007, at <http://jurist.law.pitt.edu/paperchase/2007/03/egypt-appoints-31-female-judges-despite.php>

⁶³ *Egypt's first woman judge says responsibility is great*, January 29, 2003 at <http://www.arabicnews.com/ansub/Daily/Day/030129/2003012926.html>

⁶⁴ *UAE Appoints First Female Judge*, at <http://www.wtopnews.com/?nid=105&sid=1373585>, March 28, 2008

⁶⁵ Mark Cammack, *The Indonesian Islamic Judiciary*, in *ISLAMIC LAW IN CONTEMPORARY INDONESIA: IDEAS AND INSTITUTIONS*, 154 (R. Michael Feener & Mark Cammack, eds.) (2007).

⁶⁶ Madaris which do not incorporate basic education subjects and do not use English as a medium for instruction as prescribed by the Department of Education are not accredited. Thus, Filipino Muslims in Mindanao are compelled to choose between going to a madrasa or a secular school for education. One solution offered is to accredit traditional madaris or to mainstream madrasa education by integrate the teaching of Islamic language and culture into the basic education curriculum.. Another could be to

encourage the offering of introductory courses in Islamic law in colleges and universities. For other recommendations and proposals on Islamic education in the Philippines, see BENEDICTO BACANI, *BEYOND PAPER AUTONOMY: CHALLENGES IN THE SOUTHERN PHILIPPINES*, 90 (2004).

⁶⁷ Q:3:103-104; An Islamic state is not a goal or an end in itself but only a means. See MUHAMMAD ASAD, *THE PRINCIPLES OF STATE AND GOVERNMENT IN ISLAM*, 30 (1961).

⁶⁸ See Tariq Ramadan, *The Way (Al-Sharia) of Islam*, in *NEW VOICES OF ISLAM* (Mehran Kamrava, ed., 2006); Walid Saif, *Shari'a and Modernity*, in *RELIGION, LAW AND SOCIETY*, 11 (Tarek Mitri, ed., 2003).

⁶⁹ Interview with MILF Leader Sheikh Salamat Hashim, *Nida'ul Islam* (April-May 1998) at <http://www.fas.org/irp/world/para/docs/ph2.htm>; See Santos, *supra* note 20.

⁷⁰ For readings on the first Islamic society at Medina, see Anver Emon, *Reflections on the Constitution of Medina*, 1 *UCLA J. ISLAMIC & NEAR E.L.* 103 (2002); Ali Bulac, *The Constitution of Medina*, in *LIBERAL ISLAM: A SOURCEBOOK* (Charles Kurzman, ed., 1998).

⁷¹ Q3:159; OBAIDULLAH FAHAD, *ISLAMIC SHURA: RELIGION, STATE AND DEMOCRACY*, 86 (2007)

⁷² Muhammad Asad writes that it is evident from the context that the expression among themselves in the Qur'anic ordinance under consideration refers to the whole community: hence, the legislative assembly must be truly representative of the entire community, both men and women. Asad, *supra* note 68 at 45.

⁷³ Santos, *supra* note 9 at 44.

⁷⁴ Under the Tripoli agreement, this comprises of thirteen provinces. But this is a matter of contention in present-day peace negotiations. See generally Astrid Tuminez, *This Land is Our Land: Moro Ancestral Domain and its implications for Peace and Development in the Southern Philippines*, *SAIS REVIEW*, Vol. 27, No.2, Fall 2007, p. 82. Nathan Quimpo also makes the suggestion that it might be more fruitful to avail of an interest-based approach when it comes to resolving the issue of territory and ancestral domain, i.e. fixed use of Tripoli Agreement as frame of reference. In an interest-based approach, the focus is not on the opposed positions of the contending parties but on the interests that lie behind these positions. The parties try to explore each others' interests-their needs, wants, fears, and concerns. "See Quimpo, *supra* note 4 at 286.

⁷⁵ JACOB NEUSNER, *GOD'S RULE: THE POLITICS OF WORLD RELIGIONS*, 177 (2003). ("As the heart of the Shari'a and the basis for a strong, Islamically oriented family structure and society, Islamic family law has remained intact in most Muslim countries.") Since it was perhaps the one domain which was least affected by colonialism and necessities of modernization, Muslims are reluctant to reform it.

⁷⁶ Republic Act 9054, Article 3, Section 5; *See also* Benedicto, *supra* note 67 at 62.

⁷⁷ Nathan Brown, *Sharia and the State in the Modern Middle East*, INT. J. MIDDLE EAST STUD. 29 (1997), 371.

⁷⁸ Anver Emon, *Conceiving of Islamic Law in a Pluralist Society*, 1 SING. J. LEGAL STUD. 331, 15 (2006).

⁷⁹ Rudolph Peters, *From Jurists' Law to Statute Law or What happens when the Shari'a is codified*, in SHAPING THE CURRENT ISLAMIC REFORMATION, 82 (B.A. Roberson, ed., 2003).

⁸⁰ For a sampling of the literature suggesting but not elaborating on the federal Bangsamoro Islamic state option, see Soliman Santos, *THE MORO ISLAMIC CHALLENGE* (2001); Benedicto Bacani, *BEYOND PAPER AUTONOMY, CHALLENGES IN SOUTHERN PHILIPPINES* (2004); Carmen Abubakar ed., *MUSLIM PERSPECTIVES ON THE MINDANAO CONFLICT* (2003).

⁸¹ Abdou Filali-Ansary, *The Sources of Enlightened Muslim Thought*, J. DEMOCR. Vol. 14, No. 2, April 2003, p. 32.

⁸² *See* NANCY ROSENBLUM, ED., *OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH: RELIGIOUS ACCOMMODATION IN PLURALIST SOCIETIES* (2000).

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Ateneo School of Government

In 1996, the Ateneo de Manila University formed the School of Government (ASoG) to provide an institutional vehicle for the development of public servants and as a forum for dialogue and partnership among the government, the private, the non-government organization and people's organization sectors.

As a professional school for public service, the ASoG creates an environment that fosters the development of new ideas, concepts and methods. Focusing on results, it facilitates a learning process where theory and practice are joined, and where wisdom of the classroom interacts with the world of policy decision and action.

The School draws from the intellectual resources of the various academic units of the University as well as from its many years of social apostolate and interaction with the country's decision-makers and basic sectors of society.



Konrad-Adenauer-Stiftung

The KAS, more popularly known in the Philippines as the Konrad Adenauer Foundation, is an independent, non-profit German political foundation guided by the principles of the Christian Democratic Movement.

KAS activities include political education, grants for research and scholarships for gifted students. The main aims of the international work are: training political and social leaders; introducing democratic institutions and processes; encouraging political and social elites to focus on development in their actions; promoting international political dialogue; and the worldwide exchange of information and experience.

KAS has been active in the Philippines since the 1960s. The main activities of KAS in the Philippines have focused on Social Market Economy, institutional and political reforms and peace and development in Mindanao.

