

THE PHILIPPINE STATE AND "SECULARIZED" MUSLIM CONCEPTS: ASPECTS AND PROBLEMS

Michael O. Mastura

The purpose of this paper is to rationalize on the subject of the Philippines as a secular state, with an eye to ascertaining how Muslim concepts have become "secularized" and could be incorporated into the Philippine polity. By adopting the term "secularized" (which, in the first places is a non-Muslim terminology) we tend to become innovative but end up somewhat placing the Muslims into problematical situations. Our term, therefore, must be applied by means of an explanation.

As is generally known, one fundamental aspect of Islamic life is the absence of distinction between what is religious and what is secular. The concept of *Dar-ul Islam* (household of Islam) demands that state authority manifests and reflects Islamic principles and ideals. That is why most Muslims think that to be truly Muslim is to have an Islamic state.¹

But in the development of the polity we have adopted the idea of a secular democracy constructed out of the western experience where an organized church competed for power with a strong government. The ideal therefore becomes not to ascribe religiousness into the state but to effect the state as a neutral party in religious matters.

Accordingly, the imported western concept of the secular state and the Muslim idea that the state life must be Islamic, inconsistent as they are, need a coordinate concept relevant to Philippine condition and workable to its diverse constituents. In this case, Muslim thought might just lend itself to being conveyed in our term "secularized," if it accepts a certain degree of secularization. Whether the average Filipino Muslim would feel at home with this idea remains theoretical, but somehow conceding this point offers a question of change and choice.

Atty. Mastura is Project Director of the Codification of Muslim Laws, and Deputy Commissioner, Office of the Regional Commissioner, Cotabato City.

For the Muslims the factor of change is as follows: to realize that, as a religious minority, their survival depends in their being able to move into the position of a creative minority within the secularity of the state. And this is the choice in their part: to decide in what manner they can activate and enthuse their community in Islam for services adequate enough to equip them to meet the challenge of the present conditions. This needs the forging of a new consensus; it requires new structures and forms of mass participation, and demands a new direction in leadership.

As for the government, it will need to find a way to keep on creative terms with Islam. Toward this end, the first area concerns giving Muslim law a national character to make it fit into conditions of Philippine national life. In this regard the Muslim experience is very much suggestive.

Challenge in the Field of Law

The Sanhuri Laws give the idea how a synthesis of Muslim and Western Law can be incorporated into the civil law system. The synthesis was adopted by Syria and Egypt in 1949, and by Iraq in 1951. In Indonesia the thought occurred to codify the Islamic law and develop an Indonesian *fiqh* or jurisprudence. This idea, coming as a response to the challenge faced by the Indonesian Muslims in the field of law, was broached by Professor Hazairin of the University of Indonesia and Professor Hasbiash Shiddiqi of the Government's Institute for Islamic Studies.² In the case of Singapore, the Parliament re-enacted in 1966 its laws relating to Muslims. This Act commonly referred to as the Administration of Muslim Law Act makes provision for regulating Muslim religious affairs and provides for the establishment of a Council to advise on matters relating to the Muslim religion in Singapore.

In Thailand, where a Thai-Islam minority exists, major legislations to safeguard Islam was enacted as early as 1946, allowing the application of Islamic laws in matters of family relations and inheritance and permitting a religious representative to act as assistant judge in such cases.³ When Iran and Pakistan began to reform Muslim laws, a demand to reform Indian Muslim personal law was also made. But the fear that the government was giving it a secular character led to difficulties and opened the Indian Parliament to charges of interference with religious traditions of the Muslim

minority. The Indian experience offers an interesting contrast in that the Constitution of India contains a declared policy "to secure for the citizens a uniform code" (Article 44). This is a very delicate problem of legal and religious nature and the government has been very cautious in dealing with it, because of the serious consequences to which it might lead.⁴

In the Philippines, the idea of codifying Muslim law is nothing new. Act No. 787 of the Philippine Commission, providing for the organization and government of the Moro Province in 1903, stipulated that it shall be the duty of the legislative council "to enact laws which shall collect and codify the customary laws of the Moros" (Section 13 [j]). Over a period of one year the Council investigated and studied such laws as it was able to avail of. Major Scott, for example, sent to the Council translated copies of "The Code of Laws for the Moro People" and the "Moro Civil Law" which were then in force in Sulu.⁵ About this time Dr. Najeeb Saleeby was preparing his book *Studies in Moro History, Law and Religion*. Saleeby was given access to the library of my great-grandfather, Sultan Mohammad Mastura Kudarat, whose copies of the Maguindanao *tarsilas* and *parualan* (code) he was able to secure and translate.

It would seem that General Wood, who was not impressed with the codification project in his Annual Report for 1904, recommended that "nothing has been found worthy of codification or imitation."⁶ The reasons is not difficult to see. Wood was only thinking in terms of assimilating the Muslim with the rest of the population under a common or uniform law. Shortly after assuming his post as military governor, he impressed this point upon Hadji Butu in one meeting:

A new order of things has come about. A new and very strong country now owns all these islands; that is the United States. But we realize that the Moros have laws and customs very different from ours. We want the new laws to be such that the Moro people can live under them and so that the American people can live under them.⁷

During the 1971 Constitutional Convention, I attempted to give Muslim personal law a constitutional basis or character, but it proved not only to be most strenuous but also most frustrating. Former Senator Tamano picked it up from there, and in his Memorandum for the President on February 17, 1973, he recommended that a decree

be issued that "the Muslims shall be governed by Islamic laws with respect to marriage, legal separation, the rights and obligations between husband and wife, the property relations between them, the family, paternity and filiation, support, funerals, parental authority, succession and inheritance and that the civil code provisions in these respects should no longer be applicable to them."⁸ It is interesting to note that the revitalization of Islamic law has been the subject of concern when Executive Secretary Melchor created under Memorandum No. 370 a research staff for the codification of Philippine Muslim Laws. It is rather too early to comment on the response of the average Muslim, but suffice it to say that any form of relief for Islam would gain their support.

The Way of Secularization

As hinted earlier, authority in the Muslim way of community life is both spiritual and worldly. All this implies that social control is largely governed by the Qur'an which contains laws that Muslims must obey in their relation to Allah, as well as to their fellowmen. This in Islam is called "Shari'ah". However, the Qur'anic verses only give the general guidelines so that social conduct is also guided by the details of the *Sunnah* and *Hadith* of the Prophet or traditions and practices of Prophet Mohammad (peace be upon him). In addition to these sources and with the particular case of Muslims in the Philippines, there is the *adat* or customary law which functions as social ordinances and the *taritib* or established precedent.

Islamic law and customary law are important factors in shaping both the spiritual climate and the social and political environment of the Muslim community. Naturally, the question comes up, Is there a way of secularization for the legal principles of *Shari'ah*? How likely is it that we could work out some form of *secularization* other than through the wall that divides religion and state?

Sayyid Abdul A'la Maududi wrote about the need to appoint a body of Islamic scholars and experts of modern legal thought "who should be entrusted with the task of codification of the Islamic Law section and clause-wise according to modern patterns."⁹ Haulana Sayyid Akbarabadi in one paper spoke boldly of two aspects of Islam — the *din*, which are immutable injunctions or revelations, and the *sharia'ah*, which are susceptible to changes through *ijtihad* (interpretations of jurists). Where room for interpretation is open he

concluded that "a body of Muslim jurists would be competent to effect changes in Muslim personal law."¹⁰

The above statements offer the clearest illustration that Muslim concepts can be considered to fit into the existing structure of modern social and political life if the Muslims themselves take the initiative.

Professor Chi Myong-Kwan of the Duksung Women's College has wisely suggested the way of secularization of rules and regulations as follows:

First, adopting . . . Western Law in the field [which the Sharia'ah does not cover adequately . . .]; second, attempting conformity with Shari'ah; third, adopting Shari'ah rules that have not become obsolete; and fourth, the separation of the devotional and religious provisions of the Shari'an from those regulating daily life.¹¹

For our own purpose, a fifth might be considered: accompanying rules and regulations with appropriate references to the *Shari'ah* and the *adat*. In time, as the textual passages from *Shari'ah* become associated with our positive laws and regulations, they will acquire sanction by the Muslim law. Here I should put in a word of caution. Muslims may have reasons to suspect that basic concepts of Islam can be surreptitiously grafted with "orientalists school of thought" to their own prejudice. To obviate such possibilities, a body of *ulama* or Muslim jurists should be considered as custodians of the *Shari'ah* and *adat*, besides leaving the question of adaptation and changes to the Muslims themselves to determine.

The Equation of Islam and State

This finally leads us to the problem associated with the equation of Islam and State. We have seen that in Islam no tradition of the separation of church and state developed. No organic relationship existed between them because Islam did not have an organized clergy and church hierarchy to count on. It is difficult to say whether this organizational deficiency compounds the predicament of Muslims. For one thing, it is a disadvantage against such well-organized religious bodies as the Christian [Protestant] mission or Roman Catholic Church. Donald Smith has advanced, however, that the lack of effective ecclesiastical organization is generally favorable to the

separation of religion and politics. He concluded by saying that "as one looks at the contemporary scene [it seems] that the religion of Islam, if it were well organized, could be a much more significant political force in Pakistan, Malaysia or Indonesia than it actually is."¹²

Taking a look at the present state of the Muslim Filipinos it is arguable whether they have a definite notion of how to fill the void. In facing the problem of organization they are caught between the drive for a state within the pale of Islam and the demand for a special status within the secular state. The better alternative seems to be the legal advise of incorporation.

In order to discuss the tendencies on a less abstract sense, again we have to resort to comparative situations. The case of Indonesian Muslims has been described by Kafrawi of the Ministry of Religion or *Kementarian Agama*. In this connection he pointed out:

Firstly, that the establishment of a Ministry of Religion in Indonesia has resulted [in] a compromise between the secular and Christian theory on separation of church and state and the Muslim theory on the alliance of both. Secondly, the Ministry of Religion in no [wise] interferes with the activities of other ministries, as the competence of each ministry has been clearly delimited by law. Thus the Ministry of Religion has emanated from an originally Indonesian formula which contains a compromise between two contradictory concepts: the Islamic and the secular state system.¹³

Similar manifestation of this compromise was reflected in the establishment of the *Majlisi-shari'ah* of the ulama's association of India in 1963. Another corporate body that resembles this marginal apparatus is the *Majlis Ugama Islam Singapura* established under the Administration of Muslim Act of 1966. The Kemalist revolution in Turkey divorced Islam from the state by abolishing the Caliphate. This has, however, resulted more into cooptation to the west and their seduction from Islam by nationalism.

Turning back to our own situation, there is a rough parallel to the marginal apparatus developed in these countries. It will be recalled that on January 10, 1967, the Office of the President issued Memorandum Circular No. 95, promulgating rules and regulations

governing the 1967 Muslim Pilgrimage to Mecca. The Commission on National Integration was directed to supervise the pilgrimage in consultation with representatives of the Bureau of Customs, Bureau of Quarantine and the Department of Foreign Affairs. In a very real sense, this is indicative of the state supplying the marginal apparatus to carry out a religious function that otherwise would be carried out by an ecclesiastical body. In another sense, it is a case of Muslims unconsciously lending themselves to the regulatory power of the state in the furtherance of their religious obligation.

Developing Secular Nationalism

From the point of view of the problem under discussion one more concept needs to be dealt with — secular nationalism. When we talk of Islam in terms of nationalism, we cannot avoid emphasizing a unique phenomenon in Islamic history, which points to the conclusion that Muslims have not evolved a national loyalty transcending their intense feeling of loyalty to the *umat-ul Islam* community of Islam.

Apparently aware of this phenomenon, Sukarno tried to divert the Indonesians from this feeling in his 1945 address. He said:

We shall find an Indonesian national state . . . I beg your pardon for using the word nationalism. I am a Muslim myself. I pray, however, gentlemen, do not misunderstand me when I say that the first basis for Indonesia is nationalism.¹⁴

When Turkey began to secularize her nation, men like Pasa and Kemal tried to reconcile the claims of Muslim universal brotherhood or *umma* with the elements of their concept of territorial fatherland or *watan*. In contrast, it was thought that the partition of the Indian subcontinent between the Muslims claiming to be a “nation” and the Hindus asserting them to be a territorial unit would resolve the issue once and for all. But the Delhi Pact of 1950 underlined the fact that exhibition of the “old intense feeling of nationality” is far from dead. This document reads in part:

Both governments wish to emphasize that the allegiance and loyalty of the minorities is to the state of which they are citizens, and that it is to the Government of their own State that they should look for the redress of their grievances.¹⁵

Our own contemporary experience is most revealing. On the occasion of the visit of five representatives from the Arab Republic of Egypt and Libya to see the actual conditions in Mindanao early in 1972, even the most ordinary Muslim said and did things which annoyed the Christian elements. Nothing could be further pointed out than their cohesion in Islam that impelled this boldness. An editorial of the *Mindanao Cross* gave the following picture:

The visit proved that the religious ties of the Muslims in Mindanao with other Muslim countries are as strong as if not stronger than their allegiance to their government . . . On the whole, the visit of the Arab mission and the reception and confidence it got from the local Muslims should give the Philippine government the occasion to re-examine its policies and dealings with the Muslims in Mindanao.¹⁶

It must be pointed out, of course, that the attitude of the Muslims toward their government is the outgrowth of their immediate past. Up until the closing years of the Spanish rule, conflicts between Spanish officials and church dignitaries often arose over whether the action of the government sought to be directed toward "the undoing of such an organism as Moroism constitutes, which is a nationality or state within another sovereignty."¹⁷ The United States, in acquiring the Philippine Islands, assumed sovereignty over the Muslims which was not much more complete than that of the Spanish sovereignty. The so-called "Moro Problem in the Philippines" even became a live issue in the independence question and at the same time presented in the islands the picture of two divided nations — the Filipinos constituting the Christian elements and the *Bangsa Moro* (Moro Nation) comprising the non-Christian segments. Truly enough, this "two-nation" theory proved most difficult to eliminate even after independence.

At this point we have gone full circle in our presentation of the inability of the Muslims to feel that they are part of the Philippine polity. One thing is clear: our task today is to attempt to align the religious loyalty of the Muslims and the public policy needs of the country. Of this vision we hope to see its fruition in the General Provision of the new constitution which provides:

The state shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies (Article

XV, Section 11).

Conclusion

The major point we have endeavored to develop is that the secular nature of the Republic does not echo the Muslim experience. But the Muslim concept of *kaum* may correspond to the western concept of state formed out of social contract. It has its theological basis in the tradition of the Prophet when he concluded contracts with non-Muslims. As the forgoing discussion has indicated, autonomous reform in Muslim law can produce a concomitant influence on the course of policy of the state. The codification project on Muslim laws has tended to be restricted to those that relate only to personal status, such as marriage, divorce, inheritance, etc. The lack of an established church and a hierarchy may be seen as a disadvantage but makes it easier for Muslims to temporize.

NOTES

¹An Islamic state conducts its affairs in accordance with revealed guidance of Islam and accepts the sovereignty of Allah and the supremacy of his law; a Muslim state is any state which is ruled by Muslims.

²Harjono, "The Ethical and Social Demands of Islam for a Modern Society with Special Consideration to Indonesia," *One World Only* (October 1969), 88-89.

³Astri Suhrke, "The Thai Muslims: Some Aspects of Minority Integration," *Pacific Affairs*, (1970), 531.

⁴Ziya-ul Hasan Paruqi, "Indian Muslims and the Ideology of the Secular State," in *South Asian Politics and Religion*, ed. Donald Smith (Princeton University Press: 1969), p. 138.

⁵Annual Report of the Governor of the Moro Province (Washington Government Printing Office, 1904), p. 17.

⁶Fifth Annual Report of the Philippine Commission to the Secretary of War (Washington Government Printing Office, 904), p. 290.

⁷Quoted in Herman Hagedorn, *Leonard Wood* (New York: Harper and Brothers, 1931), p. 8.

⁸Mamintal Tamano, Memorandum for the President, February 17, 1973 (mimeograph).

⁹Abdul A'la Maududi, *The Islamic Law and Constitution* (Lahore: Islamic Publications Ltd., 1967), p. 115.

¹⁰Msulana Sayyid Ahmad Akbarabadi, "Change in Muslim Personal Law" in *Daily Bulletin* of the XVI Session of International Congress of Orientalists, Delhi, January 9, 1964, p. 10.

¹¹Myong-Kwan Chi, "The Role of Religion in the Process of Modernization with Reference to the Case of Islam" *One World Only*, (October 1969), 137.

¹²Donald E. Smith, "The Political Implications of Asian Religions" *South Asian Politics and Religion*, p. 18.

¹³Quoted in C.A. Van Nieuwenhuijze, *Aspects of Islam in Post-Colonial Indonesia* (The Hague: W. Van Hoeve Ltd., 1958), p. 223.

¹⁴*Ibid.*, p. 205.

¹⁵Complete text found in *The Middle East Journal*, IV (1950), 44-46.

¹⁶Editorial, *The Mindanao Cross*, July 8, 1972.

¹⁷Pio Pi, Monograph on the Moros of the Philippines submitted to the American authorities in 1901. Fr. Pio Pi was then Superior of the Jesuit Order in the Philippines.

Other references not cited with footnote numbers but used:

Constitution of India, Constitution of the Philippines, Administration of Muslim Act of Singapore.