

THE HISTORICAL, POLITICAL, SOCIAL AND LEGAL JUSTIFICATION FOR CODIFICATION AND ENFORCEMENT OF MUSLIM LAWS AND ADAT LAWS

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It is said that the Philippines is the only Christian nation in Asia. The basis for this statement perhaps lies in the fact that the great majority of the citizens are Christian. The rest are not.

Among this group called the non-Christians, the Filipino Muslims at present number about 1.5-4 millions. The figure varies due to a difference in factual basis of statistics. The great majority of these Muslims live in the southern part of the Philippine Archipelago, specifically in the provinces of Lanao del Sur, Lanao del Norte, Sulu, Cotabato and Zamboanga. There are also Muslim residents in Visayas and Luzon, and there are around 50,000 "new" converts to Islam.

Since July 4, 1946, one of the national problems which has confronted the government has been the Muslim problem. This was originally described as the "Moro problem."

Various attempts have been made by the government to solve this problem. It tried but abandoned military action, since problems involving citizens of one nation should find peaceable solution; besides, an aggravated civil conflict will not serve the interest of a developing nation. Another attempt was the constitution of the committee on Moro affairs by Congress in 1954. This paved the way for the passage of Republic Act 1888, creating the commission on National Integration. Still, this solution came short of expectations.

The Moro problem was and is not a mere question of suppressing an uprising or a rebellion. Neither is it a mere matter of economic or educational development. The problem is rooted in the Filipino people's struggle to rediscover its identity as a nation, distinct from other nations of the world. And this identity lies in

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their culture, civilization, values and religion before the colonization of the Philippines.

Our ancestors had a way of life distinctly their own, which antedated religion. They were one race and one people long before recorded history. The Epic hero of the North, Bantug, and the Epic hero of the Darangan in the South, Bantugan, give evidence that this oneness may have existed. (Possibly, both heroes were one and the same person, the hero of the epic of our people.)

But due, perhaps, to distance, history and cruel circumstances, our oneness was buried away from memory with our forebears. This situation was exploited by foreign powers who came to our shores to divide us and exploit our artificial differences, and enslaved our people for centuries. Had the Filipinos freely exercised their religious convictions and practices and their customs and traditions, they would have been able to preserve their national identity, not merely as a religious group, but as a cultural, social and a political entity which constituted an integral part of the foundation of a new nation.

I. Historical Background

A. Islamic Era

History records that in 1380, the first Muslim missionary, an alleged noted Arabian judge, named Makhdum (meaning "merchant") landed on the island of Sumawil, Sulu and propagated the Islamic faith. However, Dean Majul, in his book *Muslims in the Philippines*, writes that the Sulu Tarsila, which is a written genealogical account, does not say that Karim ul Makhdum introduced Islam for the first time. It only says that people from different parts flocked to him and that he built a mosque. The probability therefore is that there were already some Muslims before the arrival of Makhdum.

Dean Majul supports this theory by referring to the Sulu Genealogy which related the coming of a certain Tuan Mashaika. "During his [Tuan Mashaika's] time, the people of Sulu were not yet Muslims or, as a tradition states it, the people did not yet belong to the Ahl-al-Sunnah Wa'l-jamaah. The Sulu genealogy does not explicitly state that Tuan Mashaika was a Muslim. But judging by the names of some of his reported children, Tuan Hakim and Aisha, and of his grandchildren, Tuan Mashaika must have been a Muslim. This is further confirmed by the Sulu Historical Notes which state that

Tuan Mashaika begot Maumin. But Maumin here might not be a proper name but possibly used as a collective term for believers. Therefore, what is probably meant here is that Tuan Mashaika begot Muslims." What Makhdum did was therefore to consolidate or reinforce Islam among the Sulus and make conversions. That he was later called "Tuan Sharif Aulia" suggests that he was a missionary and preacher, since the term "Aulia" sometimes carried this connotation in Malaysia.

After Makhdum, came Rajah Baguinda who continued the work of the former in about the year 1400, starting with his campaign in Sibutu Island. According to the Sulu Tarsila, "ten years after the arrival of Karim Ul Makhdum, Rajah Baguinda arrived from Menang Kabaw, Sumatra, after stopping at Zamboanga and then Basilan. Baguinda is a Menang Kabaw honorific for Prince. It is believed that Rajah Baguinda was a Prince from Sumatra. Rajah Baguinda stimulated the strengthening of Islamic consciousness, and consolidated his position in Buansa."

Then came Shariff Abu Bakr. Saleeby, in his book, *The History of Sulu*, recounts: "After that time came Sayid Abu Bakr from Palembang to Brunei and from there to Sulu . . . He then came to Buansa and lived with Rajah Baguinda."

Historical notes of Sulu further states that Abu-Bakr married the daughter of Rajah Baguinda, Paramisuli. It is to Abu Bakr that the conversion of the people of the interior of the island of Sulu is attributed. Abu Bakr was made Sultan. "This implies," says Majul, "that the people of Buansa or their chiefs at least, must have been Islamized to the extent that they would be willing to accept such an Islamic political institution. . . . Abu Bakr introduced Islam as a form of state religion with its attendant political and social institutions."

Shariff Muhammad Alawi, popularly known as Shariff Kabungsuwan, landed on the island of Mindanao where he propagated Islam. Dean Majul states, "Not only had other Muslims preceded Kabungsuwan but that some of the people who met him when he landed near the mouth of Pulangi were already Muslims. The Maguindanao Tarsila does not explicitly state that Kabungsuwan introduced Islam to the Pulangi area. It says, however, that it was the men of Kabungsuwan who built the town of Cotabato, that is, the town of Maguindanao. It is possible then, that some Muslim followers of Kabungsuwan settled where there were already Muslims although they might not

have been very deeply steeped in the faith. Muhammad Kabungsuwan was said to have had a high degree of Muslim consciousness, a rigid attitude towards non-Muslims and a great deal of proselytizing zeal."

It was not only Mindanao and Sulu which came under the sphere of influence of Islam, but also the islands of Luzon and Visayas. Dean Majul writes, "One of the earliest references to the presence of Islamic elements in Manila is found in Pigafetta's account. It states that while [Magellan's] fleet anchored off the coast of Brunei in 1521, his men were able to capture the son of the king of the island of Luzon. He was the captain general of the king of Brunei . . . It is believed that the Sultan of Brunei at this time, who was entitled Saripada, was a grandfather of this prince of Luzon, and that this prince who had just arrived from a punitive expedition had come to marry a cousin. It is further believed that this prince was the Rajah Matanda of Manila during the arrival of the Spaniards in 1570."

Below is a quotation from Retana's edition of Antonio de Morga's "Sucesos de las Islas Filipinas":

When they landed in Manila, the soldiers of Legaspi found on the same site of the present Fort Santiago, key to the capital of Manila, a powerful Muslim principality under Rajah Matanda who reigned in company with a nephew Rajah Sulaiman. Under the walls of this Fort, a historical event, little appreciated but which influenced our conquest, took place. It was there for the first time since the conquest of Granada that the Spaniards once more stood face to face with the standards of the Prophet, both meeting after circling the globe from opposite directions. As was inevitable, they met at the walls under artillery fire; and they continued to do so in Jolo, fighting a battle that began on the borders of Guadalete. And if nothing should detract from that continuity, Legaspi called them Moros, a name they keep up to this time and which regardless of their having nothing in common with the Mauretarians, signifies a community or religion shared with the Spanish Arabs.

Dean Majul relates that "It was common knowledge among Spaniards during Legaspi's time that the ruling family of Manila was not only related to the Brunei Sultan but was of Bornean origin."

The close relations between Brunei and Manila can be further

noted from the fact that when Manila was attacked by the Spaniards, some of those who fell in the battle were, according to Spanish accounts, Borneans. Furthermore, the so-called Tondo conspiracy, which was discovered in 1588, had for its ringleader relatives of the Bornean Sultan, and they had tried to contact the Brunei Sultan for help in the projected attempt to do away with the Spaniards.

"In Mindoro," Dean Majul continues to relate, "when the local leaders discovered that the Spaniards in Manila in 1574 were having difficulties with Limah-hong's invasion, they took opportunity to harass the Spaniards on their island. At this time, too, according to Spanish accounts, some inhabitants of Mindoro killed goats with special ceremonies, suggesting Islamic practices among them."

Dean Majul views the Islamic influence over the Muslim Filipinos as follows: "By adopting Islam, a segment of the population of the Philippines became part of a wider religious community extending from the Pillars of Hercules to the borders of China. These people in the Philippines gained from Islam a high sense of religious community, new laws, a more developed political organization, a new system of writing and above all, a new ethical outlook on life. Having adopted values that transcended their race and particular culture, they began to consider themselves as a historical people, yet assuming all the time that their history was not the result of their own making or efforts. Without this consciousness, as well as all the benefits that Islam brought to the peoples of Sulu and Mindanao, they would have easily been swept away by the western colonization and relegated to the limbo of conquered peoples."

B. Spanish Era

In the 16th century, the Spanish flag began to be seen in the waters of Southeast Asia. In 1521, Ferdinand Magellan with 208 men and five small ships reached Philippine waters. To him goes the credit as the rediscoverer of the Philippine Archipelago.

It was, however, during the time of Miguel Lopez de Legaspi that Spain obtained a concrete hold in the Philippines. On May 8, 1570, a Spanish expedition to Manila left Panay under the command of Marshal Martin de Goiti. At that time, Manila had a Muslim prince, Rajah Sulaiman. Sulaiman refused to submit to Spanish vassalage and defended his kingdom. The Spaniards won. On June 24, 1571, Legaspi proclaimed Manila the capital of the Philippines and built a

Spanish city from the ashes of Sulaiman's kingdom. The Spaniards were successful in subduing the peoples of Luzon and the Visayas and reduced them to vassalage. They were never successful, however, with their campaign against the Muslims in the South.

The Spaniards came to the Philippines, not only to extend the imperial domains and the economic interest of their king, but also to introduce Catholicism. This motive on the part of the Spaniards to Christianize the Philippines met vigorous opposition from the Datus of Magindanao, Iranun and Sulu. Up to the signing of the Treaty of Paris between Spain and the United States of America, the Spanish crown had never had a solid foothold in Mindanao and Sulu. While Luzon and the Visayas were under Spain and while the inhabitants of these islands were paying tribute to the Spanish crown, the Muslims in the South continued to resist the military invasion of Spain and continued to profess their religion.

The term "Spanish era" in the Philippines, therefore, has two connotations. The first is Spanish influence and sovereignty over the people of Luzon and the Visayas. It means the institutions of the Catholic Educational System, as well as Spanish political and social institutions. This was the era of the Christianization, and to an extent, Hispanization of the *Indios* in Luzon and the Visayas.

The second connotation is that which is the point of view among the Muslim in the South: that the "Spanish era" was the persistent and stubborn attempt of Spain to subjugate the Muslims and make them slaves of Spain and force them to embrace the Catholic faith. The Spanish era connotes a period of war between the Muslims and the vanguards of the Spanish Crown, as well as the cross, a war which the Spaniards did not win.

The successful resistance made by the Muslims against the Spaniards is attributable to their belief in Allah and the strength of their Islamic faith. In this connection, it must be mentioned that although there was no well defined or well developed clergy in Islam, the Ulama (or a court composed of Panditas who were religious men, or sharifs who were respected on account of their descent) constituted a force to be reckoned with in Muslim communities. The men who constitute the Ulama were distinguished from the majority for their knowledge of the Quran, the Hadith, the Sirat of the Prophet, and Islamic jurisprudence and institutions. It is from their ranks that imams, the judges and leaders of brotherhoods, were selected.

Subsequently, it had usually been the Ulama who reminded the

faithful of their religious duties. Some of them fought in battles or even led armed men as if they were datus. They had on occasion preached the Holy War and collected the Zakat which might have been reserved for war. And the Ulama were always in contact with other Ulama in neighboring principalities and conceived of the wider interests of Islam, interests that went beyond the limited political interests of the other principalities. It was the Ulama of Sulu that vigorously objected to the admission of Christian missionaries during the reign of Alimud-Din I. It was also the Ulama who released the wave of juramentados in Sulu against Spanish soldiers and their native allies.

The relations of the Ulama with the courts of Maguindanao and Sulu were intimate. Not only did the sultans appoint the highest religious functionaries, but some of the Sultans and their relatives were themselves Panditas. Moreover, it was expected that the Ulama would support those institutions that were Islamic, including that of the Sultanate, and although the Ulama might not have been too pleased with the Sultan, they remained staunch supporters of the Sultanate.

The Ulama formed an integral part of a Muslim community, and with Islam being more than a religion, that is, being a political and social institution as well, the Ulama played a vital role in the preservation of an Islamic society.

C. The American Era

The Spanish era in the Philippines lasted for 377 years. It began in 1521, when Magellan "discovered" the country, to 1898, when the first Philippine Republic was established.

On December 10, 1898, the Treaty of Paris between the United States and Spain was signed in Paris. Article III of the Treaty ceded the Philippines to the United States. On December 21, 1898, President William McKinley issued a proclamation asserting American sovereignty over the Philippines.

From 1896 to 1898, a revolution was raging in the islands of Luzon and the Visayas. At about the same time, the Spanish-American war was also in progress. General Emilio Aguinaldo's revolutionary forces succeeded in dislodging Spanish power from practically every area of the country except Manila, which was occupied by American troops on an understanding with Aguinaldo. Aguinaldo proclaimed

an independent Republic of the Philippines. As the American intentions to annex the Philippines became definite, the former allies against the common Spanish enemy went into war. The American superiority in arms quickly reduced the Philippine-American war into a mere insurrection. General Aguinaldo retreated into the mountains, where he eventually surrendered and acknowledged American sovereignty. Bands of guerillas who continued the fight were tried as common bandits when captured and some were hanged.

Like the Spanish era, the American era in the Philippines can be viewed in the context of events in Luzon and the Visayas and in the southern part of the archipelago. With history repeating itself, the Americans never did successfully crush the resistance of the Filipino Muslims. While the revolutionists in Luzon were defeated and recognized American sovereignty and continued to work for the Philippine Independence in a pacific manner, the American government recognized the sovereignty of the Maguindanao and Sulu Datus after a bitter war of resistance that produced great American generals. On August 20, 1899, the United States government through its representative Brig. Gen. John C. Bates entered into a Treaty of Peace with the Sultan of Sulu. On March 22, 1915, another treaty of similar nature was entered into between the same parties, the United States government, through its representative Frank W. Carpenter, governor of the Department of Mindanao and Sulu, and the Sultan of Sulu, Hadji Mohammad Jamalul Kiram.

These treaties were written in Arabic and English. They were peace pacts, calling for a cessation of hostilities between the American and the Tausogs. These treaties, as claimed by Muslim scholars, recognized the sovereignty of the Sultan of Sulu over his dominions and the jurisdiction of the Agama courts, over all crimes committed within the territory of the Sultan of Sulu. The English version of the Bates and Carpenter Treaty Agreements are not genuine and correct translations of the original copies in Arabic.

The provisions in the Bates Treaty which states: "Art. I. The sovereignty of the United States over the whole archipelago of Jolo and its dependencies is declared and acknowledged," is not accepted by the Muslims to be correct.

The Sultan of Sulu never recognized any sovereign in Sulu, much less in Jolo, other than himself. And history bears witness that, like the Spaniards, the Americans never did subjugate the Tausogs. One cannot be master over a person who is not his slave.

Yet, even in the English version of the Bates Treaty, the United States government recognized the jurisdiction of the Sultanate of Sulu over crimes involving Muslims. Article IX of the Treaty provides: "Where 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 persons charged with crimes and offenses will be delivered to the United States authorities for trial and punishment."

Furthermore, Article III of the English Text of the Bates Treaty provides: "The rights and dignities of His Highness, the Sultan and his datus shall be fully respected; the Moros shall not be interfered with on account of their religion; all their religious customs shall be respected and no one shall be prosecuted on account of his religion."

The wordings itself of the Bates agreement confirms the fact that the Sultan of Sulu never recognized the sovereignty of the United States over Jolo and its dependencies as contained in Article I, because in Article IX heretofore mentioned, the phrase used is "the government of the Sultan." The United States therefore recognized the existence of a government, the head of which is the Sultan and as such, recognized the sovereignty of the latter over Sulu and the other territories of the Sultanate of Sulu. The only reasonable interpretation of said treaties is that it is a treaty of mutual protection and friendship. At the most, the Sultanate of Sulu became a protectorate of the U.S.A.

On March 22, 1915 the Carpenter Agreement was entered into. In the original text, in Arabic, the stipulations were a mere reproduction of the Bates Treaty. It was also a Peace Treaty.

The English translation, however, surpassed the English version of the Bates Treaty in error. The very document itself proves gross ignorance of the Islamic faith and the political structure of the Sultanate of Sulu. The English translation is not false, but ridiculous. It starts with the heading: "The complete renunciation by the Sultan of Sulu of his pretensions of sovereignty." The Sultan of Sulu never did renounce his sovereignty over Sulu, much less admit that he was a mere pretender, even up to the act of "annexation" of Sabah to the Republic during the Macapagal era.

The English provides: "Whereas the Sultan of Sulu is the titular spiritual head of the Mohammedan Church in the Sulu Archipelago, with all the rights and privileges which under the government of the

United States of America may be exercised by such an ecclesiastical authority . . .”

Islam has no church, nor priests. Each and every Muslim is a preacher, duty-bound to preach the word of Allah. The Sultan of Sulu was not the spiritual head of the Tausogs. He was their leader in Islam which encompass religious, social, economic and political spheres.

The Carpenter Agreement further provides: “The Sultan of Sulu, on behalf of his adherents and people in the Sulu Archipelago and elsewhere within American territory, without any reservation or limitation whatsoever, ratifies and conforms his recognition of the sovereignty of the United States of America.”

The Sultan of Sulu was not supported by his people for they never stopped resisting the military forces of the United States of America. They never recognized the sovereignty of the government of the United States of America which recognized the sovereignty of the Sultan of Sulu over his dominions, under the Bates Agreement in Art. XIV – which requires the consent of the Sultan of Sulu on the matter of selling any portion of the territory of Sulu by the United States of America.

II. Justification

A. Application of Islamic Law and Customary Law for Centuries

When the first Muslim missionary landed on Philippine shores in the 13th century, he brought with him a new faith. With this new faith were new laws. And the natives who embraced Islam came within the fold of Islamic law.

As years passed, more and more inhabitants became Muslims, until most of the archipelago of the Philippine island lived under the banner of Islam. Thus as centuries passed, a greater number of people were governed by Islamic law. However, Islamic Law was in a sense infused with the *adat* or customary law. The laws of Islam and the age-old customs of the place were therefore commingled. Still, Islamic law prevailed over custom where there was conflict.

For centuries, the Muslims of the Philippines were governed by Islamic law. They had their own courts which they called *agama* and their own judges. Also, the Philippine Muslims since the early centuries were already enjoying a relatively high degree of civilization.

They were already trading with the Arabs, China and some European countries.

The Sultanate in Sulu and Maguindanao were part of a constellation to Sultanates in Southeast Asia. These Sultanates were Muslim outposts, governed by Islamic Law and their respective customs and traditions.

Thus Dean Majul states:

At the bottom, the Muslim resistance against Spain in the Philippines was not an isolated or insignificant phenomenon but an essential part of the general resistance of all Muslim people in Malaysia against Western Imperialism, Colonialism and Christianity. In an important sense, the Sultanates were articulations of a wider social entity, the Islamic society in the Malaysian world.

Although the Sultanates of Sulu and Maguindanao as well as those of the Iranuns were governed by Islamic law (Shariah), the local customs and traditions were also observed. Majul states "that only very pious and strong Sultans were able to enforce the *hadd* laws during their reign." *Hadd* is defined as the penalty appointed and specified by law on account of right of God or, in other words, public justice. The punishment of *Hadd* extends to whoredom or fornication, slander of a chaste Muslim's continence, apostasy, drinking wine, theft and robbery. The stated punishment for fornication is lapidation or stoning to death, if the convict is a sane, free Muslim adult married to a woman of the same description, and a hundred stripes if the convict is free, sane and adult but either not a Muslim or unmarried. For theft, the punishment is amputation of hands; for slander, eighty stripes; for drinking wine, scourging; and for apostasy, persecution.

Majul observes: "On the occasions, the *adat* tended to moderate what appeared to be some harsh laws of the Shariah. The Luwaran of the Maguindanao is an example of the degree of penetration of Islamic law in the native legal systems. Though Islamic, the Sultanate of the Philippine Muslims never totally abrogated or abandoned their customs and traditions. What resulted therefrom was a mixture of the Shariah, as complimented or supplemented by the Adat, or customary law."

At any rate, the fact stands out that, for many centuries,

Islamic law prevailed in the islands of Mindanao and Sulu, and with it, the Customs of the respective Muslim regions and Sultanates governed and regulated the lives of these people.

B. Recognition of Muslim Law and Muslim Courts

In the Bates Treaty, the U.S. government recognized the existence of "the government of the Sultan" and its jurisdiction over crimes committed by Muslim against Muslim. The United States government recognized the existence of Muslim courts and the enforcement of Muslim law.

In the Carpenter Treaty, even in the erroneous English version, the United States government recognized the validity of the Islamic-customary legal system in the effective administration of laws to attain social order. On June 1, 1903, the Philippine Commission, by authority of the United States, enacted Act. No. 787, which provided for the organization and government of the Moro Province.

Section 13 of this Act declares:

It shall be the duty and within the power of the legislative council:

(j) *To enact laws which shall collect and codify the customary laws of the Moros as they . . . are enforced in the various parts of the Moro province among the Moros, modifying such laws as the legislative council thinks best and amending them as they may be inconsistent with the provisions of the Act of Congress . . . and to provide for the printing of such codification, when completed, in English, Arabic or the local Moro dialects as may be deemed wise. The Moro customary laws thus amended and codified shall apply in all civil and criminal actions arising between members of some non-Christian tribes other than Moros . . .*
(italics mine)

(k) *To enact laws for the organization and procedure of district courts, to consider and decide civil and criminal actions arising between Moros, between members of non-Christian tribes, and between Moros and members of other non-Christian tribes. The district court shall be presided over by the Secretary of the district and the other members of the court shall be appointed by the district governor*

and shall vary with the race or tribe of the litigants, so that where the action arises between members of other non-Christian tribes, and when the litigation arises between Moros and members of other non-Christian tribes there shall be at least one Moro member of the court. (*italics mine*)

On June 13, 1905, the Philippine Commission, by authority of the United States, passed Act. No. 1283. This act amended Act. 787. Section 6 (b) of Art. 1283 amended Section 13 (j) to as follows:

To enact laws amending and modifying the substantive civil and criminal law of the Philippine islands to suit local conditions among the Moros and other non-Christian inhabitants of the province, and to cause such laws to conform, when practicable, to the local customs and usages of such inhabitants . . .

The substantive law as thus amended and modified shall apply in all civil actions in which each of the parties is either a Moro or a member of some non-Christian tribe, and in all criminal and civil law of the Philippine islands shall apply and be in force as in other provinces.

Section (c) amended sub-section (k) of Section (13) to read as follows:

(k) to enact for the organization and procedure of local tribal ward courts to consider and decide minor civil actions in which the parties in interest, or any of them, are Moros or members of some other non-Christian tribe, and minor criminal actions in which the accused, or any of them, are Moros or members of some other non-Christian tribe. Tribal ward courts shall, within the limits defined in the preceding sentence, have and exercise the jurisdiction now or hereafter vested by law in courts of justice of the peace.

Section 13, amended Section 27 of Act 787 to read as follows:

Justices of the peace in the Moro province shall not have jurisdiction to try civil actions in which the parties or any of them, are Moros or members of some other non-Christian tribe, or criminal actions in which the accused or any of

them are Moros or members of some other non-Christian tribe.

On April 3, 1915, the Philippine Commission, by authority of the United States, enacted Article No. 2520. Section 3 of this Act provides:

Mohammedan Laws and Customs – Judges of the courts of First Instance and Justices of the Peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed wise, *may modify the application of the law of the Philippine Islands, taking into account local laws and customs*; Provided that such modification shall not be in conflict with the basic principles of the laws of the United States of America. (italics mine)

Clearly, from these provisions, the United States government recognized and respected the religious practices of the Philippine Muslim. It furthermore recognized and created tribal courts which had jurisdiction over crimes involving Philippine Muslims.

The various provisions of the Acts of the Philippine Commission is an express admission of the U.S. government of the necessity of respecting and enforcing Islamic law and the *adat* among the Muslims of the Philippines. It was on acceptance of the fact that the Muslims fought the Spaniards on the ground of defense of the Islamic system and their homeland. The legal propriety of adopting the Muslim legal system was upheld by the U.S. government despite of its strict adherence to the doctrine of the separation of church and state.

The organic laws governing the Philippines at the time contained the same or similar provisions on church-state separation and clauses on religious freedom with the 1935 Constitution and the present Constitution of the Philippines. Considering further that our constitutional jurisprudence is similar to that of the U.S.A., it is safe to assume the validity of enforcing Muslim laws among Muslims in the Philippines.

C. Constitutional Provisions

Philippine Constitution

The present constitution of the Philippines provides in Article IV Section 8: “. . . The free exercise and enjoyment of religious

profession and worship without discrimination or preference, shall forever be allowed . . .”

Article IV, Section 8, of the New Constitution is almost a verbatim copy of the 1935 Philippine Constitution. This Section 8 of the Article is the provision on religious freedom.

Jose M. Aruego explains “that this provision on religious freedom has two aspects, namely (1) the separation of church and state, ordered in the provision that no law shall be made respecting an establishment of religion, and (2) the freedom of religious profession and worship” which is embodied in the provision above mentioned.

Religious liberty, as stated in the case of *Davis v. Benson* 133 U.S. 342, is deigned to be the “freedom of everyone to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper and not injurious to the equal rights of others.” This provision on religious liberty justifies the application of Islamic law on Philippine Muslims. Moreover, if we are to realize the basic goals of social order and justice, then Islamic Law must govern the Muslims as they have been governed for centuries.

The freedom of religion guaranteed in the Constitution is subject to the police power of the state. The Muslims do not question this. But as I have pointed out, the state may sanction the administration of Muslim laws.

And in the case of *Davis v. Benson* already mentioned, the Supreme Court held that “with man’s relations to his Maker, and the obligation 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 the morals of its people, are not interfered with.”

In law, there is a classification of what is an immoral conduct. An act may be tolerated though deemed immoral by a society because the greater society does not consider it to be immoral. Under the New Civil Code, for instance, first cousins cannot marry. If, however, they marry abroad where such union is considered valid, the marriage becomes valid here, too, when the couple returns. This is because marriage between first cousins is not considered immoral by international society.

Likewise, the beliefs and practices of the Muslims are not basically antagonistic to the principles upon which the Philippine social order stands. There is no reason, therefore, why the Muslims cannot be regulated and governed by their own laws, since these laws are the product of history and have proven their effectiveness in governing the interrelations of the citizens and their obligations to their community and country.

Foreign Constitutions

In Singapore, where the Muslims are a small minority constituting a mere 12% of the populace, the government recognizes Islamic Law and the enforcement of such law. On August 17, 1966, the Parliament of Singapore passed "The Administration of Muslim Law Act." This was assented to by the President on August 25, 1966. This Act created a council to advise the President on matters relating to the Muslim religion in Singapore. The council is called "Majilis Ugama Islam, Singapore."

Part III of the Act constituted the Shariah Court for Singapore which has jurisdiction throughout Singapore "to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim Law and which involved disputes relating to

- (a) Marriage
- (b) divorces known in the Muslim law as *fasakh*, *cherai*, *taalik*, *kholo* and *talak*;
- (c) betrothal, nullity of marriage or judicial separation;
- (d) the disposition or division of property on divorce; or
- (e) the payment of *mas-kahwin*, maintenance and consolatory gifts or *matta'ah*.

In Thailand, the Muslims are also a minority, numbering to about two millions. The government of Thailand protects the religious and political rights of the Muslims. In the Ministry of Foreign Affairs, there used to be a division which dealt with the affairs of the Muslim immigrants and residents. A Central Commission on Islamic Affairs had been set up with a senior Muslim leader as its chairman.

In Malaysia's administration of justice in its dependencies, special Muslim advisers under the title of *Datch Yutitharm*, a sort of Muslim justice of the peace, is employed in the local court to sit over and to help in settling family disputes and problems in connection

with inheritance in accordance with Muslim Laws.

In most civilized countries with substantial religious minorities, and citing particularly Muslim countries like Egypt, Pakistan, and Indonesia, a person's birthright to be governed by his own personal laws is recognized. In other words, a Christian in Indonesia or Egypt is not required to follow Islamic laws in matters like succession and marriage.

III. Basis for the Enforcement of Muslim Laws

A. Necessity

Since the birth of the Republic of the Philippines, there have been numerous insurrections by Muslims against the government. The most notorious of these has been by Hadji Kamlon, whose rebellion in the early 50's almost caused serious damage to military forces and the unity of the Philippines. He was an outlaw, a bandit and an enemy of the government. To the people of Sulu, however, there was an ambivalent attitude towards Kamlon. In a manner of speaking, there was a little of Kamlon in everyone of them.

Even at present, there are Muslim rebels who fight the government forces of the country. These incidents are not isolated cases, or mere incidents of a society which is in the process of growing. These events have been foreseen and Muslim groups have petitioned for programs to prevent them. The old society, enmeshed in corruption, failed to heed these warnings. Like the warning of Casandra to the people of Troy, the predicted tragedy has occurred exactly and we now call it the "Mindanao crisis," which has given our people a traumatic experience.

On March 18, 1935 at Dansalan (now Marawi City), a declaration was read and forwarded to the Congress of the United States of America through the President. The declaration read in part: "We foresee what condition we will be in and our children when independence is granted in these islands . . . This condition will be characterized by unrest, sufferings and misery . . ."

These warnings have been repeated through the years up to the present.

The Muslims are asking for what they believe is the preservation of their dignity and their heritage. And the Muslims shall work to preserve their identity as a people — as an integral part of the Filipino

nation. This effort of the Muslims carries with it not only the present generation and the Muslims, but also all the generations, past and those to come, in the nation. This struggle carries with it the entire Filipino people. Whatever differences, animosities and grievances the Filipinos may have against one another, whatever circumstances the past centuries may have placed them in, the fact remains that they are one people, born out of one race, sharing one culture and one social creed. This is the dream of the New Society. It is not an impossible dream.

Now on the question of religious freedom, we are all aware that the Philippine Constitution guarantees it. Jurists also state that in a democracy, the right of religious liberty is not only presumed but inherent. The provision in the Constitution for religious freedom, therefore, is a mere recognition of one's right. It is also fundamental in law, that a man cannot be convicted for any evil thought, until such thought has been transformed into an overt act.

These constitutional principles, however, are transgressed by the provision of Commonwealth Act No. 473, as amended, which provides that "no person who believes in polygamy may be naturalized as a Filipino Citizen." Now all Muslims believe in polygyny. This belief is inherent in their religion which is Islam. They accept polygyny because they are Muslims. However, although not all Muslims actually practice polygyny, the said Act already convicts Muslim even before he has committed polygyny, which is considered contrary to public morals — which are actually Christian morals. In effect, therefore, this law condemns a man for what he believes in, for a mere idea, which is not yet concretized in act.

As was stated before, the Muslims shall never stop working for the right to be governed by Islamic law, even only in the matter of their personal relations to one another. It is incumbent upon them as a duty to preserve their tradition and religion. It is a commandment to them as Muslims by Allah in the Glorious Quran.

The government loses nothing in granting the said right to the Muslims. The United States government which, as a republican state, adheres to the separation of church and state, authorized the Philippine Commission to enact laws recognizing Muslim formal and customary laws and creating the tribal ward courts for the enforcement of such laws. This was done by the United States government out of necessity. Present circumstances find themselves forced with the same necessity.

The process of colonization has not damaged the Filipino Muslims. Through them, the Filipino nation can retrace its past and can boast to the world that an indigenous culture, one distinctly Filipino, flourishes in the archipelago.

B. Benefits

1. *Political*

The Filipino Muslims constitute a potent segment in the country's political structure. Undoubtedly, they can greatly contribute to the strengthening of the political, social and economic bases of the country. In his memorandum to the President, former Senator Tamano stated that "the so-called Muslim Problem remains unsolved because of the government's failure to erase from the minds of the Muslims some latent fears which are stumblingblocks to their wholehearted support of government policy." These fears which Senator Tamano mentioned are not merely imagined. They are based on factual events which the Christian majority, as well as the government, cannot in all honesty deny.

Senator Tamano mentioned four "fears." For purposes of this paper, the discussion of only two is sufficient. These are the fear that they will be alienated from their religion; and the fear of losing their cherished values, customs and traditions. Senator Tamano discussed these fears as follows;

To a Muslim, his religion is more than a mere ritual; it is a way of life. But while religious freedom is a basic Constitutional guarantee in this country, the Muslim finds that there are many subtle encroachments on his way of life and, therefore, his religious freedom.

(a) *Fear of Religious Alienation*

Why should the Muslims be forced to adhere to personal laws which are based on Christian conceptions of morality, . . . [or] be governed by the New Civil Code which is essentially the Spanish Civil Code and the Napoleon[ic] Code?

This is a major sore that [rankles] in the hearts and minds of Filipino Muslims. Putting the shoe on the other foot; how would our Christian brothers feel if they were

required to be governed in their personal and family relations and in the transmission of their inheritance by laws based on the Quran?

(b) *Fear of Losing Cherished Values, Customs and Traditions*

For more than four hundred years, the Muslims managed to maintain their own political and social organization even in the face of foreign onslaughts. This political and social organization is based on immemorial customs, traditions and usage.

The uninitiated tends to consider such organization as crude, feudal and undemocratic; that custom, traditions and usages are relics of the past that have no place in the modern world.

On a much closer look, we find that Muslim traditional government is quite democratic in the best sense of the term although it is based on kinship and clan relationship. And within the framework of their traditional government, the Muslims have built an elaborate set of customs and traditions called "Adat" or "Taritib." These customs and traditions enabled the Muslims to carry on an active community life with a minimum of friction. Disputes were settled by the latter through arbitration courts, using a mixture of Islamic laws and customs sanctified by immemorial usage . . .

These values, customs and traditions are now being undermined by western and non-indigenous institutions backed up by the authority and force of the government.

Naturally, such forms of cultural aggression would be resented. The Muslims want to keep their values, customs and traditions, because [these] are familiar to [them] and because [they believe these values, customs and traditions] to be just as good if not better than the western institutions that seek to supplant [them]. They also realize that these cultural values are basic to their identity as a people. They consider their traditional values and customs as part of their proud heritage . . .

Politically, therefore, the codification of Philippine Muslim

Laws will have a tremendous impact on the New Society, an impact which would serve as an impetus for involvement and commitment to the principles and goals of the New Society by the Filipino Muslims. It would also serve as a valuable medium for a just social order in Muslim Mindanao.

The application of Islamic Law on the personal or family relations of the Muslims would engender respect and trust in the government and such application would mean the upliftment of the Filipino Muslims to the status they have so longed desired, a status wherein they are governed by their own personal laws based on the Islamic faith. The fears which they have always nurtured with regards, for example, to divorce and the status of the children begotten by them with their second wives, would vanish.

The collation of their age-old customs and traditions would likewise make them rest assured that their generations to come shall still belong to an indigenous people and culture that the entire nation can be proud of. These customs and traditions, said Senator Tamano, "must be patiently collected from old manuscripts, the Shariah or Islamic Laws, from the mouths of wise, old men of the village . . ."

This move on the part of the Office of the President, in issuing memorandum Order No. 370, creating the Research Staff for the Codification of Philippine Muslim Law, both formal and customary, has in effect gained the sympathy of the *ulamas*. The President has at the same time performed what would convince the Muslims that the Philippine government does not desire the destruction of their cultural and political institutions, but rather aims to preserve their legacy from their forbears. With such act, too, the President has consciously launched an attraction policy towards the Muslim countries in Southeast Asia and the rest of the world.

2. *Economic Benefits*

The Codification of Philippine Personal Muslim Law does not only strengthen the political basis of the Filipino people but also contributes to a large extent in the economic betterment of the Filipino Muslims and perhaps of the entire nation. The fact is that Islam is primarily a social system, which aims at the reconstruction of society on equitable foundations, by the removal of injustice, social, economic and legal. Islam is not a mere ritualistic religion. It is a religious ideology. Primarily it is a code of human conduct, a comprehensive

way of life.

It is not the purpose of this paper to discuss these Islamic personal laws and concepts deeply, for this paper is merely a preface to the statutory outline of the code of Philippine Muslim laws. However, it is necessary to deal with certain Islamic concepts, which are actually personal Muslim laws, to show how these concepts affect a society economically.

The right of private property is an institution which mainly governs western economy. This right is sanctioned by Islam. The concepts of this right to property, which is the institution that has far-reaching influence on the whole economic structure in Islam, is quite different from the Western concept. There are some similarities, however. In both concepts, the owner is entitled to the exclusive use of his property to its disposal in his lifetime and after his death. If the state, on behalf of the community and for the public good, wishes to dispossess him of his property, it is bound, as a general rule, to give him duly, in exchange, a fair and equitable compensation. This is what is known in democratic states as "expropriation."

However, in Islam, while the right of property is sanctioned, it is far from being the absolute right prevailing in the capitalist system, where, as a rule, property is managed according to the ultimate discretion of the owner. In Islam, an individual is a mere trustee of all property in his possession, bound to comply with all the duties of a wise and honest trusteeship. Everything in the universe is owned by God and man is only the interim owner. As such, man, with respect to all properties in his possession, is bound by certain obligations.

These obligations are classified into positive and negative obligations. The positive obligations are as follows:

1. He must devote all his energy, intellect and ability to the task of utilizing his property in such a way as to contribute to the advancement of the interests of the community. This obligation is based on Islam's abhorrence of poverty and exhortation of Muslims to be industrious in promoting their material welfare.

2. He must assign a definite annual portion of his capital wealth to the benefit of the needy classes in his community. If he is reluctant to fulfill it, it can be enforced by the state. This is called Zakat. Charity is an obligation in Islam, enforceable by law.

3. He must give endowments for the cause of "public good." This obligation is also based on the owner's allotted share of state

taxes, required for the upkeep of the community.

Some of his negative obligations are the following:

1. The owner is bound to abstain from using his property in such a way as to inflict any damage to another's property or cause any injury to the community in general. The practice of monopoly whenever it becomes detrimental to social interest, is prohibited.

2. The owner is prohibited against letting his property stand idle and producing no return to himself or to the community. Such deliberate inaction may expose his property to expropriation. Islamic law authorizes the state in certain cases – for example, cultivable land abandoned for a period of three years – to expropriate land and entrust it to a more diligent person.

3. The owner is also prohibited from practicing usury. The fundamental objection of Islam against usurious loans is the fact that they engender income unfairly earned.

The economic effect of this concept of private ownership in Islam is well summed up in these words of Dr. Muhammad Abdullah El-Araby:

In Islam, the institution of private property is directed to the benefit of the owner of the property, thus maintaining the incentive of self-interest, an essential requisite of economic growth. At the same time 'the institution' through its duties based on the theory of trusteeship, is directed jointly to the service of the community. This harmonious balance of conflicting interests eliminates class hatred, affirms social cohesion, reduces the possibilities of accumulation of wealth in the hands of a limited group, and develops a more equitable distribution of national income.

The law on inheritance based on Islamic law is also different from the western legal system. The rationale for the Islamic Law on inheritance is to prevent the accumulation of wealth in the hands of the few. When a Muslim dies, his property is divided among all his heirs. He is not permitted to favor one heir at the expense of another; nor is the inheritance limited to direct descendants. Inheritance also extends to other descendants, thus affirming social purpose of wider distribution of properties or wealth.

The outcome of such a division as based on Islamic law is the gradual parcelling of huge fortunes and big estates, thus remedying

the gross inequalities of wealth within the different classes of the community.

3. *Cultural Benefits*

Culturally, the codification of Philippine Muslim law, both formal and customary, will redound to the great benefit of the nation if only for the reason that the nation needs to know its own identity. The entire Philippine Archipelago, with the exception of Muslim Mindanao, has been considerably influenced by western civilization. "Our problem," as noted by a Filipino author, "is that we as a people have no direction. This is the consequence of the influence of the west. We have forgotten our origin." As a Tagalog saying also goes, "*Ang taong hindi marunong lumingon sa pinangalangan ay hindi makararating sa kanyang paruruonan*" (He who knows not where he came from, knows not where he is going). The Filipino Muslims can help the nation rediscover itself and provide direction and the impetus for progress and peace and national unity.

Filipino indigenous culture is the repository of the past. It contains the history of our people and holds the values and traditions which were once common among these seven hundred islands. In it is the heritage of the Filipino people and with it, the bond of nationhood which is determined not by mere fiat of law or common religion, but by a common history.

By the codification as well as application of Islamic and Adat Laws, Filipino culture shall also resemble the forgotten or dying custom and traditions which were once an institution, which taught and guided the Filipino people to hold government and resist western colonization despite overwhelming odds. Perhaps we, the generations today, can learn from our forbears a lesson or two. The dead cannot speak, but the dead Filipinos through these institutions speak and perchance the time is ripe for the nation to listen and respond.

4. *Feasibility*

In the old society's Congress of the Philippines, which was dominated by vested interests and where so many bigots sat, any proposal which would call for the grant of personal Muslim Laws as applicable among Muslims would not have reached even the first

reading. Under the pretext of the constitutional provision of the separation of church and state or of class legislation, Christian soions could have killed the proposal even before it could begin to fight. But now under the New Society, the President of the Republic of the Philippines can issue a law for the codification of Muslim Laws and its implementation as part of the national policy. The New Society is an integrating society. It aims to unify all the people under the framework of mutual respect and recognition of all segments of the society. History justifies this eventually – and contemporary times necessitates it.

In the words of Secretary Alejandro Melchor, speaking for the Office of the President: “The Philippine government gives due recognition to the vital role played by Islam, in the building of this nation and provides opportunities for strengthening the Islamic faith and community, in recognition of the fact that this can not but strengthen the Filipino people.”

Conclusion

President Ferdinand E. Marcos once said, “I will consider myself a failure if I can not unify the Christian and Muslims in this country.” This statement made by the President has become more than a mere promise, but a commitment and a duty which at the same time has become the underlying factor of the government’s policy towards the Muslims.

Thus, Memorandum Order No. 370 “creating the Research Staff for the Codification of Philippine Muslim Laws and the monitoring and operations center under the Presidential Task Force for the reconstruction and development of Mindanao” was enacted. The Research Staff has the following for its purposes:

1. To survey, collect and gather materials on Muslim Laws in all available sources with particular emphasis on current Philippine Laws affected by Islamic laws;
2. To collate and reconcile Philippine laws with Muslim laws, and finally;
3. To prepare a preliminary draft of the proposed Code of Philippine Muslim Laws (*Shariah, Fiqh, Adat*, etc.) and its complementing agencies.

The reconstruction of Philippine society, as envisioned by the

President and which is the primary concern of the New Society in the political and social spheres, begins with the unity of the Filipino people. For definitely, the maxim of thousands of years still holds true today that "a people united, stands; divided it falls."

The first step, therefore, is to take into the body politic the Muslims in the Philippines. And the only means possible to achieve this gigantic and difficult task is to give them a realization of their religious duty to Allah, that "the Muslims are never true Muslims, until Islamic law prevails among them."

The problem, however, is not totally solved by the grant of religious freedom as contemplated by the Muslims, that concordant to the right of religious worship is the regulation of their personal relations by Islamic law and the *Adat*. The Muslims are not merely a religious group. They are a part and parcel of their country. As such, whatever object conditions they may be in, economically and politically, pains the entire nation. The program of the President then, vis-a-vis the Muslim regions, is not only from the aspect of religious liberty, but also from that of economic development.

The problem, therefore, which has remained omnipresent in the island of Mindanao, namely the "Muslim problem," has been at last approached with the proper remedy. Thus the Muslims politically become citizens of the Republic and religiously become more truly Muslims.

Indeed, the proper enforcement of Islam and Customary Philippine laws will not only fulfill the duty of Muslims to observe and be governed by Islamic tenets, but will, at the same time, curb improper and even un-Islamic practices of some Filipino Muslims. And this rectification will surely redound to the benefits of the entire nation.

As Secretary Melchor fittingly puts it, "We feel very strongly that steps should be taken to strengthen the correct practice of Islam by Filipino Muslims since this can not but strengthen the moral fiber of the Filipino people as a whole."

Allah says in the Quran:

And spend on your substance in one cause of God and make not your own hands contribute to your destruction but do good for Allah loves those who do good. Allah commands justice, the doing of good and liberality to kith and kin and He forbids all shameful deeds and injustice

and rebellion . . .

Ustaj Ali Tamphan, in his invocation delivered on the occasion of the birthday of the President on September 11, 1978 said, and I quote:

The Islamic concept of society rests on the bedrock of law, i.e., Law of God, for man and by man . . .

Upon the advent of the New Society, the President enunciated broad, popular public policies that will now give the Muslims in the Philippines not only equal protection before the law but the exercise of their own personal law . . . The Muslim Filipinos can now live as Filipinos by being Muslims at the same time. They need not have to live as Muslims now and Filipinos later, or vice-versa. The President made this possible for the Filipino Muslims. Making Muslims better Muslims will not make the Christians lesser Christians. Better Muslims and Christians are better Filipinos for a greater Philippines.

My countrymen, bear in mind that Islam is the only religion that recognizes Christianity as a religion from God revealed through a revered Prophet, Jesus Christ. The Muslims are commanded by Allah to respect the Christians, Jesus and all the religious communities who believe in the hereafter. Islam and Christianity has reconciled in the middle East and Europe . . .

In Asia and Africa, there are conflicts among religious communities. These conflicts must end or else they will be exploited against the interest of the developing nations of southeast Asia and Africa. We must not allow this repetition of the colonial past. All religious communities must reconcile for only in their reconciliation and mutual recognition can they find fulfillment of their different religions.

It is a national policy, as provided for in Article XV, Section 11, that: "The state shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of state policies."

In Section 9, (2) of the same article, it is also provided that: "Filipino culture shall be preserved and developed for national identity."

This is in implementation of the universal declaration of Human Rights which provides that:

The family status and personal law of the various national ethno-linguistic minorities and their religious interests shall be forever respected by the state. Arrangements shall be made for their personal laws as are enforceable through legislation.

Let us implement these institutional declarations. Let us not be overwhelmed by obstacles. Let us consolidate our endeavors to achieve what other generations failed to achieve. Let us dare conduct socio-cultural-legal experiments that other nations may emulate. Let us be the example of enlightened social management in the adjustment of varied interests of different group, by crystalizing the basic and just demands of each and everyone into national goals. In so doing, the codification and implementation of Muslim Laws will be a matter of national concern and not only the main concern of the Muslims.

Let us have this attitude and, God willing, as a people we shall excel in nationhood.