

PHILIPPINE-ISLAMIC LAW IN THE LIGHT OF SULU PROBLEMS

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I consider it a great honor to have this rare opportunity to speak before a group of distinguished persons on a subject of enthralling interest such as the Islamic law as it exists in the Philippines. Considering the fact that the customary law of the Tausog-Samal ethnic groups, who help shape Islamic law in our country, and differs to a certain extent in modes of speaking or in modes of living with those of other ethnic groups, I am confident you will agree with me that the codification of Islamic law would be half-done without them. Indeed the need for codifying Islamic law in the Philippines was felt in Sulu since as far back as 1957 when the late Senator Claro M. Recto, upon our request, promised to support the idea, as a genuine step to national understanding. Again in recent times, Sulu leaders insisted in their suggestion to His Excellency, President Ferdinand E. Marcos, who saw the importance of codifying Philippine-Islamic law, in the interest of national unity. It is for this reason that Sulu delegates are here to attend the 6th Annual Seminar on Islam, if only to manifest the continued interest of more than a million people on the codification of Islamic law which is the main thrust of this convention.

My object today, therefore, is to interest you in the background of Islamic law as found in the Philippines, in relation to the Moro problems, with emphasis on the Tausog-Samal ethnic group, covering the areas of Sulu, Tawi-Tawi – South Palawan, Basilan and the Zamboanga Provinces. It should be made clear, however, that I am no expert on the subject. I am simply a lowly student of law and history doing some field and library research on Philippine-Islamic law. Though I have elementary Islamic education in the Madrasah, with some 18 years experience in the actual practice of the legal profession among my people, I can only speak in broad terms.

Law, simply understood, regulates the actions of man; it is a

brake on his conduct and a restraint on his decision. To understand, therefore, man's action, one cannot renounce the joy of studying the law governing him and his society for this law embodies the story of his life, his neighbors and his nation's development through many years of history. In this connection, may I quote a foremost jurist's classic statement on his outlook upon life which time and repetition are without capacity to mar: "I have labored carefully not to mock, lament and execrate the action of man. I have labored to understand them."¹ In the light of existing conditions in our region, an echo of that cadence is sounding loud and clear in our day in the frontier, among others, of Islamic law.

The world today is governed by three legal systems; the Roman law, the English or Common law and the Islamic legal system. No one can state definitely that one legal system is created or patterned after another. Besides, this is hardly the place or time to discuss that question. It is enough to say that even before the very foundations of the City of Rome, Southwest Arabia had already a fully-developed law on property, international trade or commerce, as well as obligations and contract and personal laws, which Islam adopted and improved.² This pre-Islamic law, says Nallino, an Italian jurist, was never influenced by Roman law: on the basis of the findings of Theodoreto, who lived during the first half of the 5th century A.C.,³ Roman law did not reach the Arab tribes. In other words, the laws which existed in Arabia upon the advent of Islam did not contain any foreign element.

The foreign elements entered into Islamic law only in the first century of Islam through contacts with the Byzantines at the Syrian frontier. This was the finding of the studies of Joseph Schacht, a leading modern Islamist.⁴ Like the other world legal systems, Islamic law was shaped out of the customary laws of other territories. In the words of Coulson, another Islamist, Islamic law was compared to "a tree, whose network of branches and twigs stems from the same trunk and roots; a sea, formed by the waters of different rivers; a variety of threads woven into a single garment; even the interlaced holes of a fishing net; these are some of the metaphors used by Muslim authors to explain the phenomenon of *iktilaf* or diversity of doctrine in Sharia law."⁵ Considering the growth of law in the different countries of the world, no one can say that one legal system can be developed without any foreign influence.

To not a few, Philippine-Islamic law is not generally well-known,

and for a society that is predominantly West-oriented, such a knowledge is only confined to specialists, lawyers and thinkers. But if we are informed that Islamic law embraces the study of anthropology, philosophy, history, literature, politics and religion; if we are informed that Islamic law, as parted from the land of its birth, has been shaped by the languages or habits of thoughts of the people who adopt it and influenced by the system of law existing in the country into which the Islamic law was introduced;⁶ if we are informed that Islamic law also deals with the law on property, inheritance, obligations and contracts and personal or family laws; if we are informed that the Philippine laws which originally came from Spain that was under Muslim domination for seven centuries and may therefore be Islamic-influenced to a certain extent, when it was introduced to the Philippines; if we know all these, then Islamic law will certainly attract the interest of all of us. But what is Islamic law or the law of Sharia?

As the path to understanding Islam is through *Sharia*, so is the key to understanding the Muslims in the Philippines through Islamic law, as shaped by Philippine customs, beliefs, traditions and idiosyncracies. The word *Sharia*, etymologically means "path leading to the water or source of life." In its religious sense, it means the "highway of good life." The term *Sharia* became the word later applied to the whole system of law of Islam, the totality of God's commandments. Each one of these commandments is called *huka* (*plakham*). This means that *Sharia*⁷ is likened to "Divine Revelations," a term broad enough to include those revelations made through Noah, Abraham, Moses and Jesus, aside from that which was revealed through Mohammed in the Holy Quran. The correlate of the word *Sharia* is the word *Din* which literally means "submission" or "following." While *Sharia* is the ordaining or the way and proper subject is God, the word *Din* is the "following" of the way and the proper subject is Man. *Sharia* and *Din* would therefore be identical as far as the way is concerned. But since the mood of the Quran is moral exhortation to man, the term *Din* or its equivalent, *Islam*, is more frequently used in the Quran than the word *Sharia*. In other words, the Muslims would rather be interested in the way for them to follow (*Din*) than in the way ordained by God, who alone knows it.

Nevertheless, since the Muslim community has already submitted or followed, its primary task is *Sharia*, or the ordaining of the way. Because of its all-embracing scope, *Sharia* cannot be considered

law in the western sense but as a mere guide to ethics or judicial conduct, which Westerners would not regard as law. When the Muslims seek to understand *Sharia* on a particular subject matter, their conclusion becomes a human interpretation of the *Sharia* called *Fiqh*. The word *Fiqh* in Islamic law is the term closest to the term *law* as understood in the Western sense. But *Fiqh* is still broader than law in the Western sense inasmuch as *Fiqh* covers not only transaction (*muammalat*) but also religious ritual (*ibadat*).⁸

The Muslim theory of jurisprudence tells us that the structure of Islamic law is erected on four foundations called the "roots of the law." These are the Holy Quran, the *Sunnah* of the prophet, the *Ijma* or the consensus of the community, and *Qiyas* or analogical reasoning which is either *ijtihad* (the doctrine of independent thinking) or *taqlid* (the doctrine of adherence). The mutual relationship of the four principles are confusing and the famous Aristotelian scheme of analysis is helpful. Pursuing this scheme, the Quran and the *Sunnah* are the material principles of sources; the *Qiyas* is the efficient cause, while *Ijma* is the functional power.

The Quaranic legislative pronouncement is relatively small. The only natural interpretation for a fresh application of the Quran was to see to it that it had actually worked during the lifetime of the prophet of Islam.⁹ Immediately after the prophet's death, no one person can claim authority. In fact the *Sunnah* of the prophet was subsequently expanded to include the precedents of the first four caliphs and the companions of the Prophet. The subsequent generations came under the aegis of the *Ijma* or Consensus of the Community. This was the end of the *Sunnah* and the beginning of the *Ijma*. Massive materials were brought to the field of Islamic law. Hence, it became necessary to adopt *Qiyas* and *Ijma* as additional sources of Muslim law. The earliest predecessor of *Qiyas*, the theory of analogical reasoning, is called *ra'y* or personal judgment. This simply means "I think" or "I opine." The scholarly group were nicknamed "Do-you thinkers."

Thereafter the concept of *Ijtihad* or the doctrine of systematic thinking bloomed into a powerful principle, swallowing up the theory of *Qiyas*. This is clear from the different schools of law that appeared in the different parts of the Muslim world. The great jurists of Sunni Islam, namely Abu Hanifa, Malik Ibn Anas, Idris As-Shaffi and Muhammad Ibn Hambal still appeared to control the minds of the Muslims in Islamic legal doctrines. Then the doctrine of *Ijma*

played an important role in determining which one was the genuine *Sunnah* or *Hadith*, as a vehicle to truth. Gradually, both the *Ijma* and the law took a definite shape and the door of *Ijtihad* was closed. One of the most creative and brilliant epochs of all intellectual history came to a sudden end. The doctrine of *Taqlid* or Adherence to what was assumed to be finished arose, leading to stagnation and petrification of the law of *Sharia*.

The Muslim influence of the Ummayyad Caliphate, was felt in the Iberian peninsula for more than seven centuries from July 19, 711 to January 1492, covering a period of 781 years. Knowing that Spain, which subsequently conquered a greater portion of the Philippines, was once Muslim-dominated, it would not be surprising to find similarities in the laws it introduced into Philippine Community with the Ummayyad laws. Of course, the Ummayyad rulers were largely guided by the Quran and the *Sunnah*, but these were interpreted by lay authorities, the rulers, advisers or officers, on the principles of expediency and in the light of local practices prevailing in the different provinces of the Saracenic empire. The lay body of law was called *ganun* (*canon*) and Sir Hamilton Gibb¹⁰ has remarked correctly that canon law in Islam means the exact opposite of what it means in Christianity. The administration of the law was carried in the courts by the Qadis appointed by the State or drawn from the Ulama. The task of legal application and specific interpretation of law in specific code was vested in the *Muftis*. A large body of case-law or collection of *Fatwas* or *Fitua* (ruling) of Muftis was used by the Qadi.

Let us now go to modern times. To many, the history of Islam in modern times is essentially the history of the western impact on Muslim society since the 19th century. This impact can be gleaned by stages. First, the politico-military aspect, resulting in the subjugation of the Afro-Asian Muslims; second, the religio-intellectual form of infringement, principally the destructive criticism of some Western missionaries and scholars. The issue has been so ingrained in the western mind that any man-in-the-street's knowledge of Islam is simply summed up in two words: "Polygamy or harem, and *pardah*" (curtain or veil).

From the abolition of the caliphate in 1922, Sunni (orthodox) Islam had no more recognized Head and Islamic law was applied in separate Muslim countries, as shaped or fashioned by the habits of thoughts of the people and influenced by the existing legal system of the country into which it was introduced. Codified secular laws exist

in Turkey, the Middle East countries, Africa, the Indian sub-continent and in Southeast Asia, especially Indonesia and Malaysia. Under the impact of modern conditions and the pressing need to bring the Muslim family law into line with the demands of modern society, reforms have been made, justified by the juristic basis of the doctrine of *Siyaah* or Public Policy.

From the backdrop of Islamic legal growth, let us now go to the Philippine Islamic law. You will note why I don't use the word Quranic law or customary law, as if it were distinct from Islamic law that embraces all its legal roots and the customs of people who shaped it. We have already mentioned the correlate of *Sharia* which is *Din* or its equivalent term, Islam. When Islam was introduced in the Philippines through Sulu about the early part of the 12th century, the roots of Islamic law, which are the Quran, Sunnah, *Ijma* and *Qiyas*, came with it. Of course it took centuries for Islamic law, as originally introduced, to blend and develop with the pre-Islamic customs, traditions, beliefs and habits of thoughts of the peoples in Jolo, Tawi-Tawi, South Palawan, Basilan and Zamboanga provinces.

The Islamic law as it exists in Malaysia and Indonesia is similar to those existing in the Tausog-Samal ethnic Muslim group. The family law of the Tausogs continued to function even after the coming of the Spaniards in the 16th century. The Spanish administration in the Philippines, especially in Luzon and the Visayas, could not stop or discourage the Islamic customs and practices in the south through constant military expeditions. When the Americans took over the Philippine colony in Luzon and in the Visayas, the Muslim inhabitants of the south resisted the American sovereign imposition as they had done the Spanish. For three centuries, the Muslims in the Philippines continued to be governed by their *Adat* or Islamic law.

The Americans who proved better colonizers than the Spaniards adopted a policy of attraction geared towards the respect and tolerance of the religious practices of the Muslims. The Carpenter Agreement of March 22, 1915 in Sulu specifically guaranteed and respected the personal laws of the Tausogs and Samals. Despite the benign policy of the American Administration and an organic guarantee of religious freedom, there had been no governmental machinery created to support these benign policies in practice. No doubt, several laws were passed by the Philippine Commission, Philippine Assembly, Philippine Legislature and Philippine Congress recognizing some Muslim laws. Yet there was not a single legislative en-

actment which provided for the setting up of a government instrumentality specifically designed to exercise such powers which are deemed necessary to regulate the Agama law and practices in accordance with the *Sharia*, as modified by Muslim customs prevailing in the Philippines.

One law refers to Act 2550¹¹ which was passed by the Philippine Legislature and can therefore be considered significant in the recognition of Muslim law. This law provides that in civil cases involving Muslim litigants, judges of Courts of First Instance are empowered to modify Philippine laws in accordance with Muslim laws and practices. We have the law on *wakaf* or *waqf* which refers to the doctrine of trust (charitable or family). The *cestui que* trust may either be a person, the madrasah or a mosque. We have a contract locally known as *sanda*, which refers to a conditional sale, but has the combined characteristics of mortgage, pledge, usufruct and anti-chresis.

In a *sanda* over a plantation, for example, one takes possession of the plantation and enjoys its fruit, as long as the loan is not paid by the original owner. His *sanda* includes no obligation to apply the fruits of the plantation to interest and them to the principal as in anti-chresis. In ordinary mortgage under the Philippine civil law the mortgagor retains the plantation until the mortgage is foreclosed. The Tausog word *Sanda*¹² is known as *bay bil wafa* in Arabic, which is sanctioned by the Hanafi and Shafii schools of law as a device to evade the Islamic prohibition on usury. This *Sanda* or *bay bil wafa* is called also *jual janji* in Malaysia, as exhibited in the case of *Yacoub vs Hamisah* (1950 16 MLJ 255). There is another kind of contract called *arindao* or *padjak* which is found in Basilan and Tongkil, Sulu. It is equivalent to a contract of lease with a fixed term, with reference to plantation or self-earning projects.

In Malaysia, a *Majlis Agama Islam*, a council on Muslim religion or Muslim affair primarily charged with the duty of giving advice to the Ruler on matters relating to Muslims, was constituted in 1960. The *Majlis* is a government body with powers to take custody of records of birth, marriage, divorce among Muslims and various contracts and inheritance involving their properties. There are other customs in Sulu shaping Islamic law but this paper is hardly the place for it. It is enough to state that Islamic law embraces specific provisions on obligations and contract, property, inheritance, marriage and divorce, custody¹³ and support and maintenance, etc.

Marriage in Islam is a firm covenant (*Mithaq-an Galizan*, [4:21]) between husband and wife. This mutual consent is technically called *ijab* or declaration (*pangasawa*) and *qubul* or acceptance (*taimah*). The contract of marriage is thus perfected, but it was the usage of the prophet of Islam to deliver *khutba* (sermon) before the declaration of marriage. *Mahr*, a dowry, must also be settled, though it is not necessary for validity of the marriage. The word *mahr* is used in Hadith to signify the nuptial gift to the bride. In the Philippines, as in most Southeast Asian nations, *mahr (ung-sud)* is treated as a check upon the husband's power of divorce. The additional word *basingan* in Sulu indicates respect for the evidence of virginity in the form of ring or gold. The requisites for the validity of marriage and prohibition of marriage on the ground of consanguinity, affinity and fosterage are prescribed. The requirement of a feast or *walimah* (or *paghinang*) is evidence of publicity, aside from the registration.

Though marriage in Islam is only a civil contract, the rights and responsibilities consequent upon it is of such importance to social welfare that a high degree of sanctity is attached to it. However, Islam recognizes the necessity in exceptional cases, of keeping the door open to dissolution.

The basic principle of divorce requires not only that there must be a good cause for divorce, but also that all means to effect reconciliation must be exhausted. In Sulu, there is *Bugit Ta'alik*, which is in accordance with *Surat Ta'alik*, or marriage settlement in Philippine civil law. The impression that a Muslim husband may put away his wife at his mere caprice is a grave distortion of Islamic institution of divorce. Islamic divorce may be revocable, or irrevocable (*tallaq*). If revocable, there is the so-called *idda* or period of waiting to allow reconciliation and arbitration. In the Philippines, the Spanish civil law authorized only separation of spouses from bed and board. Islam also requires *Mut'ah*, consolatory gift, to the wife upon divorce (S11-236). During the American regime, Act 2710 was passed by the Philippine Legislature establishing absolute divorce. This was followed during the Japanese occupation with additional grounds for absolute divorce under Executive Order No. 141. Act 2710 was reestablished by Gen. Douglas McArthur upon liberation. On July 4, 1946, the New Civil Code was passed providing for legal separation only, except among Muslims as provided for under Republic Act 394, made effective on June 17, 1949 and thereafter amended.

In the Muslim areas of Sulu, Zamboanga, Basilan and Tawi-Tawi,

and South Palawan, a decree has been issued by the Muslim ecclesiastical or Agama Court upon divorce. This decree is called in Sulu, *Pasa*, which literally means *Pa Sah*, *Pa maitah*, *Pa saksion*, *Pa muhatab*. This is derived from Arabic word *Faskh* and in Malaysia or Indonesia, *Fasah*.

As regards the law on inheritance,¹⁴ the Sunnah recommends that every person should make a will and appoint a testamentary executor to see to the payment of testator's debts, the payment of legacies and the guardianship of his infant children. A cursory examination of the law of succession under the Philippine civil code and under the Islamic legal system reveals differences as well as similarities.

Regarding similarities, it may interest us to know that the requisites for capacity to succeed are apparent in both laws. The capacity to dispose property, especially considering the matter of soundness of mind and the age requirement, is essential. Under both laws, the testator's right to dispose of his property is limited by the share of compulsory heirs, called legitime under Philippine civil law, and known as *fara-idi* or *furudz* (meaning, obligatory portion) under Islamic law. The share of full-blood brothers and sisters with half brothers is equal under Islamic law and under the Philippine Civil Code, particularly under Article 848. In Islam, it is proper to institute a universal heir as to free portion. Under Article 851 of the Philippine Civil Code it is also provided that there can be an institution of heir as to free portion. Before distribution of the property, payment of decedent's debt, funeral expenses and other charges must be deducted first, under both laws. In the absence of a legal heir, the State gets the property, by escheat proceeding under Philippine Civil Law and by *Baital Mal* under Islamic law. *Baital Mal* is an abbreviation of *baytal mal - al muslimin*, meaning treasury of the Muslims, administered by *Majlis Agama Islam*, as in Malaysia.

Differences in both laws of succession are evident. In Islam, adoption is not recognized. Consequently, the adopted does not become legal heir. But under Article 341 of the Philippine Civil Code, the adopted is considered a legal heir. While disinheritance is allowed under Art. 915 of New Civil Code, no provision exists either in the Holy Quran or Hadith. As to the right of representation, under Art. 972 of the Philippine Civil Code, said right refers only to descending line as to direct relation, and to brothers and sisters as to collateral relatives. The right to succeed *ab intestate* is up to the fifth

degree of relationship, but under Islamic law, like the old Philippine Civil Code, the right to succeed is up to the sixth civil degree. It is likewise interesting to note that the theory of predecease under Philippine law is foreign to Islamic law.

As to why there exists many similarities in the law of succession may be due mainly to the fact that Spain from which Philippine Civil Code originated was under Muslim domination for seven centuries and Islamic law could have influenced Spanish law. This also affects the law on property and obligation and contract.

Another similarity could be found in the Revised Penal Code which is of Spanish origin. Under Art. 351 RPC on premature marriage, a widow who marries within three hundred and one days from the death of her husband or before delivery, if pregnant, shall be punished with *arresto mayor*. Under Art. 84 of the New Civil Code, no marriage license can be issued within the said period. Under Islamic law, the *idda* or widowhood is four months and 10 days (S11-234), shorter than the *idda* of divorce which is only three monthly courses (S11-228). A definite contract of marriage is forbidden during the period. The idea behind both laws are the same: to prevent confusion in filiation and paternity in relation to the law of inheritance.

This brings us now to the Sulu problems. Like the Moro problems,¹⁵ in general, the Sulu problems are many. The more we repeat them, the more confusing they become. Even before martial law was proclaimed by His Excellency, the President, to save the Republic and to reform Philippine Society, the Sulu problems had already occupied the minds of our leaders. Some of them, in and out of Sulu, were merely opportunists taking advantage of the situation for selfish interests. Still others wittingly or unwittingly beclouded the issues or causes. From the standpoint of history, there is no denying the fact that the Sulu Problem is indeed the problem of the age. It is not only a religious problem or a political problem. Neither is it only a socio-economic problem. It is all these. Moreover, it is not only the problem of today. It is rather a problem of yesterday, left unsolved by indifference, and perhaps will be a problem of tomorrow, if no genuine steps are taken in the right direction.

For this Tausog-Samal ethnic group is seriously ill. The ailment must be thoroughly diagnosed for the right medicine. Prescription without complete examination may even endanger the patient. I do not underscore the importance of Sulu because I come from the

place. Factual examination will reveal that the Tausogs are the ones providing leadership not only to the trouble in Jolo but also in Tawi-Tawi, Basilan and Zamboanga Provinces. It is for this reasons that the Tausogs's complaints should not be lightly brushed aside; it is for this reason that the Tausogs should not be disregarded in any attempt towards the solution of the problem, including the codification of Muslim laws.

I fully subscribe to the wise observation of our great President that the Philippines has committed a national error against the Muslim minority. This error is historical. It started from Spanish times, when the Spanish authorities could see no other way for national unity, save total conquest or conversion. Since the Spanish authorities failed militarily and religiously, the American Administration ultimately did away with the iron-hand policy as the way to solve the problem. Instead of following the policy of divide and rule, the Americans adopted the policy of attraction. They created the so-called Moro Province under Act 787, as amended by Act 889, on September 17, 1903. This province did not include Sulu until July 23, 1914, when the Department of Mindanao and Sulu was created. Later this Department was abolished and the Bureau of non-Christian tribes was established. This Bureau was thereafter abolished and the position of the Commissioner of Mindanao and Sulu was created in the Department of Interior by Commonwealth Act No. 75, dated October 24, 1936.

Many laws were passed by the American Administration for the benefits of the Muslims. Among these were Act 2550, recognizing the Muslim customs and practices in civil cases; the code of Mindanao and Sulu, particularly Section 103, a circumstance modifying the criminal liability of a Muslim accused; Act No. 1639 (Section 2576-2174 of Rev. Adm. Code) prohibiting non-Christians from drinking intoxicating liquors; the Carpenter Agreement of March 22, 1915, which recognized the Sulu customs, traditions, beliefs and idiosyncracies. In 1927, Senator Lowbacon attempted to pass the so-called Bacon Bill in the US Congress providing for the separation of Mindanao and Sulu from Luzon and Visayas. The bill did not materialize into law. However, several legislative Acts were passed by the American Administration giving grants or land to prominent families in Sulu and Tawi-Tawi under Acts 2722 and 3118.

Upon her independence on July 4, 1946, the Philippines adopted another policy of encouraging Luzonians and Visayans to migrate to

Mindanao and Sulu. Though the laws for the benefit of Muslims continued to be recognized, they lacked governmental instrumentality to give them efficacy in practice such as enjoyed by *Majlis Agama Islam* in Indonesia and Malaya. The Commission on National Integration, created by virtue of Republic Act 1888 in 1957, merely followed the American policy of granting scholarship to deserving Muslims, but the other beautiful objectives under the said law could not be implemented for lack of funds and for lack of tenure of Office of the Chairman.

Anyway, the policy of attracting people from Luzon and the Visayas to Mindanao and Sulu continued, culminating in 1953 during the term of the late President Ramon Magsaysay. Except in Tawi-Tawi, Muslims in Mindanao were dislodged from their own ancestral homes, creating pocket Christian towns in Mindanao which, being well attended to, became more prosperous than the neighboring Muslim towns. That was before the "Iliga" and "Blackshirt" Movements, which aggravated the whole situation.

In the province of Sulu, the population is approximately 500,000, 95% of whom are Muslims. Among the 5% Christian, a significant portion are natives who are deeply attached to Sulu by intermarriage and who consider religious differences insignificant. Out of 22 towns in Sulu only five municipalities have post offices, namely, Jolo, Siasi, Sitangkai, Bongao and Cagayan de Sulu. There is only one 50-bed capacity Public Hospital serving half a million inhabitants. Progressive socio-economic improvements are left much to be desired. President Ferdinand Marcos, however, has taken the first good step by dividing Sulu into two provinces and by giving Commodore Romulo Espaldon authority to solve the problem. Commodore Espaldon being a native of Simunul, Tawi-Tawi and having sufficient understanding of the whole Sulu Muslim situation, there is no doubt that President Marcos shows sincerity in his benign policy towards the Muslims and we hope that, with the initial favorable response of the Sulu people, Commodore Espaldon will succeed.

In the light of the present conditions in Sulu, we submit that two courses of action should be attended to, simultaneously and sincerely. The first: Immediate action. This paper is hardly the place and this seminar hardly the occasion for specific deliberation. Suffice it to say for now that Commodore Romulo Espaldon, the SOWESCOM and Tawi-Tawi Governor, is on the right direction not

only in solving the Sulu problem but also in securing the constitutional provision, recognizing the cultural interests, beliefs and traditions of the Muslim cultural community under Section 11, Art 15 thereof. The second course of action would be: Long range goals. I would like to submit the following proposals for the latter:

(a) The adoption of a regional curriculum for Muslims for primary and secondary education. The *Salam* projects should be undertaken through the madrasah.

(b) The creation of the Division of Islamic Studies in the Department of Education and Culture and in all high institutions of learning. This is necessary for national understanding and is one way to eliminate the dimensions of prejudice.

(c) The construction, maintenance or national subsidy of a provincial museum in Sulu to preserve Muslim culture and to strengthen the tourist industry.

(d) Grants in aid to genuine Muslim scholars, writers, researchers and those who intend to publish books of varied historic-cultural interests. The existence of the Sulu Cultural and Historical Society Inc. is a definite evidence of the interest of the Sulu people along this line.

(e) To have a just and proportional representation of the Tausog-Samal ethnic group in the national hierarchy.

Before closing, let me explain our idea of the codification of Muslim personal laws. It is submitted that the proposal is a happy alternative to the idea of secession or federation. Since the Muslim invokes the principle of justice in a society where the rule of the majority is strictly observed, the Christian majority can validly object. But if the minority will merely ask for the codification of what actually belongs to them already there can be no valid opposition to it. We already know that there are many laws existing in our country, affecting Muslim interests. All we have to do is to gather, modify or improve them, together with Muslim customs and practices not yet made into law. The Muslim laws in Malaysia, Singapore and Indonesia can be consulted as guides not to mention other Muslim codified laws of India, Algeria and Turkey. Even the Philippine Civil Laws could be assimilated and Islamized under the principle of *Response Prudentium* of the Roman law. The national approach to law could be followed by studying its history as a first step towards the deliberate reconsideration of the worth of the rules. In the classic phrase of Justice Holmes, "When you get the

dragon out of his cave on the plain and in the daylight you can count x x x what is his strength. But to get him out is just the first step. The next is either to kill him or tame him and make him a useful animal."¹⁶ History can really help us in our efforts at codification.

Though the Quran, for instance, is deemed by Muslims as the word of God, it was nevertheless addressed to a given society, the 7th century Arabs. Similarly the Sunnah of the prophet or his usage was also to create a model out of the condition and materials then available for the rest of the world and for posterity. In other words, it was meant as a nucleus for the building of a universal *sharia* adaptable to all times and all people and the Muslims of the Philippines should therefore be prepared to depart from its strict letter, in favor of the spirit of the law. The only way to preserve Islam in modern times is for us to have keen awareness of the necessity of conserving what is best for the Muslim heritage¹⁷ and to make it relevant to the Philippine social atmosphere. By decree, the President can create a "Philippine Muslim Code Commission" which shall compose of nine members, two qualified Maranaos, two Magindanaos, two Tausogs and two Samals with a chairman who may be a Christian well-versed in comparative laws, preferably a retired justice of the Supreme Court. This Commission should be a working commission, designed specifically to codify Muslim personal laws, in the light of the principle of *ijtihad*. I am confident that the result would serve as an authentic legislative document for the entire Filipino people to understand the Muslim group in the interest of genuine national solidarity, and for the world to know that the crusade against Muslims which started in the Mediterranean frontiers centuries ago has at last happily closed its final chapter in the Malayan area, particularly on Philippine soil.

In behalf of the Sulu Cultural & Historical Society Inc., the municipal government of Jolo and the provincial government of Sulu, we feel obliged to Professor Alfredo Tiamson and his associates for affording us the distinct opportunity to be heard on the codification of Islamic law involving the Tausog-Samal ethnic group, in the interest of genuine and lasting national unity.

NOTES

¹Justice Benjamin Cardozo, *Harvard Law Review*, 44 (March 1931), 682-692.

²J. Well Naucan, *The Arab Kingdom and Its Fall*, trans. Margaret Weir (Calcutta, 1927); N.J. Couson, *A History of Islamic Laws* (Edenberg, 1964).

³Lecture by C.A. Nallino, an Italian jurist, in 1933 at Rome International Congress trans. Dr. Muhammad Hamidulla. *Voice of Islam* (November 1952), 63.

⁴*An Introduction of Islamic Law* (Oxford: Clarendon Press 1964), pp. 6-9.

⁵*History of Islamic Law*, p. 86.

⁶Galdziher, *Vorlesungla Uber den Islam* (Heidelberg, 1919), trans. F. Aren, 1920; a masterly account of the development of Islamic law.

⁷Fazlur Rahman, *Islam*, "Anchor Books" (Garden City, New York: Doubleday, 1968).

⁸D.S. Mahmasani, *The Philosophy of Jurisprudence in Islam*, trans. Farhat Ziadab.

⁹Fazlur Rahman, *Islam*.

¹⁰*Mohammedanism*, p. 90.

¹¹Article 1376 of the Philippine Civil Code provides: "That the usage and customs of the place shall be borne in mind in the interpretation of the contract." (Reproduced from Article 1287, Spanish Civil Code).

¹²Recognized by the Court of First Instance of Sulu in Civil Case No. 165, *Asjali Pusong et al vs. Aspari Hashim et al.* and decided on November 20, 1956 by Judge Macapanton Abbas. It is interpreted as *pacto de retro* without a definite term.

¹³Dr. Ahmad Ibrahim, *Islamic Law in Malaya*, (Singapore, 1965), p. 188-375.

¹⁴In Sumatra, it is called *Warisan*; in the Tausog-Samal group, it is called *pansalihan* or *Posaka*. *Posaka* is similar to *Harta Posaka* in Malaysia.

¹⁵See J.D. Rasul, *Philippine Muslims; Struggle for Identity* (1970), p. 1-10.

¹⁶"The Path of the Law," rpt., *Harvard Law Review* (1896), 451-458.

¹⁷Smith, *Islam in Modern History*, pp. 44-45.