ISLAMIC LAW IN CHRISTIAN SOUTHEAST ASIA: THE POLITICS OF ESTABLISHING SHARI-A COURTS IN THE PHILIPPINES[1]

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Introduction

The Philippines is unique in that it is an avowedly Christian nation with a set of Islamic laws on the books. These laws have been technically in effect for two and one half years without any administrative machinery to enforce them, without a single case being heard, without any concrete evidence that they exist at all aside from the paper they are printed on. This paper examines the background to this anomalous situation, the reasons why a Code of Muslim Personal Laws was created, and the convoluted process by which it arrived at its present, inoperative, form. It will begin with a brief consideration of Muslims' positions under Spanish and American colonial regimes (especially in terms of legal jurisdictions), proceed to consideration of the goals underlying the codification effort, and finally describe the processes and politics of codification and lack of implementation as they actually took place.

Historical Background

Spanish colonialists in the Philippines carried a crusading ethos. They regarded Islam as "completely antithetic to the Spanish" and therefore also antithetical to Christian civilization

as a whole (de la Torre, 1893, quoted in Gowing, 1977 : 13).. Fr. Pio Pi pressed the urgency of removing this "obstacle to civilization" in a round condemnation of Philippine Muslims delivered to the military government in 1903 (Gowing, 1977:44). American policy, embodying a tradition of church-state separation, guaranteed freedom of religious profession, protection of religious customs, and respect for Muslim leaders as ecclesiastics. [2] The evolution of American policy toward Muslims can be seen in the various agreements concluded with the rulers of the Sulu Sultanate. The Bates Treaty (1899), which ceded to the United States sovereignty over Sulu dominions, included specific guarantees of religious freedom (cf Gowing, 1977:348-49). Unfortunately, American and Muslims often did not share understandings of what privileges were protected under the Bates Treaty and other agreements. Sultans and datus tried to maintain their rights to adjudicate disputes, a traditional source of authority and income (cf Mednick, 1965). American authorities regarded this presumption as flagrant violation of the agreements. After the US Congress abrogated the Bates Treaty in 1904, Dept. Gov. Frank Carpenter set out to spell the situation out more clearly. In 1915 he concluded an agreement with the Sulu Sultan subtitled "Being the Complete Renunciation by the (Sultan of Sulu) of his Pretensions to Sovereignty and a Definition of his Status," which ceded, for all time, all sovereign rights to the United States and its officials, "including the adjudication by government courts or its other duly authorized officers of all civil and criminal cases falling within the laws and orders of the government (Forbes, 1928 :472-74)."

Predictably the trouble did not end there. "Religious" courts intruding on the prerogative of the American judiciary reemerged as an issue sporadically throughout the Muslim regions and with particular vehemence during the 1930's once again in Sulu (cf. Thomas, 1970).

Both Spanish and American colonial policies ultimately aimed at bringing all Filipinos under the rule of a single body of law.

The Spanish intended by this means to eventually "reduce Moroism" in the Philippines (i.e., to compel religious conversion or assimilation to a Christian Filipino norm). The Americans, on the other hand, thought that public order could be maintained and a modern legal order instituted without impinging on Muslim religious sensitivities. Of the two courses the American policy was more successful in pacifying the Muslim population, although it depended on the preponderance of government military force in the region.

Filipino officials adopted wholeheartedly the goal of promoting a single body of law for all citizens. Referring to the issue of religious courts, Commonwealth President Manuel Quezon spoke as follows :

> These datus and sultans should never be allowed to have anything to do with functions that are official. They should be heard exactly and precisely as every other citizen in any other part of the Philippines is and sought if and when the services of such citizen may be needed. By this, I mean that nothing must be done by this government or its officials that would give the impression that men without official responsibilities and powers may exercise any authority or intervene with authority or government or administrative affairs of the nation, the province, the municipality, or the district.
>
> (Quezon, Sept. 20, 1937 quoted in Mastura, 1971 52)

Despite the determination to eliminate alternative legal forums, Philippine legal codes from the beginning of American rule have included some concessions to Muslim customs, especially on domestic matters such as polygyny and divorce. All these concessions have been temporary, considered expedients, necessary in the the short run for the ultimate success of integration and assimilation.[3]

Government policies promoting assimilation have run directly into stiff Muslim resistance. While many elements of Philippine Muslim cultures and societies have changed over the years, their determination to maintain independent Islamic identifies has not. Religion has provided a link of common understanding and common interest among Philippine Muslims who are otherwise ethnically disparate. It has also provided a link to the larger Islamic Malay and Arab worlds. The sense of connectedness has surged since World War II with the increasing political and economic power of Muslim nations and with widespread movements to revitalize and purify Islamic theory and practice. Right now there are far more powerful supports for Philippine Islam than ever before.

The sanctity of Islamic law has been a crucial element of Philippine Muslim identity throughout the colonial and postcolonial periods. The exceptional nature of Islamic inclusions in Philippine law confirmed in the minds of many Muslims the ultimate government goal of eradicating Islam entirely (cf. Majul, 1977:382-83). As Islamic consciousness has grown, the unity of *shari-a* ('the right way') and its expression through *fiqh* ('jurisprudence') have become much better known to Philippine Muslims. At the same time a number of external factors have made the Philippine government more willing to accept a more pluralistic approach to national integration than reform has undermined the Philippine image of Islam as hide-bound and traditional. Several Philippine scholars argue persuasively that Islam could be used as an instrument for modernizing Muslims. Antonio Isidro notes the salutory effect foreign Muslim visitors have on Philippine Muslims.

> (foreign Muslims) bring information on the adjustment of other Muslim societies to Western contacts. Significantly, this information tends to reduce the Moro's resistance to some aspects of Western culture which at first were thought to be harmful if accepted by Muslims.
> (Isidro, 1968b:19)

Increasing linkage between Philippine Muslims and international Islam has given the major Islamic countries more knowledge and greater interest in the fate of their Philippine coreligionists. The postwar emergence of Malaysia and Indonesia as Islamic powers in southeast Asia has also imposed on the Philippine government the necessity of dealing with Islam as a constructive ideological system, a potential medium of change, instead of simply being a block to it.

Most postwar Philippine policies toward Muslims concentrated on integrating them through education, proceeding on the liberal assumption that if Muslims could be educated to think like other Filipinos then persistent law and order problems would gradually disappear. [4] These hopes were dashed by increasing agitation in the late 1960's, culminating in the Muslim Independence Movement (later changed to the Mindanao Independence Movement, 1969), the spread of Muslim/Christian clashes throughout Mindanao, and the formation of the Moro National Liberation Front (MNLF). All these contributed to the declaration of martial law by Pres. Marcos on Sept. 21, 1972 (cf. McAmis, 1974). Accelerating events proved that assimilationist policies simply had not worked. Most members of the government would have agreed with sentiments expressed somewhat later:

> Will Muslims disappear? No. Will they be assimilated by the majority and eventually become Christians? No. They will and must remain in the status quo. Although they are but a ripple in the stream of millions of Filipinos, the Muslims will continue to agitate and articulate their passion for justice, sincerity and greater participation in the affairs of the government of this nation.
>
> (Casar, 1974 :7)

With the obvious failure of previous policies, the government was left with two options, genocide or some pluralistic acceptance

of Muslim distinctiveness. The political costs of genocide were too high, especially given Muslim capacities to resist and the support they could expect from other Muslims nations. Clearly some version of the latter option has to be adopted. Codification of Muslim laws and incorporation of them into the national judicial system was to be a key element in an accomodation policy toward Muslims complementing the military oppression of martial law. How this policy developed is described in the following.

Goals of Codification

Dean Cesar Majul, head of the Institute for Islamic Studies at the University of the Philippines, lists the following elements of the "Muslim problem in the Philipppines":

1. The problem of peace and order;
2. The problem of inculcating new habits and attitudes among the Muslims, raising their standards of living, developing them in the professions and industries to be able to compete with other citizens, all the while modernizing them;
3. The problem of integration;
4. The problem of prejudice against or, at least, indifference on the part of others towards the Muslims;
5. The problem of greater autonomy for the Muslims;
6. The problem of religion;
7. The problem of ethnic and regional differences of the Muslims and their fragmented leadership;
8. The immediate problem of refugees; and
9. The problem of foreign involvement.

(Majul, 1975 :16-23)

Muslim leaders have argued that many of these problems could be overcome through codification and incorporation of Isla-

mic law. Sen. Mamintal Tamano, in a Feb. 7, 1972 speech before the Philippine Senate, argued that formation of a Muslim law code,

> . . . will have a laudable effect on the Muslims as it will ramify their faith that the government cares for them, especially among the Ulamas, who are a force by itself. The President will immediately gain the sympathy of the Ulamas who as a class are very influential in the Muslim community. Secondly, it will convince the Muslims that the government desires the preservation and not the destruction of their customs, usages and traditional institutions. Thirdly, it will attract the goodwill of other neighboring Muslim countries like Malaysia and Indonesia . . . Fourth, it will lead to better understanding of the Muslims by the dominant Christian majority if, after codification, courses on Muslim cultural values, and traditions and usages could be offered in our colleges and universities.
>
> (quoted in Casar, 1974 :27-28)

Alunan Glang, a Maguindanaoan historian, argued that wha was really at issue was modernization, a process requiring libera tion of the Muslim masses from the ties by which they were bounc to traditional leaders. In his view, political warlords had generatec the incessant Muslim/Christian conflicts for purely selfish motives A modernizing Islamic code might help "eradicate the hold o these ambitious leaders upon the life and prosperity of helples citizens (Glang, 1972 :8)." Majul (176:15) argued that,

> The formal recognition of (Muslim) laws coupled with the gradual evolution of a system of Islamic jurisprudence in the Philippines will go a long way in the Islamic education of the Muslim masses. Hopefully, also, the application of more Shari-a elements will reduce the influence of some old customs which tend to strengthen

> kinship relations in such a manner that makes possible nepotism. It might also create more consciousness of the community such that one will emancipate himself from purely personal or family interests and be able to conceive of a greater good—that of the *ummah*.

While promulgation of a Muslim law code was not expected to bring heaven to earth, hopes were high that its effects would be positive and far-reaching

While Muslim leaders had argued that Islam could be a progressive force for years, an event shortly after martial law began which dramatized the importance of Muslim law codification in pacifying a population which threatened to get completely out of hand. On October 21-22, 1972, several hundred young rebels simultaneously attacked the Philippine Constabulary Headquarters at Camp Amai Pakpak in Marawi City, Lanao del Sur, took control of Mindanao State University with its provincial broadcast station, and attacked a bridge linking the province with predominantly Christian coastal areas (cf. McAmis, 1974:52-53). According to residents of Marawi, rebels running through the streets proclaimed the city under the rule of Islamic law.[5] While they had control of the radio station, rebel leaders broadcast messages declaring Marawi liberated, a place where Islamic law would prevail and Islam could be practiced unhindered. The rebels were quickly dislodged when government forces arrived from the coast but the message continuously broadcast by the rebels could not have been entirely lost on government officials. If Islamic law was to be a central issue, it could be addressed directly, especially since martial law had eliminated the legislative impediments to decisive action. Codifying the laws concretely dealt with a situation mind-boggling in complexity, which threatened to become completely unmanageable.

Of particular importance was the potential impact of a Muslim law code on foreign involvements in the southern Philippine conflict. The Philippines had already become embroiled with Ma-

laysia over claims to Sabah (cf. Noble, 1977). The Philippine government was accused of having trained an invasion force of Philippine Muslims, almost all of whom were killed when they supposedly refused to fight their coreligionists. Both these events inflamed Philippine and foreign Muslims since they were never fully explained. Core cadres for what became the Moro National Liberation Front (MNLF) received their initial guerrilla training in Malaysia in 1969-70. As the conflict mounted, representatives of Islamic nations (esp. Kuwait and Libya) denounced the Philippine government's "campaign of genocide" against its Muslim citizens. The image of the fanatical Muslim "juramentado" has a long tradition in the Christian Philippines (cf Majul, 1973 353-60) and the prospect of a strong secessionists movement well armed and financed by Arab oil profits did not appeal to the government. Added to this was the country's dependence on foreign oil and the possible economic sanctions middle Eastern countries, and Malaysia and Indonesia, might impose. Given Philippine dependence on the US for economic and especially military support, and the inevitably negative reception of the martial law declaration in the US, any additional evidence of minority oppression had to be avoided. The government needed a dramatic demonstration of its constructive concern for Philippine Muslims. A Muslim law code fit the requirements admirably.

Process and Politics of Codification and Implementation

In proclaiming martial law, Marcos named the Muslim rebellion in the south along with Communist insurgency near Manila as problems insoluble without the extraordinary measures he was taking (cf. Marcos, 1973:173-76). The military response to disorder in the south was left to the armed forces, with cautions that they use restraint. To coordinate non-military actions Marcos

issued Executive Order No. 411 (April 2, 1973) creating the Presidential Task Force for the Reconstruction and Development of Mindanao (PTFRDM) to be chaired by his executive secretary and advisor, Alejandro Melchor. The task force was created, in Marcos' words,

> . . . to work on chanelling most of our borrowed funds from international institutions (running into hundreds of millions of dollars) into the Muslim areas for roads and bridges, settlements, electrification, schoolhouses, credit for both agriculture and industry and economic projects like fishing, fishponds and seaweed culture and trade.
>
> (PTFRDM, nd:54)

These measures were intended to complement military "pacification" efforts going on in Mindanao and Sulu. Soon added to this list was the task of constructing a draft Muslim law code.

A prominent southern Philippine cleric, Fr. Thomas O'Shaugnessy, had already articulated the theoretical basis for a strategy aiming at neutralizing foreign support for Muslim rebels. He analyzed the modern judicial distinction in Islam between friendly and hostile territory (*dar aul-Islam* and *dar ul-harb*). Early on, Islamic theorists had considered any territory politically controlled by non-Muslims *dar ul-harb,* and therefore a legitimate target of *jihad* ('sacred war'). However, following a review of Islamic *fiqh* on the subject, O'Shaugnessy (1964 :442) concluded,

> By the middle of the last century it was more commonly held by Muslim jurists that a country did not become hostile territory by the mere fact of non-Muslim conquest, but only when Muslims were impeded in the free observance of Shari-ah.

If establishing a Muslim law code could demonstrate the govern-

ment's commitment to Muslim rights to pursue Shari-a unhindered, then the legal basis for foreign aid to rebel and secessionist movements might be undermined (cf. Majul, 1977 :393).

This strategy was immediatey apparent to Sec. Melchor, head of PTFRDM, through his special assistant, Macapanton Abbas, Jr. a Maranao lawyer who had explored this very subject in his law thesis (Abbas, 1967). Melchor was also aware of Dean Majul's views on the subject and understood from his many contacts with Muslim leaders the positive domestic effects such a code might have.

Through Memorandum Order No. 374 (Aug. 13, 1973) Marcos created the Research Staff for the Codification of Philippine Muslim Laws.[6] Its prescribed activities were :

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

(Research Staff, 1974 :210)

The research staff was headed by two lawyers from Cotabato, Michael Mastura (Advisor to the Executive Secretary, Project Leader, and former Constitutional Convention delegate) and Musib Buat (Asst. Project Leader). Their approach to codification involved extensive consultation with leaders throughout the southern Philippines to define a structure which would accomodate existing Philippine Muslim jurisprudence in the Philippine judicial context.

Mastura and Buat had given considerable thought to the structural problem even before the research staff was set up.

Drawing on the constitutions of West Malaysian states they decided to recommend construction of a body of majlis who would administer the law, a Board of Ulama and a legal committee to decide on subtantive issues of law, and an Endowment Fund for administration of trusts (cf. Research Staff, 1974: 17-21). Early in the research staff's work, Asst. Executive Secretary Ramon Cardenas announced at a seminar on Shari-a and adat law (Sept. 20-23, 1973) that the staff,

> . . . aims at two major innovations in the Philippine legal system; the first is the establishment of an administrative body to be known as the "majles Agama Islam". This body will oversee the enforcement of Islamic law and the adat in Philippine Muslim communities. Under it shall be an arbitration council and *agama* oourts, the latter being the traditional form of justice in Philippine Muslim society. The second innovation involves substantive law, and this covers the subjects of marriage, divorce, personal status, property and inheritance, and *waqf* and endowments.
>
> (Cardenas, 1976:8-9)

Other contributioons to this seminar included a description of substantive Muslim adat and agama court operations by Buat (Buat, 1976) which drew heavily on his own UP law thesis (Buat, 1967), a discussion of historical and legal precedents justifying the codification effort (Abbas, 1976), and a discussion of how Philippine Muslim concepts might be secularized through implementation of an Islamic judiciary system (Mastura, 1976).

After the Malaysian model had been decided upon the research staff moved to the southern Philippines for two months field research. They held numerous meetings with leaders (ulama, politicians, lawyers, educators, etc.) all over the Muslim regions. Their letter of acknowledgment lists 330 persons in six provinces as having been particularly helpful in the fieldwork effort (Re-

search Staff, 1974:219-20). From these interviews it was apparent that Philippine Muslim practice did not form an organized and consistent corpus of law. But then, one of the purposes of institutionalizing the Muslim law was to generate, in an evolutionary fashion, a body of judgment and precedent around which Philippine Muslim practice could be organized. In an explanatory note accompanying their draft code, the staff emphasized that,

> . . . the *draft Code does not seek to codify Muslim or Islamic Substantive Law* for this should be another product of the codification effort, a second stage, if we may. But in the preparation of the draft Code, the Research Staff has taken in every respect Muslim law as modified where applicable by customary adat law to be its point of reference. . . . It was far from the intention of the Staff to introduce into our jurisdiction something that may be found irrelevant to our existing conditions and situations for we have developed in our own Muslim communities the rudiments of Islamic or Muslim law and customary adat law.
>
> The proposed Code also has introduced certain reforms on existing customary practices and among them is the arbitration in second marriages as practiced in Pakistan.
>
> (Research Staff, 1974:20;)
> italic in original)

From this caveat it is clear that, while the staff intended to introduce some reforms in current practice, they carefully avoided imposing any radically new usages through the medium of the draft code.

The code consisted of nine chapters covering preliminary provisions, the consultative council (majlis), the Shari-a courts, marriage and divorce, property and inheritance, *wakaf* and endowments, penal provisions, miscellaneous provisions, and final and

transitory provisions. The articles in each chapter dealt with procedural law, the ways disputes in each of these areas would be adjudicated, but not substantive law, actual standards of right and wrong behavior. Substantive provisions were to be added later, through careful processes which would avoid introducing "something that may be found irrelevant to our existing conditions and situations."

In a memo accompanying their report, Mastura and Buat wrote that their staff had collected sufficient materials on the substantive aspects of Islamic law and that the research staff might be able to prepare a model code. They recommended, however, that a Code Commission be established to take advantage of "the knowledge and experience of (a) greater number of Alim-Ulama (Muslim scholars) and the prudence of more mature minds (Research Staff, 1974: i)."

On April 4, 1974 (Maulidan-Nabi, the Prophet's birthday) the "Proposed Draft of the Administration of Muslim Law Code of 1974" was presented to Marcos. Hopes were high that something of permanent importance was being accomplished. Cardenas (1976:10) had already reported that,

> . . . during a briefing for foreign Muslim dignitaries, the Muslim guests registered a perceptible change in facial expression when Secretary Melchor mentioned this project–the codification of Philippine Muslim laws. I was told by a Muslim friend that this was eloquent indication that of all the efforts attempted so far bringing about unity in this island, this project involving Islamic jurisprudence strikes closest to the Muslim's soul.

Despite the high hopes the draft code received a chilly reception in Manila. Mastura and Buat were invited to appear before the Judiciary Code Committee of the Supreme Court of the

Philippine on July 22, 1974 to answer questions about the draft. This committee holds statutory responsibility for the operation of the whole Philippine judiciary. At that meeting, Committee Chairman Fred Ruiz Castro raised the following questions (among others):

1. If we do adopt your recommendations to the extent that it is feasible, would these recommendations fit within the framework of our present constitution?
2. If my impression is correct, you do not want a complete separate judicial system and I think you want to try to achieve an integrated judicial system to the judicial system we now have. What is the extent of the integration you propose?
3. There has been an impression all over the Committee as well as among people who have read your thoroughly prepared Muslim Code, that it would appear that you gentlemen who are Muslims would rather secede than integrate.

(Mastura and Buat, 1976:356)

The criticism boiled down to the oft-repeated fear the if Muslims were allowed to be governed by their own laws then they might constitute a "state within the state." Fear was expressed that any action in this direction would set a dangerous precedent for the other cultural minorities. Mastura and Buat retorted that Islam guarantees each community's right to be governed by its own *personal* laws without being regarded as an autonomous force or a "state within the state" (Mastura and Buat, 1976:359). Muslims simply asked the same guarantee from the Christian Philippines. They stated that their intent was obviously not to create a separate state but to "set out a systematized administration of Muslim law and customary law (adat) in order to allow the Muslim legal institution to operate within the framework of the New Constitution." They ask,

> How else and (by) what better means can the regulating powers of the State come in the matter of a Muslim legal system which has sustained the test of time but has otherwise remained outside the bounds of the national judicial system? Can it be called a "state within the state," an institution that seeks to bring in the coercive power of state authority as far as practicable?
>
> (Mastura and Buat, 1976:364)

They go on to explain that, although Islam admits no distinction between the sacred and the civil, there is no risk of a theocratic state developing among Muslims since there is no clerical hierarchy which might be turned to political purposes (Mastura and Buat, 1976:366-69). They assert that, "Philippine Muslims can be loyal citizens of our Republic so long as they enjoy full religious and civil liberty. That is why there is never any doubt that the Muslim communities have to preserve the critical portion of their personal law (Mastura and Buat, 1976:369)."

Aside from being uncomfortable at the degree of judicial autonomy implied by the draft code, several government officials objected to repugnant practices it might allow.[7] Mastura and Buat explain how all practices allowed under the draft code have solid bases in Islamic theory and how practices Christians often regard as repugnant actually have humanitarian origins. They go on to describe provisions of the draft code and argue that it threatens neither secession nor establishment of a religious state, it applies only to specific elements of personal law, only adds penal provisions for offenses not already covered under the Philippine Penal Code; it creates courts with limited and specifically defined jurisdictions, and that room is left for constitutional appeals to the Supreme Court in any event.

Sources of government dissatisfaction with the draft code can easily be discerned. Instead of introducing progressive new practices, it would serve to institutionalize existing practices. It

would answer Muslim demands that their religon and customs be preserved, but it would not serve to "inculcate new habits and attitudes among Muslims." Inclusion of adat considerations lessened the possibility that "old customs" would be eliminated. On top of that it created a multiple level judicial hierarchy the operations of which would be effectively out of the control of the regular judicial bureaucracy.

Out of this discussion the government's intentions regarding the code became more clear. The Muslim law code was meant to be a painless way of "integrating" Muslims as Philippine citizens responsible to the government and its organs of authority. As always before, any attempt to lessen central control over governmental processes was rejected out of hand.

Seizing on the Research Staff's memo asking for consultation with "more mature minds," Marcos issued Executive Order No. 442 on Dec. 23, 1974, creating the Presidential Commission to Review the Code of Filipino Muslim Laws. The review commissions membership was completely different from that of the research staff which prepared the draft code. Instead of a staff headed by Muslims and composed almost entirely of Muslims, the review commission was chaired by a Filipino convert to Islams,Dr. Cesar Majul, and included representatives of the Supreme Court, the Dept. of Justice, the Integrated Bar of the Philippines, the University of the Philippines Law Center, the Catholic Hierarchy of the Philippines, two Muslim lawyers, two alims, and Michael Mastura, lone representative of the research staff.[8] The Commission had its first meeting on May 23, 1975 and divided into committees to review the administrative and substantive provisions of the code. The Commission invited twenty-five senior Muslim lawyers to a conference in Quezon City on June 20, 1975. These lawyers were all trained in Philippine national law, not shari-a, that more than half of them held positions in the judiciary (primarily as judges or fiscals), and that most others had held high govern-

ment positions in the past (cf. Code, 1977:59). In short, this was an entirely different segment of the Muslim population from that consulted by the research staff. All these were people who had attained considerable stature under the system as it existed, and they had little to gain from increased Muslim autonomy. They represented the progressive elements in the Muslim population, those committed to the ethos of development and a Muslim way of life remolded to fit the requirements of the modern world. They were not interested in a code which upheld practices which had "stood the test of time." As it turned out, over half those invited failed to attend the scheduled meeting and the chairman invited a University of the Philippines graduate student who had studied Islamic and secular law in Egypt. The Commission's report describes the meeting as fruitful with the lawyers offering constructive ideas on how to improve the draft, mostly dealing with constitutional principles (Code, 1977:60).

The recommended consultation with learned alims took place July 23-24, 1975. Twenty-six representatives from the Muslim provinces were invited (with care to insure ethnic representatives) and eighteen attended. The chairman also invited a representative of the Converts to Islam Society of the Philippines and an Egyptian alim stationed in Manila. The report states,

> The particular problems on which they gave their opinions dealt, among others, with the Majlis, Mufti, Bait-ul-mal, waqf, zakat, judges of Shari-a courts, divorce by talaq, plural marriage, the rights of women, and the right of a non-Muslim wife to inherit from her Muslim husband.
>
> (Code, 1977:62)

Through August the Commission revised its drafts, and on Aug. 28, 1975 it prepared its final report to the president. The report states that five principles governed the code's drafting.

1. Of the Islamic Legal System, which is considered a complete system comprising civil, criminal, commercial, political, international, and purely religious laws, only those that are fundamentally personal in nature were to be codified;
2. Of the personal laws, those relative to acts the practice of which are absolute duties under Muslim law were to be included, and those which according to Muslim law are forbidden and demand unconditional punishment were to remain prohibited;
3. Where the provisions of the law on certain subjects were too complicated for a Code, only the fundamental principles were to be stated, and the details left to the judges for proper implementation;
4. No precept, fundamental though it might be, was to be incorporated in the Code where it appeared to be contrary to the principles of the Constitution of the Philippines; and
5. No precept was to be included unless it was based on the principles of Islamic law, as expounded by the four orthodox (Sunni) schools.

(Code, 1977:63; cf. also Majul, 1977)

The effects of these principles were to restrict the code to far narrower range of topics, to apply constitutional principles even if they conflicted with fundamental Islamic precepts, and to eliminate all consideration of adat. The report says the draft code was "revamped." The final code derived, "from researches . . . made principally by the knowledgeable Muslim members of the committee, and from their personal knowledge of the customs and traditions of the Muslims (Code, 1977:64)." The review commission decided that of the administrative structures recommended in the draft code, some referred to purely religious matters while others were not immediately urgent. Hence, most of the administrative provisions were excluded and only the Shari-a courts, the Agama

Arbitration Council, and the office of Mufti (jurisconsult) were retained in modified form (Code, 1977:64). The report concludes that, "For all practical purposes, it may be said that, with reference to the draft Code reviewed by the Commission, this Code is almost in its entirety a new one (Code, 1977:65)." Where the draft code was procedural, the final code is substantive. Where the draft code preserves Philippine Muslim customs, the final code prescribes behaviors consistent with Islam as it is practiced in the Middle East. Where the draft code created a semi-autonomous judicial structure, the final code creates a small easily controlled compartment within the existing Philippine judicial system.

The code as finally submitted to the president consisted of five books, dealing with general provisions, persons and family relations, succession, adjudication and settlement of disputes and rendition of legal opinions, and miscellaneous and transitory provisions. Of these only the fourth book takes procedural matters into consideration. In form the code mirrors the Philippine Civil Code, some portions of which it superceded. The format would be familiar to anyone versed in Philippine (or American) law. It would not be familiar to anyone who had studied shari-a and *fiqh*.

It is not possible to disaggregate the contributions committee members made to revising the draft code, but the commission's chairman, Dr. Majul, certtainly had the largest hand in it. He claimed it was largely his creation when I met him in Manila late in 1977. The code as it emerged reflects his perspectives on the matter. He is a former dean of the College of Arts and Sciences at the University of the Philippines. Since its founding he has been Dean of the Institute for Islamic Studies at the Philippine Center for Advanced Studies, University of the Philippines system. While he is considered in Manila an authoritative academic spokesman for Philippine Islam he is a convert to the faith. He is not steeped in the traditions of Philippine Islam. His feelings about those tradi-

tions parallel those of many foreign Muslims, that many traditional practices are primitive, objectionable and un-Islamic. He sees Islam as a civilizing force, and the best hope for bringing Philippine Muslims into the modern world. He is a reformer rather than a preserver, and his reformist zeal has largely been responsible for convincing the government that Islam could play a role in the Philippine scheme of nation-building.

When I talked to Majul, he said the reason the draft code was so completely changed was that the research staff were "greenhorns" and really did not know what they were doing. It appears that Mastura and Buat, as well as others on Melchor's staff, were either unaware of the political requirements of codification, or else chose to deliberately ignore them. They proceeded as if the government intended the law code to signify true autonomy for Muslims instead of a new means of pursuing the old goal of integration/assimilation. As it turned out, the final draft of the code was constructed in Manila with little apparent consideration of outside contributions.[99]

Even though the code, in its final form, could generate little trepidation among government officials, it was not promulgated until considerably after its submission to Marcos. He received it on Aug. 29, 1975. Nothing further happened until the Tripoli Peace Talks between representatives of the government and the MNLF in December 1976. In compliance with provisions of that peace accord, Marcos issued Presidential Decree No. 1083 promulgating the Code on Feb. 4, 1977. According to the report which accompanied the code, its provisions were to take effect forty-five days after the date of its promulgation, except that creation of positions and appointment of personnel and other administrative preparations were to take place immediately (Code, 1977:68). In his decree Marcos dated its effectivity as immediate. Again, nothing happened.

I arrived in the Philippines in late October 1977 intending

to study implementation of the code and its effects. I was unnerved to find no evidence at all that anyone was interested in implementing it. Majul said his responsibility ended with submission of the final report to the president. It would be implemented when Marcos and his staff people wanted it to be. UP law Prof. Esteban Bautista, a member of the Judiciary Code Committee, said some unanticipated problems had come up. The main one involved an utter lack of judges qualified to man the shari-a courts. Philippine law requires that all judges must be members of the Integrated Bar of the Philippines. While there are many Muslim members of the bar, almost none of them knew much about Islamic law. At the outside there might be two or three men in the whole country sufficiently versed in both shari-a and Philippine law to serve as judges in the shari-a courts. Bautista said two suggestions had been made for solving this dilemna. The first involved setting up short term bar preparation courses so that members of the ulama might qualify as members of the bar. This might also include special abbreviated examinations to ease their passage. The other possibility involved giving present bar members sufficient training in shari-a to get by for the present. Bautista said no one on the committee knew how either of these suggestions might work out in practice and no one wanted to put much effort into finding out. The Judiciary Code Committee felt no responsibility to implement the code. Their province covered supervision of shari-a courts once they were already operating.

I asked a number of people if the code's promulgation had caused problems since it created a gap in legal jurisdictions. Large section of the civil code no longer applied to Muslims but there was no machinery to enforce the new provisions. No one seemed overly worried about it except for their rights under the new code for fear they might do something foolish like immediately marry more wives than they could support. Several people did wonder out loud, however, about when the promised laws would actually

take effect.

When I left Marawi City this past April (1979) plans were under way to begin training classes in shari-a for bar qualified lawyers. These were to be held at the Mindanao State University King Faisal Center for Arabic and Islamic Studies beginning in June *if* government approval and funding could be obtained. I do not know whether the training program has yet begun. Even if it has the shari-a courts are still two or three years away from beginning operation.

Conclusion

Philippine politics have always been changeable, and the martial law period is no exception. Executive Secretary Melchor abruptly dropped from sight after his office made some embarrassing gaffes and he came into conflict with Imelda Marcos over development priorities. His special assistant, Macapanton Abbas, Jr. briefly returned to Marawi City where he took an administrative position at Mindanao State University. Embroiled in political difficulties there, he moved on to the Institute for Muslim Minority Affairs at Abdul-Aziz University in Jeddah. He also holds the title of Secretary General of the Bangsa Moro Liberation Organization (BMLO), an organization claiming to represent all anti-government Muslim interests. He frequently launches sharp criticisms from both positions against the Philippine government for its oppressive treatment of Muslims. Michael Mastura is now assistant commissioner in Region XII, comprising the Cotabato and Lanao provinces of Mindanao. Musib Buat is rumored to have become so disenchanted after the revamping of the draft code that he joined a rebel unit in Cotabato. The PTF-RDM eventually was superceded by the SPDA (Southern Philippines Development Authority) which quickly developed its own management problems.

The situation for Muslims has not changed appreciably. It does not appear that the creation of shari-a courts will cause much change if and when they do appear on the scene. As finally designed, they prescribe new behaviors on private matters previously handled outside the judicial system. There is no reason that informal and traditional adjudication of personal matters will not continue. The courts are being imposed in an unfamiliar form by outsiders in Manila. They will be staffed by lawyers superficially trained in Islamic law. The most influential group which might have supported the courts, the ulama, have been left out of the matter almost entirely. Mastura and Buat claimed that the traditional Philippine Muslim practices had stood the test of time. From the viewpoint of domestic effects, the test of shari'a courts hasn't even begun and already the prognosis is not good.

However, even if the desired domestic effects are not forthcoming, the codification effort has already yielded immense foreign benefits to the Philippine government. Along with the development of joint interests with Malaysia and Indonesia in ASEAN, the law code has neutralized these potential allies of the Muslim rebels. The Islamic Foreign Ministers Conference has withdrawn its genocide charge and is no longer pressing the government so hard for strict observance of cease-fire procedures. Rebel units have been isolated from their former sources of foreign support. To the extent that codification of Muslim laws helped to acomplish this goal, it was a brilliant diplomatic maneuver.

NOTES

[1]This paper is based on research supported by a Social Science Research Council, Southeast Asia Doctoral Dissertation Fellowship (Oct. 1977-April 1979 and was carried out while the author was a Visiting Research Associate ot the Institute of Philippne Culture, Ateneo de Manila University, Quezon City.

It was prepared for the ninth Annual Conference of the Canadian Council for Southeast Studies, held at the Institute of Asian Research, University of British Columbia, November 9-11, 1979.)

[2]Majul (1973:385) argues that conversion remained the paramount goal of the many Christian missionaries who came to Muslim areas after the American conquest. Mastura (1976b) presents a concise summary of continuities and differences in Spanish and American policies toward Muslims. See also Gowing, 1979.

[3]Republic Act 394, passed in 1949, allowed divorce among Muslims for a period of twenty years, the hope obviously being that within that time this pernicious custom would disappear so that no renewal would be necessary. Articles 78 and 79 of the Revised Civil Code (1971) similarly exempt Muslims from marriage solemnization and registration requirements, but only for a perioa of thirty years after which time all marriages must be solemnized and registered in accordance with the code, unless any Philippine president should decree that the exemption should end sooner. An early act of the American Philippine Commission (No. 787, 1903) directed the Legislative Council to "enact a law which shall collect and codify the customary adat laws of Moros (Sec. 13 (j))." While this directive indicated a possible movement toward legal pluralism, a cursory survey revealed "nothing worth admiring" and the instruction was never implemented. Throughout the American regime, and the Republic, there have been advisory boards attached to administrative offices. While they ruled on matters of customary law, these unofficial bodies had always derived their authority from the offices to which they were attached (typically mayor or governor). Their decisions were not binding and were respected only to the extent that the officials to whose offices the were attached were willing to back advisory board decisions with the authority of those offices.

[4]See Clavel, 1969 for an analysis of performance by the Commission on National Intergration, the government agency chartered in 1954 to integrate the national minorities. It operated largely through apportioning schorship funds, an effort compromised by pork-barrel patronage.

Mindanao State University, a state school intended to provide high education for Mindanao residents *in a Muslim area,* was opened in 1963. Some of its precepts and accomplishments are described by its founder and first president, Antonio Isidro (1968a and 1968b).

[5]One informant caught in Marawi during the rebellion reported men in the street shouting "Gyaya so Isamic law", a combination of Maranao and English translating as "Here is Islamic law." According to this same imformant, the first words spoken by the announcer after radio station was captured were, "MSU, Marawi City, is under control by Islamic law."

[6]Newspaper accounts indicate that Marcos announced the beginnings of the codification process on June 23, 1973.

[7]Justice Secretary Jose Abad Santos wrote a letter to Mastura and Buat on Oct. 7, 1974 in which he expressed surprise and disgust that, "the code allows the practice of polygamy." He apparently ignored the fact that polygynous marriages were already legal. Implicit in his comments was the assumption that the Muslim law code ought to bring Muslim into conformance with Christian practices.

[8]One alim, Ustadh Ali Abdullazzis, and the Catholic representative, Bishop Bienvenido Tudtud, never attended any sessions of the review commission. The latter told me he felt the Catholic church hod no legitimate interest in reviewing a Muslim law code.

[9]Note that the concerns expressed by consulting *ulama* were largely ignored in the final draft. See pg. 141.

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