

## TRADITIONAL AND LEGAL AUTHORITY SYSTEMS IN A MUSLIM SETTING

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### Abstract<sup>1</sup>

Traditional authority is a vital regulative system of the indigenous social structure. When traditional authority changes, as it does, when it comes in contact with the dominant legal authority system, other elements and relationships within it may simultaneously experience observable changes.

In three Maranao communities, contemporary Philippine Muslim groups, the overlapping functions of traditional and legal authorities produced a new authority system that in turn induced other changes.

The use of coercive, then utilitarian and later identitive powers by the modern state produces changes in the recruitment and characteristics of leadership needed during the evolution of a new authority system. The new authority system later becomes outdated, hence it becomes traditional, with the coming of a newer hybridized authority system. The hybridized system will later, as the cycle repeats, become outdated, too; hence it then can be considered traditional.<sup>2</sup>

Max Weber classified authority into three types — traditional, legal and charismatic. Each type derives leadership, power and influence from the type of political order of a certain community.

Examples of traditional authority are those exercised by the political organization and leaders of the sultanates or datuships of Sulu, Cotabato, and Lanao, and the "tribal" communities of non-Christian and non-Muslim groups. The legal type includes those of the governing power and leaders of public and private bureaucracies in the Philippine Republic. The charismatic type is assumed by any great man, who may or may not hold an office or title but who is an accepted leader of a certain organized or unorganized group of people. Prophet Mohammed, Dr. Jose Rizal, and the late Philippine President Ramon Magsaysay are said to have had charismatic authorities and leadership based on strong faith in their persons.

Of these types, traditional and legal authority systems are today relevant to two current problems: the relationship between the Muslims and the government and other Filipino citizens; and the present task of studying and codifying Muslim laws, customs, and traditions in line

with the government plan to incorporate them into the laws of the land.

We shall examine these types as they meet in historical and contemporary contacts in a Muslim cultural setting, particularly among the Maranaos, who, like other people exposed to conflicting orders, are confused.

The primary socio-political order, to which the Maranaos have been — and are still exposed — is the traditional order and its type of inherent authority. This order and authority are commonly called the sultanate, datuship, or *agama* system due to lack of a uniform concept. As a form of social control, the traditional authority is indigenous to the Maranao way of life from pre-Islamic to Islamic times in the Philippines.

The foreign type of order and authority, to which the Maranaos are exposed, is the *legal* or *constitutional* type which is better known as the “government”. This type is considered external, or non-indigenous, a product of military and civil conquests, education and acculturation, and other identifiable social processes.

In the last seven decades the legal system has gained increasing influence on Muslim affairs, gradually weakening the traditional system.

As a result of the institutional contact between the two systems, the Maranaos and their territorial home, are actually under dual control, with each authority system operating independently, often ignorantly, of each other.

The two authority systems are generally in rivalry. But there also are in some areas accommodation or cooperation. Overlapping jurisdictions can be seen in these elements of community organization:

### **Traditional Authority**

1. *Source of authority.* Traditional authority derives its legitimate power and influence from the community organization of the sultanate or datuship and the indigenous law and order which govern them.

2. *Territorial Jurisdiction.* Traditional authority is supreme over the *pangampong*, the largest Maranao community. A *pangampong*, in a larger sense, is a confederation or alliance of four principalities

or states — Bayabao, Masiu, Onayan, and Baloi. (This can be seen on the maps of Lanao del Sur, Lanao del Norte, Marawi and Iligan cities, and Misamis Oriental).

Each *pangampong*, (in a narrow sense — principality or state) is divided into *suko* (district or region) *inged* (township), and *agama* (village community). Ideally, the land and social structure of the *pangampong* constitute a “close-society”, which prohibits the coming in of new settlers.

3. *People or citizens.* The traditional authority claims jurisdiction over all natural-born Maranaos and their affinal kin-groups. They are organized into community groups in the *pangampong*, *suko*, *inged*, and *agama*. Community membership (corresponding to citizenship) is ascribed or acquired through intermarriages between new settlers and natives. Sometimes membership and office leaderships are conferred or acquired through merit by a new settler.

4. *Leaders or Powerholders.* Authority is generally by a group of civil and religious leaders, called the “Council of Elders” (*Pulok-loksen*). Ascension to office is by ascription or inheritance from a founding ancestor or parent.

5. *Law and Order.* Enforcement of law and order is the mode of controlling the relationship among individuals and groups within the community. Two sets of laws are in operation over Maranao traditional affairs. One is the customary *adat* law (*kokoman*) composed of *taritib* and *igma* and other, the Islamic law of Shariah based on Qur’anic teachings. At times, these laws are also in conflict with each other.

6. *Religion.* Traditionally and by custom, Maranao society and culture tend to prescribe Islam as a “state religion” although the Qur’an says, “There is no compulsion in religion.”

### Legal Authority

1. *Source of Authority.* The legal authority derives its legitimacy from the nation-state, the Philippine Republic and its Constitution which governs all people and institutions within its jurisdiction.

2. *Territorial Jurisdiction.* The legal authority is the sovereign power over the national, provincial, city, municipal and barrio territories within the Republic. Its right over land, water, and air is

imposed on the traditional principalities, districts, townships, and villages in the two modern Lanao provinces, the cities of Marawi and Iligan, and partly in Misamis Oriental where Maranaos were once widespread. The territories under the legal authority are open to settlement by non-Maranao individuals and groups, irrespective of ethnic background.

3. **People or Citizens.** The legal authority encompasses not only the homogeneous ethnic Maranao populace, but all other inhabitants who have equal rights to domain and citizenship.

4. **Leaders or Powerholders.** The leaders in the legal authority system, called government agents or officers, get their positions through appointment or election, unlike the hereditary nature of offices in the traditional community. Agents comprise a hierarchy of positions such as governor, vice-governor, clerk, etc. in the civil office; general, colonel, sergeant, etc. in the military service.

5. **Law and Order.** The basis of legitimacy of the legal authority are the laws of contract of which the Constitution is the principal document. Unlike traditional custom, which are committed to memory by tribal elders, the formal laws of contract are written or codified. They are enforced by those who exercise authority.

6. **Religion.** The legal authority does not favor nor antagonize any religious faith under the constitutional mandate of freedom of religion and the principle of separation of church and state.

By comparison, investigators of institutional conflicts can clearly see the over-lapping interests, social structures, and values between the traditional and legal authority system when they come in contact with each other.

Aside from these contrasting structures and values, other elements can be made the based of understanding the situation of contact between the two systems' respective social, cultural, political, and economic institutions.

### **Contacts in War and Peace**

Historically, both leaders and followers under the two authority systems first met in violent contact. Concretely, this was shown in the

Muslim resistance to the American Military Forces who invaded the whole Muslimland to replace the old political order and the native authority with a new one labelled "modern democracy", as if the indigenous community were not enjoying any semblance of a free society.

The Muslims on their side fought to preserve the independence of their land and institutions, including their authority system to which they owed long-established obeisance. On their part, the American forces, as agents of change, fought to bring new and foreign institutions. An example of this conflict, later of compromise, was the avowed plan of Gen. Leonard Wood not to recognize the authority of sultans and datus when he would become Military Governor of the then Moro Province in 1903. Wood's view was opposed to Dr. Najeeb M. Saleeby's scholarly recommendation. Saleeby saw the possibility of extending government authority over the Muslim through their leaders, the sultans and datus. Such mild recommendation later became the basis of the "policy of attraction" of the early American administration in Mindanao and Sulu.

In the course of culture-contact between peoples of different backgrounds, some changes occurred within the people themselves and their institutions. But the changes were not total. This is shown in the case of the Lanao government authority, a legacy of the Americans to the present Republic. Theoretically, it is above all other local authority, but in reality it has not completely defranchised the rival sultanate authority. To what degree of compliance each system elicits from the same people cannot be readily measured. Suffice to say, both systems exercise dual influence today.

In landholding, natives claim rights over their property from either the traditional or the legal authority or from both. But often conflict arises between traditional and legal ownerships due to lack of communication and formal agreement between the people under the two authority systems. Now, any person has the legal right to acquire on a piece of public land, including the traditional Maranao territory.

In leadership, there is often conflict but also accommodation between the two systems. For instance, a member of the Council of Elders may at the same time be a government agent.

By traditional ascription or inheritance, the person with the title of sultan, datu, etc. might at the same time be appointed or elected to state office as a governor, mayor, army officer, or a simple clerk. Such a leader playing a dual (sometimes conflicting) role bridges the relationship between the traditional community and legal government. It should be noted that such dual leadership is not formally recognized by either of two authority systems.

A person who assumes dual leadership might be conceptualized as a "marginal leader"<sup>3</sup> or double-agent of two kinds of authority system.

### COMPARATIVE-CONTRASTIVE FEATURES OF THE TRADITIONAL AND THE LEGAL AUTHORITY SYSTEMS

FEATURES	TRADITIONAL AUTHORITY	LEGAL AUTHORITY
1. Source or location of authority	Sultanate or datuship	Government of the Philippine Republic
2. Territorial jurisdiction	Territory of the Four Principalities of the pangampong	All national, provincial, city, municipal, and barrio territories of the Republic
3. Local or Regional territorial units	Bayabao, Masiu, Onayan and Baloi* (extending to Misamis Oriental)	Two Lanaos, Marawi and Iligan Cities, and Misamis Oriental
4. People or Citizens	Indigenous Maranao inhabitants, a homogenous ethnic population	All inhabitants in the two Lanaos, Marawi and Iligan Cities, and Misamis Oriental, a mixed population
5. Leaders or Power-holders	Council of Elders ( <i>Pulok-loksen</i> ) e.g. <i>sultan, datu, imam</i> , etc.	Government agents (Officials & employees) e.g. governor, mayor, policeman, etc.
6. Ascension or Recruitment for office	By ascription or inheritance	By achievement, appointment or election
7. Instrument of Social Control	<i>Adat</i> and Islamic Laws (customary and religious laws)	Constitutional law (formal contractual laws)
8. Religion	Islam (Theocratic)	No state religion (non sectarian)

\*Each of these is a principality or sultanate (state) with territory and people, sub-divided into districts (*suko*), town-ships (*inged*), and villages (*agama*). The Four pangampong (principalities) are allied or confederated under an ancient order (*taritib*) handed down by founding ancestors.

Examples of "marginal leaders" are Maranaos titularly called "sultan-mayor", "sultan-colonel", "sultan-clerk", "sangkopan-policeman", etc. But just the same the people recognize the authority of these persons in either of their dual roles.

Among the Maranaos, as among Muslims, there is conflict and confusion in the operation of the three sets of law – the *adat* (customary), the Islamic (religious), and the constitutional (state). But in a variety of situations, each set of law provides the social control in the general affairs of society.

When conflict arises, enforcing officers, in both traditional and the legal authorities, resort to *bitiara* (in the Maranao sense) or *extra-legal* settlement (in the government sense). Both are amicable procedures of arbitration and good offices in order to maintain peace and order.

In pre-Islamic times, communities in Mindanao and Sulu combined their civil affairs with animistic rituals. In Islamic period they tended to mix temporal and religious affairs. But it was Ibn Khaldun, the Muslim classical philosopher of history, who warned against putting no demarcation line between Islamic religious affairs and temporal matters. Later, European social thinkers moved for the separation of state and religion, which today is the general pattern of secular and democratic states.

### Conclusion

In reality then both the traditional and the legal orders and authorities have dual power and influence over the general affairs of Filipino Muslims. This is clearly shown in the case of the Maranaos, the example cited here. The ideal models of the two systems are no longer what they were structurally. Each or both tend to mix in the process of a bastardizing contact, leading to confusion – a natural social process.

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## NOTES

1. This is the abstract of my dissertation titled, **The Transition From a Traditional To A Legal Authority System: A Philippine Case**, University of Kansas, 1967. Most ideas in this article are derived from my dissertation. This article was originally a paper read at the 6th Annual Seminar on Islam in the Philippines and Asia at Ateneo de Davao Collage, Davao City, September 20-22, 1973.

2. Weber defines traditional authority as one "resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them"; and legal authority as one "resting on the belief in 'legality' of patterns of normative rules and the right of those elevated to authority under such rules to issue commands." Max Weber, **The Theory of Social and Economic Organization**, trans. by A. M. Henderson and T. Parsons, Oxford University Press, New York, 1947, p. 328.

3. For another subject I investigated, cf. **Marginal Leadership in a Cultural-Contact Situation**, unpublished M. A. thesis, University of Kansas, 1957.