

INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT
AND CIVILIZATION (ISTAC)

ANALYTICAL STUDY OF THE ISLAMIC LEGAL HISTORY
IN THE PHILIPPINES WITH SPECIAL REFERENCE TO
THE DEVELOPMENT AND MANAGEMENT OF WAQF

A THESIS SUBMITTED TO THE INTERNATIONAL
INSTITUTE OF ISLAMIC THOUGHT AND CIVILIZATION
(ISTAC) IN PARTIAL FULFILLMENT OF THE M.A. DEGREE

BY

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KUALA LUMPUR, MALAYSIA
FEBRUARY 2001



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الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُونَيْسِرِيَّتِي اِسْلَامِيَّةً اِنْجِيْبَارِيَّيْتِي مَلَيْسِيَا

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

This thesis is humbly dedicated to my parents,
my wife and my two beloved sons,
‘Ali Muḥammad ‘Īsa (Amin) and
Muḥammad al-Khwārizmī (‘Arif)

TABLE OF CONTENTS

TABLE OF CONTENTS	iii
ACKNOWLEDGMENTS	v
ABSTRACT	vii
INTRODUCTION	1
1. Background of the Study	1
2. Objectives, Significance and Scope of the Study	3

CHAPTER ONE DEVELOPMENT OF ISLAMIC LAW IN THE PHILIPPINES BEFORE THE CODIFICATION OF THE MUSLIM PERSONAL LAWS

1. Historical Stages of the Development of Islamic Law in the Philippines	6
A. Pre-historical Period	6
B. Spanish Era	8
C. Muslim Laws under U.S. American Regime	9
D. Development of Muslim Laws during the Post Independence	14
2. Moro Customary Laws (' <i>ādāt</i>)	17
3. Conclusion	19

CHAPTER TWO THE MUSLIM CLASSICAL TEXTS: THE EARLIEST EVIDENCE OF ISLAMIC LAW IN THE PHILIPPINES

1. Introduction	22
2. <i>Luwaran</i> Code of Magindanao	23
A. The Genesis of the <i>Luwaran</i> of Magindanao	23
B. The Characteristics of the <i>Luwaran</i> Code	24
C. The Legal Significance of the <i>Luwaran</i> Code	25
D. The Contents of the <i>Luwaran</i> Code	26
I. Law of Succession	27
II. Marriage and Divorce	29
III. Criminal Law	30
IV. Evidence	33
V. Law of Transaction	34
VI. Partnership	37
VII. Guardianship	37
VIII. Law of Property	38
3. <i>Diwān</i> Tausog	39
A. The Principal Sulu Code	39
I. Abduction	40
II. Theft	40
III. Murder	40
IV. Offenses Relative to Marriage	40
V. Other Related Rules	40
B. The New Sulu Code	41
4. Conclusion	41

CHAPTER THREE
MINDANAO PROBLEM: ITS ROLE IN THE DEVELOPMENT OF
ISLAMIC LAW IN THE PHILIPPINES

1. Introduction		43
2. The Genesis and the Causes of the Mindanao Conflict		46
3. Government Solution to the Mindanao Problem		53
4. Conclusion		57

CHAPTER FOUR
THE CODIFICATION OF MUSLIM PERSONAL LAWS IN THE PHILIPPINES
AND THE CREATION OF *SHARI'AH* COURTS

1. Introduction		60
2. Research Staff for the Codification of Muslim Laws		62
3. The Role of Presidential Commission		65
4. The Contents of the Muslim Code		69
5. The Creation and the Jurisdiction of the <i>Shari'ah</i> Courts		73
A. Genesis of the <i>Shari'ah</i> Courts in the Philippines		73
B. Classification, Function and Jurisdiction of the <i>Shari'ah</i> Courts		76
6. Conclusion		81

CHAPTER FIVE
MANAGEMENT AND DEVELOPMENT OF *WAQF* IN THE PHILIPPINES

1. Introduction		84
2. The Meaning, Nature and Basis of <i>Waqf</i> under the Islamic Law		86
3. Legal Status of Muslim <i>Waqf</i> in the Philippines		89
4. <i>Awqāf</i> Institutions and the Administrators		92
A. The Philippine Amanah Bank		96
B. The Office on Muslim Affairs		96
C. The Office of the Autonomous Region in Muslim Mindanao		96
5. Classification of <i>Awqāf</i> Properties		97
6. Management of <i>Waqf</i> Institutions		101
7. The Development of <i>Awqāf</i> Properties		104
8. Conclusion		106

CONCLUSION AND RECOMMENDATIONS		109
1. On the Development of the <i>Waqf</i> Institution		113
2. On the Amendment of the Muslim Code		114
3. On the Development of the Study of <i>Shari'ah</i> and Customary Laws		114
4. Final Statement		115
BIBLIOGRAPHY		116

ACKNOWLEDGMENTS

Praise and gratitude be to Allah, the Lord of the Universe, and peace and blessings be upon His Final Prophet and Messenger Muḥammad (s.a.w), and upon his family and companions and those following his exalted way of life.

I wish first to record my grateful acknowledgment to the authorities of the International Institute of Islamic Thought and Civilization (ISTAC) for not only granting me a scholarship in pursuing my master studies but also for creating an intellectual environment for research. In this connection, I extend my deepest thank and gratitude to our father and shaykh, Professor Dr. Syed Muhammad Naquib al-Attas, the Founder-Director of ISTAC and holder of Al-Ghazali Chair in Islamic Thought, who has nourished my understanding on the theory of Islamization of the Malay-Indonesian Archipelago which then become as my framework in reinterpreting the history of Islam in the Philippines. Apart from the enormous benefits I have gained from his authoritative writings, his series of Saturday Night lectures have indeed enlightened my vision and helped in molding my thoughts. Acknowledgment is also due to Professor Dr. Wan Mohd. Nor Wan Daud, the Deputy Director, for his continuous support and encouragement; for allocating time from his busy schedule in monitoring the improvement of my work and also for helping me when I encountered some difficulties in my studies.

In the writing of this thesis, I am greatly indebted to my Supervisor, Professor Dr. Ala'Eddin Kharofa, for his constructive guidance and fatherly encouragement throughout my research work. May Allah grace him in due course in the Hereafter.

I wish to thank also the following who assisted me in vital ways: Haji Mat Ali bin Mat Daud, the Registrar of ISTAC, Puan Nooraini Mohd. Yusoff and Wan Mohd. Nasruddin Wan Abdullah, the Senior Assistants Registrar of ISTAC, for their kind acts and encouragements; the members of the ISTAC-Format Committee for their comments or ideas that helped me to enrich the format of this thesis; and my sister-in-law Jolainie for sending me the reading materials and other sources for my fieldwork in the Philippines. And lastly,

I am grateful to my wife, Dr. Mariam S. Tagoranao, for her unfailing support that has eased my burden through the years.

ABSTRACT

This dissertation traces the legal history of Islam in the only Christian country in Asia from the pre-colonial times to the present. In this study, we find that the legal system of Islam was extended and expressly put in peace and not by force in the Archipelago. The Muslim Filipinos (Moros) are, indeed, very fortunate in finding that the development of the Islamic law in the Philippines has never had any break from ancient times up to the present.

I have outlined, in a balanced presentation of broad brush strokes the origin and the development of the Islamic legal system and other legal institutions particularly, the Muslim *waqf* in the Philippines. It is only by examining the origin and the course of development of the Islamic law and the reasons for its codification and implementation that the true scope of this study can be understood.

It is a major premise that this work is of global significance as it is not only intrinsically interesting but frequently of practical utility. This study provides an understanding of how the Muslim law becomes part of the national law and how the *Shari'ah* courts become part of the national judiciary of a non-Muslim state like Philippines. This recognition complies to the international law and discipline in recognizing the minorities' right to be governed by their own personal laws, to have a free exercise of their religious beliefs and practices and the right to culture as a human right. It is hoped that being literally the first work of both its type and scope, this dissertation will serve as a springboard for further research on the legal history of Islam in the Philippines.

As to the arrangement of this study, it has five chapters. The first chapter deals on the historical background of the Islamic law in the Philippines. An historical overview of the coming of Islam and the development of the Islamic law before and after the colonial intrusion of the European imperialism has been traced in this portion. The second chapter is a detailed presentation of the Muslim classical texts, the *Luwaran* Code and the *Diwān* Tausog (Sulu codes). These texts can be considered as the earliest evidence for the application of Islamic law in the Philippines. These laws also represent the earliest codification of Muslim laws and *'adah* in the Philippines. The third chapter is an

examination of the role of the Muslims armed struggle to the development of Islamic law in the Philippines, first, against the Western colonial oppression and later, against the Philippine government. This struggle became the main instrument for the enactment of special laws promulgated for Muslims and the codification of the Muslim personal laws in the Philippines. Chapter four deals with the executive orders calling for the codification of Muslim personal laws in the Philippines. The role played by the Research Staff and the description of the proceedings made by the Code Commission until the final adoption and signing into law of the said Code has been discussed in this chapter. This is followed by the creation, jurisdictions and functions of the *Shari'ah* courts under the provisions of the Muslim Code and the Organic Act of the Autonomous Region in Muslim Mindanao. The last chapter of this study deals with the development and the administration of *waqf* institution in the Philippines. It begins with the legal positions of the Muslim *waqf* under the Code of Muslim Personal laws, the Philippine Corporation Law on trust properties, the Civil Code of the Philippines, the Public land Act and other related laws. It is followed by the administration and development of Muslim *awqāf* properties. Thereafter, we make the general conclusion where we set some recommendations and suggestions to develop and reform the Islamic legal institutions and system in the Philippines.

INTRODUCTION

1. Background of the Study

The Republic of the Philippines is the only avowed Christian nation in Asia. However, it has significant Muslim population who are basically concentrated in the islands of Mindanao, Sulu, Basilan, Tawi-Tawi and Palawan. Islam has been considered as the second largest religion in the country. It shows that the largest non-Christian minority are the Muslims in the South. In contrast with 25%-estimation of the Philippine Government, the Muslims claimed that they are over ten percent of the total population of the country. These are rough estimations due to the inaccuracy of the government statistical data of the census returns of Muslims who migrated in some areas and numbers of Muslim converts in all parts of the country.

Islam was introduced in the Philippines before the colonial intrusion of European imperialism in the Archipelago. In the early century, the islands was populated by one race and one people as their communities shared surprising similarities in political, laws and social structures. But this oneness was buried away from memory when this situation was exploited by foreign powers. This situation was exploited by foreign powers who came to these islands to divide the people and exploited their artificial differences and made them as slaves for centuries.¹

The Philippines was first colonized by Spain for more than three centuries (1565-1898), and then by the United States for nearly five decades (1898-1946). Because of this foreign subjugation, Philippine legal systems have been dominated and characterized by the Roman laws, Spanish civil system and the Anglo-Saxon legal jurisprudence. But if we look at the Philippine history, it shows that the Islamic law have touched, penetrated and gained ground in the Philippines before the Spanish and the American conquest. The different Muslim ethno-linguistic groups in the Philippines have kept a great deal of their customary laws and applied to themselves, in varying intensities, the person and family rules of

¹ Macapanton Y. Abbas Jr., "The Historical, Political, Social and Legal Justification for Codification and Enforcement of Muslim Laws and Adat Laws," *Mindanao Journal* iii (January-June 1977): 110, hereinafter cited as *Legal Justification for codification*.

Islamic law as expressed in the Shāfi'i school. These rules did not receive any recognition from the government before the codification of the Muslim Personal laws. However, the Muslims continued to get married and divorced along with Islamic lines.

The Sultans of the different kingdoms based the legitimacy of their rule from the *Shari'ah* which shows their belief that the enforcement of their sovereign authority was founded upon the principles of Islamic law. The Sultan or *Datu* of every locality rules, so to speak, by the "books" and in promulgating laws, he was assisted by the *Qāḍī*, who used the Qur'ān and codes such as the *Luwaran Code* and the *Dīwān Tausog* which are based on the four primary sources of Islamic law.

After the Philippines was proclaimed a Republic, the Muslim Filipino was forced to comply with Christian concepts of marriage and marital dissolution and with Western European notions of personal status, property and inheritance, and endowments. These laws were ignored by majority Muslims and continued to structure their family life according to the Islamic teachings and objectives. This violation separated millions of people from the rest of the populace retarding the birth of the nation. The Muslims, in the spirit of *Jihād*, self-preservation and defense, openly defied the government and expressed that dissatisfaction in an armed struggle for survival. With this, the Moros won the full glare of local and international publicity in many years. The Muslim world showed deep interest over the plights of the Muslims in the Philippines by conducting several negotiations between the Philippine government and its Muslim populace. In effect, the government was compelled to enact a law that would apply to the Muslim personal and family relations. Thus, the Code of Muslim Personal Laws of the Philippines² under the Presidential Decree No. 1083 was signed into law in February 1977 by the then President Ferdinand E. Marcos, providing among others for the recognition of the legal system of the Muslims in the Philippine as part of the law of the country. This law became the first concrete step in the sphere in establishing real peace and harmony with the Muslim in South. The Muslim Code universalizes and systematizes the Muslim personal law of the Muslim Filipinos in spite of their ethnic and linguistic differences. As a published

² In this study the Code of Muslim Personal laws of the Philippines is referred as the "Muslim Code."

document, the Code certainly helps in the dissemination of Islamic knowledge and raises the educational standards of the Muslims in the Philippines.

There have been considerable developments in the creation of *Shari'ah* courts for every Muslim district in Mindanao and Sulu regions. The Muslim Code provides for the organization of the *Shari'ah* courts, the qualification of judges and the position and office of jurisconsult (*mufti*). The *Shari'ah* court form part of the judiciary or judicial system of the Philippines because it provides an effective administration and enforcement of the Muslim personal laws for the Muslim populace.

Concerning the *waqf* system, Philippines had a chequered history of *waqf* administration.³ It is sad to note that there is no statutory law that regulates the management and administration of *awqāf* properties. Attempt had been made to establish a Muslim Endowment Fund based on the proposed provisions on *waqf* before the codification of the Muslim Personal Laws. However, the proposed provisions were not considered because *waqf* was defined by the government as a religious institution contrary to the principles of the fundamental law of the land. There are only two provisions provided in the Muslim Code related to the administration of *awqāf* properties: 1) The testamentary *waqf* under Article 104; and 2) the charitable trust property and ancestral land classified as communal properties. Therefore, in the absence of an Islamic *waqf* law, there is no difference between the laws applicable to Muslim and Christian trusts.

2. Objectives, Significance and Scope of the Study

Much has been written about the Muslim law in the Philippines; but there has been none published so far creating a full interest on the legal history of Islam in the Philippines, particularly the development and administration of *awqāf* properties. So, it seems reasonable to examine this field to understand and appreciate the presence of Islamic law in a non-Muslim state. The main objective of the study is to criticize and evaluate the historical development of Islamic law in the Philippines with special reference to the institution of the Muslim *waqf*. In addition to this, is to give an amount of information about how the Islamic law came into the Philippines and how does it develop as part of the Philippine's

³ Musib Buat, "Philippines," *Management and Development of Awqāf Properties* (Jeddah: Islamic Research and Training Institute 1987), 131.

legal systems. It will set forth the historical process whereby an Islamic system has come to be what it is over time.

The subject of Islamic legal history particularly in a non-Muslim state is not merely of theoretical or academic interest. It will not only enlighten the lawyers, legislators, but it has also a great practical value for all Muslims. There are authors who believed that not all types of mind could benefit from a study of jurisprudence, but every intelligent individual can benefit by learning legal history because the roots of the present lie buried deep in the past. In the present times, if we want to study the new, we need to examine and understand the old and grasp the reason for its development. It is only through such a study that one can understand them in their true perspective. The same is true in the study of Islamic legal institutions in the Philippines.

This study, then, hopes that it will enhance the knowledge and widen the understanding and appreciation of the readers as to the legal history of Islam in a Catholic country like Philippines. It will also give a better understanding for non-Muslim Filipinos on why the Islamic law becomes part of the law of the nation.

The scope of this study comprises the growth, evolution and development of the Islamic law from the pre-colonial era until the codification of the Muslim personal laws in the Philippine. Chapter One is designed to give a background on the historical development of Islamic law in the Philippines. We commence this chapter by tracing the beginning of Islamic law in the Philippines and by briefly discussing its development before and after the colonial era. It will be shown that the development of Islamic law is not an overnight affair because it took time to maintained its root firmly in a Christian state. In Chapter Two, the Muslim classical texts, *Luwaran* Code and the *Diwān* Tausog, have been discussed as the earliest evidence for the application of Islamic Law in the Philippines. These laws show that prior to the enactment of the laws provided for the Muslims, the *Moros* had already attained a considerable degree of literacy. These texts also show how the Islamic law penetrated into the local custom or *'ādah* of early Muslim Filipinos. The third chapter recounts the role of the Muslims armed struggle to the development of Islamic law in the Philippines, first, against the Western colonial oppression and later, against the government. This struggle

became the main instrument for the enactment of special laws promulgated for Muslims and the codification of the Muslim personal laws in the Philippines. Chapter Four examines the executive orders calling for the codification of Muslim personal laws in the Philippines. The role played by the Research Staff and the description of the proceedings made by the Code Commission until the final adoption and signing into law of the said Code. The role of the *Shari'ah* court in the development of the Islamic Law in the Philippines as provided under the provisions of the Muslim Code will be discussed.

The concentration on the discussion of the development and administration of *waqf* institution in the Philippines will be covered in Chapter Five. The first part of this chapter examines how the Muslim Filipinos understand the word "*waqf*" and its application in the Philippines. The present *awqāf* institutions in the country will be enumerated and their legal positions, especially, under the Muslim Code or Presidential Decree 1083. Its management will be discussed and scrutinized in this portion of our study.

The concluding chapter gives the general conclusion and a summary of the principal issues and elaborate some of the defects and problems in the growth and development of Islamic law in the Philippines. Finally, recommendations and suggestions to develop and reform the Islamic law in the Philippines, particularly the institution of *waqf* will be submitted.

CHAPTER ONE

DEVELOPMENT OF ISLAMIC LAW IN THE PHILIPPINES BEFORE THE CODIFICATION OF THE MUSLIM PERSONAL LAWS

1. Historical Stages of the Development of Islamic Law in the Philippines

The study of Islamic law cannot be separated from the historical progress of the country in which this system is enforced or partly implemented. In the Philippines, the Islamic law was developed from several historical stages; each stages having its own peculiar characteristics. The stages of its development are organized as follows: The Pre-Colonial Era, the Spanish Regime, the American Occupation and the Post-independence.

A. Pre-historic Period

The early Filipinos had a system of laws partly written and partly unwritten before the Spanish conquest. It is believed that they had their laws before their migration to these islands because before that time, they were already living in an organized societies under patriarchal government. Based on scanty known facts, their laws may have partly originated from customs and usages peculiar to their race and environment, and partly borrowed from surrounding countries.⁴ The Filipino people, even in pre-historic times had already shown high intelligence and moral virtues clearly manifested in their legislation which, taking into consideration the circumstances and the epoch in which it was framed, was certainly as wise, as prudent, and as humane as those of the nations then at the head of civilization.⁵ But as to the *Moros*⁶ in the South, it is known that Islam had taken hold of them even though in a corrupted form. In other parts of the country, it can be asserted that some of the ruling families were identified as Muslims, but there is not much evidence of acceptance of the Islamic practices among the inhabitants. In the Visayas and in some northern parts of Mindanao, in spite of the commercial intercourse with Borneans, and, therefore, presumably Muslim traders, the evidence points to the fact that for all practical

⁴ Antonio E. Cuyugan, "Origin and Development of Philippine Jurisprudence," *Philippine Law Journal* iii, no. 6 (January 1917): 198.

⁵ Norberto Romualdez, "A Rough Survey of the Pre-Historic Legislation of the Philippines," *Philippine Law Journal* i (November 1914): 179.

⁶ The term "Moro" was used by the Spaniards to refer to any Muslim. It was originally used to denote the Muslims who conquered Spain and the Berbers of North Africa.

purposes Islam was unheard of.⁷ It can be added that historians do not tell us definitely whether the Islamic law had exerted any influence on the laws of the Christian Filipinos. One reason, among many others, is the absence of archeological data and contemporary accounts of the period before the colonial intrusion of European Imperialism in the Philippines.

The Islamic law in the Philippines can be traced back in the 13th century when Islam was introduced to the inhabitants by a Muslim missionary who landed on Philippine shores. He introduced the Islamic law along with religious devotional observances. In the following years, the Muslims began to develop a deeper awareness and a more concrete grasp of the teachings of Islam through the coming of Muslim preachers and through broader religious⁸ and commercial contacts with neighboring Muslim principalities.⁹

The Islamic law obtained its earliest foothold in the South particularly in Sulu and then, in Mindanao. With the spread of Islam, the *Moros* gained new laws, a more developed political organization, a new system of writing and on top of these, a new ethical outlook on life from the entire Muslim world. This superior religion and culture influenced the early Filipinos. According to a Christian Filipino writer, "With this religion came the sultanate form of government and laws based on the Qur'ān, the sacred book of Islam; the Arabic alphabet of the Christian Filipinos; the Arabian calendar with its Muslim festivals; the Islamic arts, characterized by the Arabesque architectural style of the mosques, the Maranaw *sari-manok* and Tausog designs in decorative art; and the Muslim customs."¹⁰ This means that, along with the penetration of Islam in the Philippine was the introduction

⁷ Cesar A. Majul, *Muslims in the Philippines* (Quezon City: Asian Center, U. P. Press, 1973), 36.

⁸ Prof. Syed Naguib Al-Attas in his book "Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago" had profoundly argued that the study of Islamization in Malay-Indonesian Archipelago can not be fully understood by merely focusing on arts, social interactions such as trading, intermarriages, economic and political alliances, because these inquiries will only provide the external manifestation of Islam. Thus, the totality of Islam could be fully recognized by studying all the elements that had contributed to the process of revolutionizing individual's world-view. This transition could be comprehended by considering the role of philosophical mysticism and metaphysics (*taṣawwuf*) and other rational and intellectual elements such as rational theology (*kalam*). For details, refer to Syed Muḥammad Naquib al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1969), 5-10.

⁹ Hamid Barra, *The Code of Muslim Personal Law in the Philippines* (Iligan: Padilla Press, 1988), 44, henceforth cited as *Code of Muslim Personal Law in the Philippines*.

¹⁰ G. F. Zaide and S. M. Zaide, *Philippine History and Government* (Manila: National Bookstore, Inc., 1987), 54.

of the roots of Islamic law, namely: the Qur'ān, *Sunnah*, *Ijmā'* and *Qiyās*. All this is enough to point out that before the colonial times, the Muslims in the Philippines were already enjoying a relatively high degree of civilization.

The Sultanates in Mindanao and Sulu were Muslim outposts, governed by Islamic law and their respective customs and traditions. They have their own *Agama* courts with learned judges. Though Islamic, the Sultans never totally abrogated or abandoned their customs and traditions because there were occasions that '*ādah* tended to moderate what appeared to be some harsh laws and severe penalties of the Islamic laws. The punishment of *hadd* can be enforced only by a very pious and strong Sultan. The fact stands out that for many centuries, Muslim law prevailed in the islands of Mindanao and Sulu, and with it, the customs of the respective Muslim regions and sultanates governed and regulated the lives of these people.¹¹

B. Spanish Era

When Spain established her sovereignty in the islands of Visayas and Luzon in 1565, the Islamic system of law and government has already been established in the Southern part of the Philippines. Animated by the spirit of the centuries-old crusade against the Arabs or "Moors" of Spain, the Spaniards began the long wars with the *Moros* in 1578. This means that the Spaniards carried to the Philippines a fanatical hatred of Islam which was born of hundreds of years of their own struggling for independence from Muslim rule in Spain.¹² With this hatred, the Spaniards described the Muslims as cunning, cruel, treacherous, savage, a pirate, a raider and a slaver. The colonialists were either unaware of, or chose to completely ignore the fact that the *Moros* in the Philippines had already attained a considerable degree of literacy because the Arabic alphabet was applied to their own tongues, and old Arabic and Malay books on religion and law were translated into their native dialects.

For more than 300 years of Spanish sovereignty, the *Moros* fought against Spain in defense of their freedom to pursue their religion and way of life and for liberty to be

¹¹ M. Y. Abbas Jr., *Legal Justification for Codification*, 119-120.

¹² Peter G. Gowing, *Mandate in Moroland: The American Government of Muslim Filipinos 1899-1920* (Quezon City: New Day Publishers, 1983), 13, hereafter cited *Mandate in Moro Land*.

governed by Islamic laws. Since Islam was firmly rooted to resist the power of the colonizers, the Spain's policy to Hispanize and Christianize the Muslims failed. The Spaniards failure to subjugate the Muslims explained the non-enforcement of the Spanish laws, including the *Fueros Municipales* (the local customs influenced by the Islamic law system of Spain) and the *Forum Judicum* (legislation emanated from the Visigoth, a Germanic people).¹³ It is true that several Spanish codes and special laws, the *Las Leges de Indios* and the *Las Siete Partidas*¹⁴ were successfully extended to the Christian provinces. These laws were not implanted to the Muslims in the South. The Muslim law and customary law continued to function for centuries without the influence of any foreign laws. Therefore, the Spanish regime has no direct bearing on the legal development of Islam in the Philippines because of their failure to eradicate Islam in Sulu and Mindanao. The successful resistance by the Muslims against the foreign conquerors can be attributed to their belief in Allah and the strength of their Islamic faith. A Filipino historian commented that, "While a large part of the Philippines was being subjugated and Christianized by the *conquistadores*, the proud Muslim of the South guarded his citadel, swept the seas with his fast vinta to protect himself from the Spanish version of Christianity and culture, and fought courageously against the Spaniards, later, against the Americans, in defense of his religion and freedom."¹⁵

C. Muslim Laws under the US-American Regime

It was the US-American era that brought a milestone in the legal history of Islam in the Philippines. During their occupation, new laws were enacted and added to the existing body of the Philippines' laws. There were treaty making, memorandums issued by the US-Americans pursuant to their policy that "mutual friendly and well-defined relations be established with the *Moros*."¹⁶ The Sultans of Sulu was the first Muslim sultanate that opened and established relations with the Americans through the Bates Treaty. The United States government through Brig. Gen. John C. Bates entered into a Treaty of Peace with

¹³ Anonio E. Cuyugan, "Origin and Development of Philippine Jurisprudence," *Philippine Law Journal* iii (January 1917): 200-201.

¹⁴ Edgardo L. Paras, *Family Code of the Philippines: Annotated* (Manila: Rex Bookstore, 1990), 76.

¹⁵ Teodoro A. Agoncillo, *History of the Filipino People* (Manila: R.P. Garcia Publishing Co., 1990), 19.

¹⁶ Michael O. Mastura, *Muslim Filipino Experience* (Quezon City: PDM Press Inc., 1984), 15.

the Sultan of Sulu on August 20, 1899.¹⁷ It was provided in this treaty that the United States government recognized the sultanate form of government of the *Moros* and the enforcement of the Muslim law. The *Moros* were assured that their internal affairs (e.g. religion and laws) would not be interfered with by the US-Americans. Article III of the Treaty provides:

The rights and dignities of His Highness, the Sultan and his datus shall be fully respected; the *Moros* shall not be interfered on account of their religion; all their religious customs shall be respected and no one shall be prosecuted on account of his religion.¹⁸

Crimes and offenses among the *Moros* were to be tried under the jurisdiction of the Sultan as clearly enunciated in Article IX of the Bates Treaty:

Where crimes and offenses are committed by *Moros* against *Moros*, the government of the Sultan will bring to trial and punishment the criminals and offenders who will be delivered to the government of the sultan by the United States authorities if in their possession. In all other cases persons charged with crimes and offenses will be delivered to the United States authorities for trial and punishment.¹⁹

Unfortunately, Gen. Leonard Wood trampled the Bates Treaty based on his wrong impression that "the agreement was an obstacle to the establishment of an orderly government because it recognized a highly corrupt and arbitrary administrations and the *Moro* laws were cruel and barbarous."²⁰ Another reason in abrogating the Bates Treaty was the decision to take a direct hand in the control of *Moro* affairs. The Americans treated the Muslims in the same way they have long dealt with the Indians in America. In other words, the *Moros* were treated as "savages" and treaties made with them were not considered binding and could be unilaterally set aside as new policy demanded.

On June 1, 1903, the Philippines Commission, by authority of the United States, enacted Act No. 787 or otherwise known as an "An Act Providing for the Organization and Government of the Moro Province."²¹ The Philippine Commission was organized as a body serving both as legislature and Supreme Court during the early years of the American occupation. It was administered by the Americans who created the Moro Province in order

¹⁷ M. Y. Abbas Jr., *Legal Justification for Codification*, 116.

¹⁸ *Ibid.*, 117.

¹⁹ *Ibid.*

²⁰ P. G. Gowing, *Mandate in Moroland*, 117-118.

²¹ *Ibid.*, 73.

to abandon the policy of non-interference and to exercise direct rule over the Muslims and bring them with the other Filipinos under the rule of a single body of law. In this respect, the legislature decided that the policy of "indirect rule" marked out by the British in Malaya and the Dutch in the East Indies would not be adopted by the US-Americans in Moroland. They preferred to combine the military powers with the *Moros* government and the establishment of civil institutions and procedures. This combination should have as its function the pacification of dissident elements, the establishment of law and the preparation of the *Moros* for their proper place in the body politic of the Philippines.

Act No.787 offered to accommodate the collection and codification of the Islamic and customary laws of the Muslims. Section 13 of this Act provides that:

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

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

k) To enact laws for the organization and procedure of district courts, to consider and decide civil and criminal actions arising between *Moros* and members of other non-Christian tribes. The district court shall be presided over by the Secretary of the district and the other members of the court shall be appointed by the district governor and shall vary with the race or tribe of the litigants, so that where the action arises between members of other non-Christian tribes, and when the litigation arises between *Moros* and members of other non-Christian tribes there shall be at least one *Moro* member of the court.²²

The collection and codification of Muslim customary laws did not succeed when the Americans made a wrong presumption that the Muslim law was not suitable for more general purposes. The same General Wood who abrogated the Bates Treaty reported in 1904 after a study of Moro legal codes that he found nothing worthy of codification in the *Moro* laws as "they have no laws."²³

²² M. Y. Abbas Jr., *Legal Justification for Codification*, 120-121.

²³ Peter G. Gowing, *Muslim Filipinos: Heritage and Horizon* (Quezon City: New Day Publishers, 1979), 36-37, henceforth cited as *Muslim Filipinos: Heritage and Horizon*.

On June 23, 1905, the Philippine Commission, by authority of the United States enacted Act No. 1283 amending Act 787. Section 6 (b) of Art 1283 amended Section 13 (j) of Act No. 787 as follows:

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

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

Section (c) amended section (K) of Act No. 787 as follows:

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

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

Justices of the peace in the Moro province shall not have jurisdiction to try civil actions in which the parties or any of them, are *Moros* or members of some other non-Christian tribe, or criminal actions in which the accused or any of them are *Moros* or members of some of other non-Christians tribe.²⁴

The Tribal Ward Courts were staffed and introduced by the Americans to deal with cases involving Muslims. However, the attempt failed when the *Moros* ignored these courts totally and preferred to continue using the dispute settlement procedures provided by the *datus* in the *Agama* Courts. In 1914 Philippine law became generally applicable in Moroland under certain limitations.²⁵

On April 3, 1915, the Philippine Commission enacted Article No. 2520, recognizing the judges in the official Moroland courts to modify the application of Philippine laws taking into account the local laws and customs of the Muslim. Section 3 of this Act provides:

²⁴ M. Y. Abbas Jr., *Legal Justification for Codification*, 120-122.

²⁵ Chibli Mallat et al., *Islamic Family Law* (London: Graham and Trotman, 1990), 242, hereinafter cited as *Islamic Family Law*.

Judges of the courts of First Instance and Justices of the Peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed, may modify the application of the law of Philippine islands, taking into account local laws and customs; Provided that such modification shall not be in conflict with basic principles of the laws of the United States of America.²⁶

The Moro province became an instrument in the implementation of the American mandate. Some parts of its program includes the illegality of slaves, suppressing piracy and preventing other *Moros* practices offending the Americans sense of justice and good order. The *Moro* Province adopted the policy of respecting the Islamic religion and associated customs of the Muslim Filipinos provided they did not conflict with the basic principles of American law.²⁷ Judged from the American standards of justice, the *Moros* criminal law was characterized by barbarities, inconsistencies and class favoritism. With the implementation of the US-American mandate, slavery was made illegal; the common people were protected from the tyranny of their traditional leaders and the depredations of lawless persons and unscrupulous traders.²⁸ There were laws which seemed to offend the sensitiveness of the Muslims specifically, the collection of head-tax (*cedula*), property tax and road tax, land surveys, export and import duties and other customs. The Muslims defied these regulations because the payment was made to an infidel government. On the other hand, the Americans called the Muslims who defied their laws as bandits and outlaws. But thousands of the Muslims resisted to the death.

In 1913, the Moro Province was reorganized into the Department of Mindanao and Sulu. A policy of attraction was vigorously pursued. With this, public schools, public works and hospitals were established. The Muslims participated in the local government and some were even appointed to the Legislature.

Another treaty was entered on March 22, 1915²⁹ between the Sultan of Sulu and the US-representative, Frank W. Carpenter. It was clearly provided in the agreement that the government will not prohibit the domestic affairs of *Moros* to be regulated by the

²⁶ M. Y. Abbas Jr., *Legal Justification for Codification*, 122.

²⁷ P. G. Gowing, *Muslim Filipinos: Heritage and Horizon*, 37.

²⁸ *Ibid.*

²⁹ Jainal D. Rasul, "Philippine Islamic Law in the Light of Sulu Problems," *Mindanao Journal* iii (January-June 1977): 157, hereafter cited as *Law in the Light of Sulu Problems*.