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THE DECLINE OF DEMOCRACY IN THE PHILIPPINES, By William J. Butler, Esq., Professor John P. Humphrey, and G.E. Bisson, Esq. Geneva, Switzerland: International Commission of Jurists, 1977. Pp. 97.

The International Commission of Jurists is a prominent non-governmental organization dedicated to the protection of human rights. In this publication, three of the Commission's members have presented a report of their study of the state of the democratic process in the Republic of the Philippines since the declaration of martial law by President Ferdinand Marcos in 1972.

The report begins with a brief history of the Philippines, tracing its past from the onset of Spanish domination in the seventeenth century, through the period of control by the United States following the Spanish-American War, to the granting of independence to the islands in 1946. The first Constitution for the Republic was written in 1935 and was patterned after the American model. Two provisions in particular are significant to this study: the first granted the President the power to suspend the writ of habeas corpus or to place any or all of the Philippines under martial law in circumstances of rebellion or danger thereof, as public safety required; the second limited the term of office of the President to eight consecutive years.

Following this background information, the authors present an in-depth analysis of the usurpation of power by the administration of President Marcos. In response to a serious challenge to the government by insurgent Communists and Moslem separatists, Mr. Marcos suspended the writ of habeas corpus, following procedures prescribed by the 1935 Constitution. This suspension, announced in August 1971, was rescinded in January 1972. More important than the President's actions, however, was the response of the Supreme Court of the Philippines to a challenge of the suspension. In *Lansing v. Garcia,* (decided in October 1971), the Court upheld the constitutionality of the suspension, stating that the Court was empowered only to ascertain that the President had not acted arbitrarily or had not gravely abused his discretionary power. This principle adopted by the Supreme Court continues to be the standard applied to the maintenance of the martial law declared on September 21, 1972.

This report shows how President Marcos has used the powers available to him under a declaration of martial law to continue in of-

fice beyond the constitutional limit of two consecutive terms. Mr. Marcos masked his activities behind national referenda, the results of which, the authors claim, were suspicious at best. This publication questions the legitimacy of these referenda because, under martial law, there is no freedom of speech or of the press, voters are intimidated by military forces even at the polling places, and the ballots are counted by the government without verification. The referenda were used to ratify a new constitution under which the President suspended the National Assembly and undertook to rule indefinitely by decree.

As a result of the moves by President Marcos, there have been serious violations of the civil and political rights of the population. These violations are spelled out in the report and include the suspension of the writ of habeas corpus, governmental control of all communications media, the limiting of freedom of speech, the limiting of overseas travel to those of sworn allegiance to the Marcos government, the intimidation of the Catholic Church hierarchy through official accusations and arrests, the extensive use of military tribunals often denying rights to counsel and trial by jury, and, in the area most emphasized and documented by the authors, the prolonged detention and torture of prisoners being held often without charges being made. In addition to the restrictions on the jurisdiction of the civil courts through the extensive use of military trials, the Marcos administration exercises further control over the civil courts by requiring all judges, including those on the Supreme Court, to submit resignations, thereby allowing Mr. Marcos to keep only those judges acceptable to the government on the bench.

The authors do give the Marcos administration credit for having taken important strides to improve health care facilities and to expand the educational systems of the Philippines. However, the increased military expenditures which are used to fight a now almost nonexistent enemy have reduced the funds available for areas of social reform, thus slowing much needed action. This report also indicates that the government has made some limited efforts to reduce the incidence of torture of prisoners. Whether this slow progress indicates lack of concern by the Marcos administration, or an inability to control methods used by certain interrogators, is not decided in the analysis.

However, other conclusions are drawn and recommendations are made. It is in this section that the difficult position in which the authors find themselves is most clear. Throughout the report the

authors are critical of actions taken by President Marcos in abusing his powers since the 1972 declarations of martial law. They give evidence supporting the contention that the continued imposition of martial law is not warranted, and even conclude that the Marcos administration is using its martial law powers not to protect the nation, but rather to keep President Marcos and his "collaborators" in control of the nation. Still, the recommendations which the authors make for dismantling the present government and for effecting a smooth transition to a constitutional form of government are directed to that very government of President Marcos. Because of the state of development of the human rights area of international law, there is no outside body to which the Intenational Commission of Jurists may appeal. (As the authors note, the Philippine government has never ratified the United Nations Covenant on Civil and Political Rights). Making the task more difficult is the aura of constitutionality which is created by Mr. Marcos' use of referenda to support his actions and by the Supreme Court's unwillingness to chalnenge those actions. Perhaps the only hope for return to a democratic form of government in the Philippines lies in the focusing of public attention on the situation through publications by respected authorities such as the organization which has issued this report.

Charles M. Hall

THE LAW OF THE NEAR & MIDDLE EAST. By Herbert J. Liebesny. Albany, New York: The State University of New York Press, 1975. Pp. 302.

This book represents the first comprehensive study of the developments in Islamic law during the nineteenth and twentieth centuries to date. It was developed from a graduate seminar on the law of the Near and Middle East which has been taught by the author for over ten years at the National Law Centre of George Washington University. It is thoroughly researched, and contains an extensive bibliography for those readers who wish to continue their study of the law of this region in either specific or general areas.

Although the progression of chapters through the book is extremely logical and easy to follow, the author's style of interspersing his personal commentary between excerpts from other essays and Islamic writings can, at times, be very confusing. Furthermore, the extensive use of Arabic terminology, though defined in Appendix 2 and

unavoidable for an accurate understanding of Islamic law, makes the book very slow reading in spots.

The book is divided into two parts. Part I, consisting of chapters 1-5, presents a concise survey of the history of Islamic law. Part II, chapters 6-12, covers a more substantive examination of the law of the Near and Middle East by looking at specific legal institutions in both their classical Islamic form as well as their present-day appearance in various Arabic countries.

Chapters 1 and 2 establish the historical background necessary to understand the modern law of the Near and Middle East. The author presents the basic characteristics of Islamic law, its sources, and its historical development through the eighteenth century in order to demonstrate the integral relationship between the classical Islamic law and the Islamic religion, one of total unanimity. For many centuries, the religious doctrine was the law. Even today, the roots of the laws of the Islamic countries are cemented in the basic religious principles and philosophy of Islam.

These basic principles are discussed at length in chapter 1. Chapter 2, then, begins the examination of the historical underpinnings of the classical Islamic law. It notes that there are four sources of Islamic jurisprudence, known as "roots." These are: the Qur'an, which is the supreme source of Islamic law; the Sunna, which are the determinant norms in the conduct of the life of an individual and of society; the Ijma', which is the consensus of the community; and the Qiyas, which is analogy. It is important to note that the first three of these rely on infallible divine inspiration, whereas the fourth and last source depends upon the fallible judgment of man.

Chapter 2 also examines the development of the four classical schools of Islamic jurisprudence: the Hanefite; the Malikite; the Shafi'ite; and the Hanbalite; as well as surveys their growth through the eighteenth century.

With Chapter 3, however, the author begins the most vital section of the book. This chapter introduces the legal reforms of the nineteenth century, a subject never before comprehensively considered in one presentation. It first explains the desire of the Ottoman Empire to modernize the country's institutions according to a more European pattern. The author depicts the early attempts to codify the religious law by selecting sections of a number of European codes as the basis for the new Ottoman code. The author then compares these developments in the Ottoman Empire with the concurrent reform movement in

Egypt prior to World War I. Chapter 4 continues this examination for the period following World War I, expanding it to encompass the Arabic countries, Iran, and Afghanistan.

Chapter 5 concludes Part I's survey of the historical development of the law of the Near and Middle East with a look at India and Pakistan. It compares the development of the law in these countries with that of the countries discussed in Chapter 4. The primary emphasis here, though, is on what effect the extended English rule had on the Islamic law, both substantively and procedurally.

Chapter 6 begins Part II of the book and it emphasizes the substantive law of the Islamic countries both today and historically. The subject of Chapter 6 is marriage and divorce. The author spends a great deal of time examining the classical Islamic views of marriage and divorce including such specific areas as the formalities of the marriage contract, dowry, polygamy, and support of wife and child. He then compares and contrasts these views with the law as it exists in the various countries of the Near and Middle East today.

Chapters 7-10 continue this process of describing the classical law in a certain area and then comparing it with the law as it exists today in various countries. Chapter 7 deals with the laws of inheritance; Chapter 8 with contracts and torts; Chapter 9 with property; and Chapter 10 with the criminal law.

Chapter 11 digresses from these discussions of the substantive law, considering instead the judicial practices and procedures of the classical Islamic law. It considers the *qadi* (Muslim religious judge), and his office, the allocation of the burden of proof between plaintiff and defendant, evidence, and the special role of the oath in Islamic law. The final section of the chapter discusses the *mazalim* courts which were roughly equivalent to the English Courts of Equity.

The final chapter, Chapter 12, continues the discussion of procedure begun in Chapter 11. It examines the practices and procedures of the gresent-day Near Eastern countries. The book closes with a discussion of the influence of Western jurisprudence upon the procedures of the individual countries of the Near and Middle East.

The Law of the Near and Middle East accomplishes two things: first, it traces the historical development of Islamic law, including, most importantly, the systematic assimilation over the last 200 years of Western law through the drafting of modern statutes and codes based upon various European codes; and second, it gives a brief but

thorough and systematic survey of the important legal institutions in both their classical form and their present-day appearance.

The importance of this book, besides its being the first such compilation of the developments in Islamic law over the past two centuries, rests upon its timeliness. Due to the sudden ascendance of the Near and Middle Eastern countries within the last ten years, legal transactions and law suits involving the laws of these countries are playing an ever more important role in American legal practice. The author has provided American lawyers, law students, businessmen, and others who wish to gain some insight into the development of Islamic and present-day Near and Middle Eastern law with an excellent starting point.

David M. Schulman

DE-RECOGNIZING TAIWAN: THE LEGAL PROBLEMS. Victor H. Li. The Carnegie Endowment for International Peace, 1977. Pp. 48.

This booklet examines potential legal problems which might develop if the bonds between the United States and the Republic of China (ROC) are maintained while the United States "normalizes" relations with the People's Republic of China (PRC). It is assumed by the author that the United States will recognize the PRC as the government of China and withdraw recognition from the ROC as the government of China.

The contents of the booklet are clearly outlined and faithfully followed, but the material is rarely dealt with in detail. For that reason, this booklet only provides an interesting introduction to a controversial and difficult problem. Numerous footnotes are the source of more detailed information for those who desire to explore this problem further. The basic presentation and analysis is solid though unspectacular; it is as if the author's creativity were somewhat stifled due to overexposure to legislation, as evidenced by his heavy reliance on the United States Code when addressing domestic American law issues. The lack of originality is excusable, however, as the booklet focuses on the most obvious problems and viable solutions likely to be adopted rather than bold, untested alternatives which governments usually avoid due to uncertain outcomes.

The complexity of the de-recognition problem is simplified as the material is broken down into six chapters. The first chapter explains the problem. Monetary figures depict some of the economic problems;

statistics showing the number of persons traveling between the United States and Taiwan, the number of Americans living in Taiwan, and the number of Taiwanese living in and emigrating to the United States are provided. The Mutual Defense Treaty of 1954 is the principal source of military ties between the United States and the ROC. Monetary figures and other statistics make a problem concrete, but fail to reflect the size of the problem. For instance, "over 100,000 Americans visit Taiwan annually" (page 1), but how many Americans visit foreign countries annually? Answers to questions such as these would place the problems faced by the United States and the ROC ineividually as well as collectively in perspective. No matter how they are presented, the problems are unprecedented. The problem is not a refusal to extend recognition; withdrawl of recognition and the ensuing ramifications are the problem.

The concept of recognition is explained in the second chapter. Under traditional international law, recognition on a *de jure* basis is extended where the control of a new government is firmly established. This is contrasted with *de facto* recognition, which is extended where control is effective but not quite total. American recognition practice has differed from the traditional approach since the early 1900s. The United States uses recognition subjectively according to policy and, by withholding recognition, can indicate its disapproval of a foreign regime as well as place it at a disadvantage relative to other regimes. In the past, the United States has held the ROC to be the *de jure* government of mainland China, and the PRC to be the *de facto* government. Although the legal status of the island of Taiwan is undetermined, the ROC is the *de facto* government. These relationships will change after the United States withdraws recognition from Taiwan, and the most likely results of such action are discussed.

To help understand the problems which might arise, it is important to understand the situation as it developed and as it exists now. The third chapter covers American legislation affecting *de facto* recognized countries. Definitions of terms such as "foreign country," "foreign government," and "friendly country," as well as the statutory distinctions between *de jure* and *de facto* recognized countries help provide the foundation necessary to analyze American legislation in this area. The material is concise and depicts some of the complexities of statutory interpretation, including the changing interpretations which result from changing times.

Specific programs and problems ranging from economic relations

to arms transfers and immigration form the fourth chapter. Each problem is chosen for its importance or difficulty, and although each is dealt with only briefly, that approach is most helpful because the purpose of the booklet, to expose the reader to the problems, is fulfilled. Treaties and executive agreements are discussed separately in the fifth chapter; while some of these are of no pracitcal consequence at the present time, United States withdrawal of recognition from Taiwan could interfere with the functioning of many economic and military treaties. Provocative questions offer guidance through these problems, and a glimpse of the difficulty of the situation.

The conclusion does not summarize the text, nor could it; there is just too much substantive material. The conclusion offers a solution, which appears simple on the surface. The solution proposes some type of international existence for Taiwan with disruption of the friendly ties between the United States and Taiwan. Legislation and military assistance could be used to help maintain good relations between the two countries. Unfortunately, there is no easy way to describe the problem of de-recognizing Taiwan, let alone an easy way to solve that problem. After providing background information, the author has succeeded in presenting the main issues and providing a great deal of information in this booklet. Because it has anticipated an unprecedented problem, it is more than just a good work, but its true value can only become clear as the problem itself develops.

Raymond John Pikna, Jr.