

LAND RIGHTS, LAND LAWS AND LAND USURPATION: THE SPANISH ERA (1565-1898)*

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The Legal Landscape

The primary innovation introduced by the Spaniards concerning legal rights to natural resources was the concept that land could be exclusively owned by individuals. In other words, "the outstanding novelty" was not that the Crown claimed to own all the land.¹ Rather, it "was the gradual adoption of the European principle of individual ownership."²

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¹The prevailing perspective of the Philippine Government and legal profession, which is referred to as the Regalian Doctrine, implicitly holds that at some still unspecified moment the sovereignty and property rights of the indigenes in the politically undefined and unexplored archipelago were abruptly and subsequently owned by the Spanish Crown. See e.g. *Valenton v. Murciano*, 3 Phil. 537, 543 (1904); *Lee Hong Hok v. David*, 48 SCRA 372, 377 (1972). The "doctrine" relies on a narrow interpretation of LAWS OF THE INDIES (hereinafter referred to as LI), BOOK 4, TITLE 12, LAW 4. It completely ignores contrary laws within the same title and elsewhere in the Laws of the Indies, as well as an array of historical evidence. For additional discussion see the next, i.e., the third part of this four part series.

A less sweeping perspective is presented by J. LARKIN, *THE PAMPANGANS: COLONIAL SOCIETY IN A PHILIPPINE PROVINCE* 71 (1972), where he cited a 1784 Decree by Governor Basco y Vargas [a copy of which can be found in 52 E. BLAIR & J. ROBERTSON, *THE PHILIPPINE ISLANDS* 291-307 (1973); hereinafter referred to as B&R] to support the assertion that "Until the late nineteenth century, all land technically belonged to the government with the exception of property awarded to the early datus and their heirs or land sold in usufruct by the government to private parties."

Both perspectives are incorrect. "No European government, in fact, asserted that the Indians had no claim at all to any of their lands [barring a grant from the colonial sovereign]. Rather they questioned just what sort of title and political jurisdiction native rulers possessed under national and natural law." R. BERKHOFFER, JR., *THE WHITE MAN'S INDIAN: IMAGES OF THE AMERICAN INDIAN FROM COLUMBUS TO THE PRESENT* 121 (1979). In addition, cognizable customary rights were neither awarded nor limited to those established at the time of the initial Spanish occupation. In Basco's words, "the inhabitants of the islands ought to have understood that the lands which they obtained are all royal or communal, with the exception of those which they possess from inheritance, or through legitimate purchase from the native chiefs who were cultivating them at the time when the Catholic faith was established in Filipinas, and when they rendered fidelity, obedience, and vassalage to the august Spanish monarchs." 52 B&R 295-296. [Emphasis supplied.]

²J. PHELAN, *THE HISPANIZATION OF THE PHILIPPINES, SPANISH AIMS AND FILIPINO RESPONSES* 117, 156 (1959). N. CUSHNER, *LANDED ESTATES IN THE PHILIP.*

Initially, the colonial regime recognized two types of private property rights: those held pursuant to customary criteria and those held by the Crown, i.e., *terrenos realengos*. Customary rights were predicated on usage and possession. Crown lands comprised all areas not used or occupied by the natives. Soon after the arrival of Legazpi and his entourage, private estates owned by Spanish citizens and friar orders were also established by royal grants.³ These estates subsequently "expanded through additional purchase and donations [of customary property rights], or through usurpation of contiguous . . . holdings."⁴

The Spanish colonial government was bedeviled throughout its existence with confusion and unrest over land rights.⁵ The legal significance of land registration, for example, was never conclusively resolved.⁶ Land laws consisted of "numberless single decrees forming a casuistical, disconnected, complicated and confused mass."⁷ The situation was further complicated by the fact that "the Spanish administration kept no systematic records of agricultural land."⁸ This was due, in large measure, to the fact that the regime did not levy a land tax.⁹ Finally, a fire during 1897 destroyed the main Manila

PINES 2 (1976) opined that the European concept of private, individual ownership, in contrast to the archipelago's indigenous concepts, "was a major factor in the dispossession of native Tagalogs of their land."

³N. CUSHNER, *supra*, at 68. The *encomienda* was not a land grant. Salamanca, *Was The Philippine Encomienda A Land Grant?*, 7 HISTORICAL BULLETIN 1963, pp. 34-51; Milagros Guerrero, by contrast, is conducting research which demonstrates that, regardless of legal technicalities, most Philippine *encomenderos* considered themselves to be holders of landed property rights. Personal communication of Milagros Guerrero to the author, September 29, 1988.

⁴N. CUSHNER, *supra*, at 68.

⁵J. LARKIN, *supra* note 1, at 71. See also "The Penultimate Century" *infra*.

⁶In *Cariño v. Insular Government*, 41 Phil. 935 (1901), Oliver Wendell Holmes, writing on behalf of the U.S. Supreme Court chastened those who interpreted the Maura Law of 1894 as being "the confiscation of a right." Holmes opined that the Maura Law merely "Withdrew the privilege to register rights." *Id.* at 944. See also *Reavis v. Fianza*, 40 Phil. 1017; 215 U.S. 16 (1909).

⁷F. Jagor, *Agricultural Conditions in 1866* in 52 B&R 302-303 at 296 concluded that "there was great confusion and uncertainty in land titles; the laws in force were too complicated and slow in operation, and left too much power in the hands of indifferent or mercenary officials." The confusion is reflected in the varied references to Spanish colonial laws. Hence, unless a source reference was provided, or a given law was found in the Laws of the Indies or the *Autos Acordados*, or in B&R, it was often unclear during the preparation of this article which official enacted the law being cited, or in what capacity and manner he acted.

⁸D. ROTH, *THE FRIAR ESTATES OF THE PHILIPPINES* 118 (1977).

⁹J. Plehn, *Taxation in the Philippines*, 16 POLITICAL SCIENCE QUARTERLY 680, 701, 710 (1901). Taxes were levied instead on people (*tributu*), produce (*vandala*), income (*industrial*), and buildings (*urbana*). The *tributu* was abolished in 1884 and replaced by a graduated poll tax. The poll tax was levied by means of a certificate of identification (*cedula personal*) which every "Christian" resident of the colony was required to obtain. See generally, *id.* at 684-695, 701-11. Those unable to pay taxes levied against them were often subject to forced labor (*polo*).

repository of documents pertaining to recognized property rights.¹⁰

Despite these vicissitudes, the colonial government over a span of three and a quarter centuries created and upheld a documented private property regime. By 1898 an estimated 2.3 million hectares of agricultural land were officially considered by the incoming U.S. regime to be privately owned.¹¹ These areas comprised 7.7 percent of the colony's total land mass. Official records, however, also indicated that church holdings encompassed only 170,918 hectares, or less than six percent of the estimated private land total.¹² If these estimates are even somewhat credible, it should be obvious that when the Philippine Revolution of 1896 erupted, the overwhelming majority of documented private property rights recognized by the Spanish regime were, contrary to a widespread perception, held by indigenous and Chinese mestizo elites.

¹⁰Tipton. *Memorandum As To The Spanish Land System In The Philippines With Observations As To Certain Advantages Of The Land System In The United States*. Appendix G in 2 REPORTS OF THE PHILIPPINE COMMISSION (hereinafter referred to as RPC) 326 (1901). The author was the first Director of the U.S.-Philippine Bureau of Public Lands. See also *Spanish Records in the Provinces*, Appendix AA in 2 RPC (1901): 5 United States-Philippine Commission Minutes of Public Sessions (MPS) 171. In 4 RPC 91 (1900) land records were described as being "in a chaotic and hopeless confusion." The REPORT OF THE SECRETARY OF THE INTERIOR TO THE PHILIPPINE COMMISSION FOR THE YEAR ENDING AUGUST 31, 1902 at 57 (1902) cited destruction caused by "evil-intentioned persons," "insects," "pests," and the "tropical climate."

Some data concerning documentary tenure allocation on local levels can be found in the *protocolos* (notarial registries) and *terrenos* (lands) sections which are categorized by province and located at the Philippine National Archives in Manila. For sources not cited elsewhere in this article see J. LARKIN, *supra* note 1, at 72; B. FENNER, *CEBU UNDER THE SPANISH FLAG 1521-1896: AN ECONOMIC SOCIAL HISTORY* 86-95 (1985); W. WOLTER, *POLITICS, PATRONAGE, AND CLASS CONFLICT IN CENTRAL LUZON* 51-85 (1984).

¹¹1 RPC 33 (1901). The following year the Commission lowered its estimate of private holdings to "about 2,000,000 hectares" and emphasized that the "land has not been surveyed and these are merely estimates." *Ibid.*

The estimates may have actually referred to, or at least been primarily inspired by, the amount of land believed to have been cultivated, as distinct from land which was officially recognized by Spanish officials in 1898 as being privately owned. J. MONTERO, *EL ARCHIPELAGO FILIPINO Y LAS ISLAS MARIANAS, CAROLINAS Y PALAOS: SU HISTORIA, GEOGRAFIA, Y ESTADISTICA* 215 (1886) estimated that 1,800,000 hectares were cultivated in 1860. The U.S.-Philippine (Schurman) Commission estimated that as of 1898 about eleven per cent of the total land mass, or 3,267,000 hectares, was cultivated. 4 RPC 6 (1900). The 1903 CPI listed 815,453 farms in Hispanicized areas covering 2,827,704 has., of which 1,298,845 were cultivated. Table 1:4:250. For additional background on the political economy and implications of these haphazard estimates during the early years of the U.S. regime see the next, i.e., third part of this four-part series.

¹²1 RPC 203 (1903); COMMONWEALTH OF THE PHILIPPINES, DEPARTMENT OF LABOR, FACT-FINDING SURVEY REPORT 200-203 (1936). J. FAST & J. RICHARDSON, *ROOTS OF DEPENDENCY: POLITICAL AND ECONOMIC REVOLUTION IN 19TH CENTURY PHILIPPINES* 122 (1979) averred, without supporting citation, however, that 215,000 hectares, or 9.35% of the estimated private land total, were owned by the friars. N. CUSHNER, *supra* note 2, at 12.

Customary Rights

The debate over the legal bases of Spanish sovereignty in its far-flung empire influenced official attitudes concerning the Crown's ownership of land and other natural resources. The uncertainty was exacerbated by reports of greed and brutality being inflicted by Spanish colonists on American indigenes. After some initial hesitancy, King Philip II resolved that a similar fate would not befall the Philippine natives. To that end, an "irrevocable commitment of the Spanish colonial policy" was that the "natives as new Christians, merited some effective guarantees of their property rights."¹³ Various laws were promulgated to promote these guarantees, many of which also applied to non-Christians.¹⁴

In his instructions to Legazpi, King Philip II emphasized that while land could be apportioned among the colonists "you shall not occupy or take possession of any *private property* of the Indians." To ensure that his instruction was complied with, and the natives were not harmed, the king also recommended that, at least in the Ladrões (Guam), the Spaniards establish themselves "somewhat distant from the districts and locations where the Indians have their settlements, pastures and fields."¹⁵ Thirty years later, Philip was still reiterating his original instructions.

Let not lands be given with prejudice to the Indians and those given should be returned to their owners.

We command that the habitations and lands that are given to the Spaniards be without prejudice and offense to the Indians and those given with prejudice and offense are to be returned to those to whom the right belongs.¹⁶

Although the Spaniards found an impressive amount of land already under cultivation when they first arrived,¹⁷ most specific pre-contact land-tenure practices among the archipelago's indigenes are not, and likely never will be, known. Nevertheless, it is known that in general "landowning was communal in character, with the actual title to the lands vested in the

¹³J. PHELAN, *supra* note 2. at 94.

¹⁴As early as 1529, the Emperor Don Carlos ordered that all "laws which are in favor of the Indians should be executed notwithstanding appeal." LI 2:1:5. Included among these laws was Ordinance 8 of 1523 which prohibited the taking of native "properties, farms, livestock, and fruits *unless* the sales and ransoms are done *voluntarily and entirely free*." LI 4:8:8 (emphasis supplied).

¹⁵*Instructions given to Miguel Lopez de Legazpi in regard to what he is to do in the Ladrões Islands*, 34 B&R 249-54, 249 (emphasis supplied).

¹⁶LI 4:12:9 dated June 11, 1594. The basic twenty-three Laws of the Indies laws pertaining to the "sale, adjustment and distribution of land, lots and water" are in Book 4, Title 12.

¹⁷N. CUSHNER, *supra* note 2. at 12. So much of the stable land around Manila was already occupied and cultivated in 1581 that the governor "thought that large estates owned by Spaniards could not come into being except at the expense of Tagalog-held land." *Id.* at 18.

communal barangay."¹⁸ Within communal perimeters, ownership was contingent on actual use and, in the minds of the Spaniards, frequently rested on the venerable phrase "from time immemorial."¹⁹ Until the Maura Law of 1894 provided the basis for arguing otherwise, customary property rights continued to be established and legally cognizable.²⁰

Among Tagalogs near Manila, individual ownership rights varied in their degree of exclusivity and were held by traditional leaders and small scale cultivators. The leaders, who were referred to by the Islamicized title of *datu*, or the Hispanicized words *principal* or *cacique*, often relied on indebted laborers to cultivate their fields and provide military manpower in times of need. Debt-free farmer-cultivators, by contrast, were more self-reliant and produced mostly for family consumption. Their holdings were distinct from land owned by the *principalia*.²¹

Under colonial law, customary property rights, whether communal or individual, were essentially equated with titles held in fee simple.²² Only individually held rights, however, were alienable. Alienation of communal property was illegal. "Spanish law was explicit in this, and the fact that the policy of the Crown had to be reiterated on frequent occasions indicates that the royal orders were not obeyed."²³ In large measure, the insubordination was encouraged by an official anomaly. Colonial officials in Manila and Madrid recognized the communal nature of customary property rights, but procedures for securing official, documentary registration of communal holdings were never promulgated.

Like their U.S. and Philippine Republic successors, the Spanish regime only provided for the documentation and registration of individual land rights. (Religious orders and institutions, and private corporations were

¹⁸J. PLASENCIA, *Tagalogs* 174-5; Phelan, *supra* note 2, at 117; N. Cushner, *supra* note 2, at 8. For a synthesis of early Spanish accounts concerning indigenous social organizations, including patterns of land allocation in southern Luzon and the lowland western Visayas, see W. Scott, *Filipino Class Structure in the 16th Century*, in *CRACKS IN THE PARCHMENT CURTAIN* 96-126 (1985).

¹⁹N. CUSHNER, *supra* note 2, at 21. Cushner added that the phrase "really meant that the land had been worked and cultivated before the arrival of the Spaniards." See also Roth, *supra* note 8, at 39.

²⁰See note 6 *supra*. Feodor Jagor noted as late as 1866 that "Excepting some large estates acquired in earlier times through donation, landed property originated mainly through the right of occupation by the possessor and his rendering the land productive which even now is a common right recognized in the laws of the Indias in favor of indigenous inhabitants." *Supra* note 7, at 302.

²¹N. CUSHNER, *supra* note 2, at 17, 21.

²²J. PHELAN, *supra* note 2, at 118. In Anglo-American legal terminology, title in fee simple refers to individual ownership of a parcel of land which, among other things, is alienable and upon the owner's death, will pass to his or her heirs.

²³N. CUSHNER, *supra* note 2, at 19.

legally equated with individuals.) Indigenous communities had no documentary existence and were unable to secure any. In the minds of the Spanish colonizers, therefore, communally held ancestral domains were legal abstractions which were not cognizable in concrete terms.

The absence of legal machinery for documenting communal rights facilitated an ever-expanding pattern of illegal usurpation by Spaniards and native and Chinese mestizo elites. Most ancestral domains, however, were initially unaffected by any colonial usurpation. Indeed, "there is evidence that much of the archipelago was not affected at all until the late eighteenth century."²⁴ The further the distance from Manila, or other urbanized areas, the greater the likelihood that indigenous patterns of resource allocation remained intact and expanded as populations grew.

Manuel Bernaldez, a ranking colonial official who had spent seventeen years in the Philippines, noted that as late as 1827 "the most common method the Indians of the villages have for proving their territorial property is by tradition, and the depositions of witnesses." Bernaldez was not pleased. He claimed that native land rights prompted controversy and litigation, and he called for the Crown to "oblige all the villages and private land owners" to acquire official documentation of "their ownership, both private and communal [*sic*]."²⁵ Failure to secure official documentation, in Bernaldez's scheme, would preclude indigenes from gaining recognition of the ancestral domains. It would also effectively convert indigenes into squatters on Crown lands, a proposed "solution" which presaged the confiscatory Maura Law by sixty-seven years.²⁶

Crown Lands/*Terrenos Reaengos*

Lands not owned pursuant to customary laws were considered as belonging to the Crown and comprised the royal domain or *terrenos reaengos*.²⁷ Royal lands symbolized the largesse which the Crown and its authorized subordinates could bestow on those deemed to be deserving.

Various modes were established for granting rights to royal lands.²⁸ Documented rights held pursuant to a *titulo real* came into being by way

²⁴N. CUSHNER, *supra* note 2, at 67. See also note 96 *infra*.

²⁵*Reforms Needed in Filipinas* 51 B&R 182-273, 201-3. Communal rights are not owned by the state and, therefore, they are not public. The correct dichotomies are private/public and individual/communal.

²⁶The Maura Law is discussed *infra*.

²⁷52 B&R 291-292 quoting Governor Basco on March 3, 1785: J. PHELAN, *supra* note 2, at 118.

²⁸Brief discussions of the various modes of Spanish land grants can be found in F. VENTURA, *LAND TITLES AND DEEDS* 7-32 (4th ed., 1955); N. PEÑA, *REGISTRATION OF LAND TITLES AND DEEDS* 22-46 (1966); A. NOBLEJAS, *LAND TITLES AND DEEDS* 4-8 (1955); and F. PONCE, *THE PHILIPPINE TORRENS SYSTEM: A TEXTBOOK ON LAND TITLES, DEEDS, LIENS, DESCENT AND MORTGAGES* 11-31 (1964).

of a royal grant (none of which were apparently made in the Philippines). *Titulos de concesion especial o extraordinario* were based on special, documented grants awarded on the Crown's behalf at the discretion of the governor.²⁹ Lands purchased from the colonial regime were covered by documented *titulos de compra*. Free grants or *titulos de gratuito* were awarded to settlers, and apparently some indigenous occupants, in the form of *repartimientos*, or apportionments.³⁰

Once rights were documentarily confirmed, any subsequent encroachment on adjoining areas could be accorded legal sanction by way of *titulos de composicion con el Estado*. Newly established *pueblos* were granted land from the royal domain. These areas were referred to as *terreno comunal* (common land) or *dehesa comunal* (common pasture).³¹ Royal lands used by a municipality or *barrio* for the payment of public expenses were referred to as *bienes propios*.³²

In many instances, the Crown retained a residuary interest in lands which at one time comprised part of the royal domain.³³ Grantees held usufructory rights, or, at best, titles in fee tail. Individuals could pass on their rights to legitimate heirs but sales were proscribed without the consent of the *Audiencia's fiscal*. In addition, title to *terrenos baldos*, i.e., abandoned Crown lands, was deemed to revert to the Crown whenever lands were not cultivated for two years.³⁴

Royal Grants

Grants of *titulos de concesion especial o extraordinario* were the most common form of royal grant in the Philippine colony. They were usually made on behalf of soldiers and other colonial officials in return for meritorious service. The governor-general decided whether or not a request for a special or

²⁹This power originated in a special order sent to the Manila audiencia from King Philip I on May 5, 1583. See LI 2:15:11. See also *Jover v. Government of the Philippine Islands*, 10 Phil. 522, 532 (1908) (presumption is that a representative of the Spanish Government who makes a grant of land has the power to do so unless contrary proof is presented). This presumption, insofar as it applied to the governor-general, was upheld by the U.S. Supreme Court but the lower court decision was reversed on procedural grounds concerning the mode of appeal. *Jover v. Government of the Philippine Islands*, 40 Phil. 1094 (1911).

³⁰F. PONCE, *supra* note 28, at 18.

³¹J. PHELAN, *supra* note 2, at 127. Pursuant to the Royal Decree of June 25, 1880 a *legua comunal* (common league) measuring 20,000 square feet was reserved in some *pueblos* for common use. F. PONCE, *supra* note 28, at 14-15.

³²*Municipality of Catbalogan v. Director*, 17 Phil. 217, 224 (1910).

³³D. ROTH, *supra* note 8, at 39.

³⁴N. CUSHNER, *supra* note 2, at 63. See generally M. BERRIZ, *GUIA DEL COMPRADOR DE TERRENOS BALDOS Y REALENGOS DE FILIPINAS* (1886).

extraordinary grant, or for a sale,³⁵ was merited. He was not authorized, however, to approve grants "within lands already settled and cultivated."³⁶

The Spanish governors, acting in the name of the Crown, made at least 208 *concesiones especial* between 1571 and 1626. The grants were described by size measurements used in New Spain (Mexico). An *estancia para ganado mayor* was a large estate intended for cattle ranching. The *estancia para ganado menor* was only three-fifths as large and was intended for grazing goats, sheep, pigs, or horses. The *caballeria* comprised about 68 hectares, while the *cabalita*, or *peonia*, was half as large. A fifth category, referred to as the *pedazo*, was used to refer to irregular plots of unknown size.³⁷

Most of the land covered by royal grants was located in or near Manila and the province of Pampanga.³⁸ Grants made within the jurisdiction of Tondo (which roughly corresponded to modern day Metro Manila) were all made on behalf of Spaniards. They included nineteen cattle ranches (*estancias mayor*), nine *estancias menor*, and fifty-four *caballerias*.³⁹ Pampango *principales* were, by far, the main native beneficiaries of early royal grants. Between 1585 and 1593, sixty-seven grants were made on their behalf, presumably as rewards for aid extended on behalf of the Spanish colonists.⁴⁰ "The loyalty of the Pampangan *principales* was complete and constant, making them the most valued among the native population."⁴¹

Failure to cultivate agricultural and grazing lands covered by royal grants, coupled with the rapacious conduct of the *encomenderos* and the non-productive consumption of Spaniards in Manila, contributed to a food

³⁵The sizes of *caballerias* and *peonias* were prescribed in LI 4:12:1. For other measurements see N. Cushner & J. Larkin, *Royal Land Grants In The Philippines (1571-1626): Implications For The Formation Of A Social Elite*, 26 PHILIPPINE STUDIES 102-111, 103 (1978). The authors based their determination on a document found in the Lilly Library (Bloomington, Indiana) Philippine Collection. The document, prepared in 1698, is a copy of an original government list. It implies that no grants were made between 1626 and 1698. For a distribution of land grants by governors see Table 1, *id.* at 104.

³⁶J. PHELAN, *supra* note 2, at 118.

³⁷52 B&R 296. Ownership rights subject to a reversionary interest are referred to in Anglo-American legal terminology as a title in fee tail.

³⁸The president of the Municipal Board of Manila estimated in 1902 that there were 18,000 private lots in the city. 5 U.S. Philippine Commission Minutes of the Public Sessions (unpublished) 5 MPS 230. Grants covering land far from Manila included 13 in Cebu, 11 in Cagayan, 2 in Pangasinan, and 9 in Camarines. Four hundred and ninety *cabalitas* were also granted in Bataan. For a geographical distribution see Cushner & Larkin, *supra* note 35, at 105.

³⁹N. CUSHNER, *supra* note 2, at 24; for insights into the organization of an early colonial Philippine ranch, see *id.* at 37-55.

⁴⁰R. CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* 93, 131-132 (1975); J. LARKIN, *supra* note 1, at 53; Cushner & Larkin, *supra* note 35, at 105. Larkin and Cushner noted that "It would appear that the Pampangan leadership was the first native group to solidify their elite status in regional society, and, although the membership changed over time, the class persisted from the awarding of the grants onward." *Id.* at 109.

⁴¹Cushner & Larkin, *supra* note 35, at 108. For a list of land grants awarded to Pampango *principales* as of 1603 see Table 3, *id.* at 105-106.

shortage among the Manila-based colonists during the early years of the Spanish occupation.⁴² This appears to have prompted a discontinuance of the policy of issuing royal grants. The only legal means left to acquire documented recognition of ownership was by the purchase or donation of customary rights.⁴³

The initial burst of Spanish entrepreneurial activity was also short-lived. The Philippine colony quickly lost much of its attraction for Spaniards interested in establishing themselves as farmers or plantation owners. Many who took up farming mortgaged their lands to religious institutions. When payments were not forthcoming, the friars or diocesan priests foreclosed. Others sold, donated, or abandoned their rights to the religious orders.⁴⁴ Until the latter part of the seventeenth century, therefore, only the religious orders provided a stable exogenous element in terms of land allocation and usage. This stability and continuity enabled the orders to expand steadily their rights over prime agricultural lands.⁴⁵

Despite the relatively small areas affected, and the short period during which they were issued, the royal grants prompted a profound change in native perceptions of natural resource allocation. The grants introduced "a new concept, that of private [individual] ownership of land, from which a whole series of devastating socio-economic practices spring."⁴⁶

The commoditization of land rights commenced during the sixteenth and seventeenth centuries as local native elites began to secure individually documented rights to agricultural land in southern Luzon and some coastal areas of Ilocos and the Visayas. The elites mimicked Spanish landowners and often encroached on communal and Crown lands, which were then sold.⁴⁷ The emergence of large private estates, or *haciendas*, owned by native and mestizo landlords, however, did not become important until the late nineteenth century. "[T]he growth of this class can be said to be linked closely to the economic development of the Islands which followed the great expansion of trade in the mid-century."⁴⁸

⁴²N. CUSHNER, *supra* note 2, at 24.

⁴³For additional speculation on the decline in grant-making, as well as the apparent absence of any grants after 1626 see Cushner & Larkin, *supra* note 35, at 110-111.

⁴⁴D. Roth, *Church Lands In The Agrarian History Of The Region*, in 1982 PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND LOCAL TRANSFORMATIONS 134.

⁴⁵N. CUSHNER, *supra* note 2, at 36.

⁴⁶N. Cushner & J. Larkin, *supra* note 35, at 103.

⁴⁷N. CUSHNER, *supra* note 2, at 18-21; J. LARKIN, *supra* note 1, at 53; B. FENNER, *supra* note 10, at 43. See also 47 B&R 200 and 51 B&R 32.

⁴⁸D. Wurfel, *Government Agrarian Policy in the Philippines* (M.A. Thesis. University of California: 1950). See also R. CONSTANTINO, *supra* note 40, at 128-131.

Church Estates

Initially, there was a royal prohibition against land ownership by religious institutions. But at the urging of Manila bishop, Domingo Salazar, in 1591, this prohibition was revoked by the Crown.⁴⁹ Soon after, ecclesiastical estates became "the largest single item of Spanish-owned latifundia."⁵⁰ The primary modes of acquisition were purchase and donation,⁵¹ many of which were transacted illegally by native chiefs and *datus*.⁵² Once established, many estates expanded by way of illegal encroachments onto adjoining areas.

By the late seventeenth century, "the religious orders had completed most of their major acquisitions of land. However, because of a scarcity of tenants, most of it still lay fallow."⁵³ The friars resorted to various methods to populate their estates. Exemptions from forced labor, i.e., *casas de reservas*, were provided to natives who worked on the estates. Cash advances were made to prospective tenants. Actual tenants were loaned crops, tools and work animals. These efforts did not prove profitable in the short term. But as the nineteenth century dawned, the investments were proving their worth. The friar estates had become "a substantial source of income for the orders."⁵⁴

Presumably, there were occasions when friars, animated by Christian principles, would speak out against illegal acquisitions of ancestral domains. There may even have been times when some priests convinced their colleagues to respect the property rights and customs of native peoples. In large measure, however, it would appear that priestly valor was a deviation from the norm. "It is most likely that the land acquired illegally by the religious orders and other ecclesiastical bodies was far greater in extent than that acquired legally."⁵⁵

By 1898 there were 31 friar estates which covered approximately 170,917.56 hectares.⁵⁶ These areas included as much as 24.3% of the arable

⁴⁹ *Letter from the Bishop to the Governor Dated March 21, 1591*. in 7 B&R 304-318; 8 B&R 25-69, 56.

⁵⁰ J. PHELAN, *supra* note 2, at 118. The term *latifundia* is an ancient Roman reference to large estates which were uncultivated or poorly cultivated.

⁵¹ P. FERNANDEZ, *HISTORY OF THE CHURCH IN THE PHILIPPINES* 263 (1979). D. Roth, *supra* note 44, at 135. Fernandez argued that except for the grants by Legazpi "the other land properties were acquired through purchase at public auction, or directly from the proprietor." Roth observed that the donations and sales were numerous, but their numbers "appear to have varied regionally."

⁵² N. CUSHNER, *supra* note 2, at 18-19; Roth, *supra* note 44, at 135. See also Cushner, *Meysapan: The Formation and Social Effects of a Landed Estate in the Philippines*. 7 JOURNAL OF ASIAN HISTORY 38 (1973).

⁵³ D. ROTH, *supra* note 8, at 83.

⁵⁴ *Id* at 99.

⁵⁵ D. Wurfel, *supra* note 48, at 27-8. A detailed listing of the friar estates at the end of the Spanish regime can be found in a special 1902 Philippine Commission report, *LAND HELD FOR ECCLESIASTICAL AND RELIGIOUS PURPOSES* (1902).

⁵⁶ 1 RPC 203 (1903).

land in Bulacan, 28.8% in Laguna, 82% in Cavite, and almost 100% in Rizal.⁵⁷ Significantly, these provinces surround Manila and would provide an important source of support for the Revolution of 1896.⁵⁸

Ancestral Domains: Usurpation and Response

The *Real Audiencia* of Manila was responsible for seeing that customary property rights were respected and that possession of ancestral domains illegally sold, donated, or otherwise usurped was restored among the rightful owners.⁵⁹ But it was notoriously unsuccessful. In effect, the Crown's legal admonitions on behalf of indigenes were balanced against the prerequisite of sustaining the colonial regime.

Illegal conveyances of communal holdings around what is now modern-day Metro Manila were described by Nicholas Cushner, S.J., in *LANDED ESTATES IN THE PHILIPPINES*. According to Cushner, many traditional Tagalog leaders, unilaterally or through collusion and coercion, sold inalienable village lands to each other or to Spanish citizens.⁶⁰ "Mindful of the principalia's usefulness as the conduit of colonial power, the Spaniards seldom placed any obstacle to such acquisitions."⁶¹ As a result, colonial laws were "ineffective in preventing indigenous communal holdings from being replaced by concentrated and consolidated [individual] private properties cultivated by Tagalogs under a feudal-like organization."⁶²

⁵⁷J. FAST & J. RICHARDSON, *supra* note 12, at 122. D. Roth, *supra* note 44, at 131 stated that at the end of the Spanish era almost 40 percent of the total surface area in the four fertile Tagalog provinces surrounding Manila, i.e., Cavite, Laguna de Bay, Bulacan and Tondo (Rizal), was included in these "monastic haciendas."

⁵⁸*Foundation of the Audiencia of Manila*, in 5 B&R 300.

⁵⁹N. CUSHNER, *supra* note 2, at 18-20, 68. See also E. ROBLES, *THE PHILIPPINES IN THE 19TH CENTURY* 120 (1969). W. SCOTT, *supra* note 18, at 103 interpreted early Spanish accounts as saying that a *datu* was vested with customary control over the disposition of communal land, including its alienation. Scott added, however, that this right was "presumably" contingent on it being exercised by the *datu* "on behalf of his entire community."

⁶⁰R. CONSTANTINO, *supra* note 40, at 64. N. CUSHNER, *supra* note 2, at 56, characterized Spanish resistance to encroachment on native landholdings as "weak and sporadic." J. Phelan, *supra* note 2, at 119 noted that colonial policies of exploitation in the Philippines involved "smaller landholdings owned by a native upper class who were [*sic*] made responsible for delivering to the Spanish authorities labor and commodities." See also W. WOLTERS, *supra* note 10, at 11.

⁶¹N. CUSHNER, *supra* note 2, at 68.

⁶²Besides extra-judicial means of resistance, many natives attempted to avail of colonial "legal processes. A former Spanish official in the Philippines stated that indigenes often engaged in the most contentious lawsuits, aided by fiscals of *Audiencia*," Pizarro, *supra* note 28, at 202. The German traveller Jagor claimed in 1866 that native peoples often presented their testimonies in court and "assert that they inherited these very lands from their father, and have never ceased to work them." 52 B&R 306. J. DE ZUÑIGA, *STATUS OF THE PHILIPPINES IN 1800* at 279 (1973 ed., 1893), by contrast claimed that, at least in Bulacan, "native owners of the land are easy to convince and when the provincial governor or parish priest proposes to them the common benefit to be derived from opening a road in their property, they readily agree. There is a problem, however, with other proprietors, especially the Chinese mestizos who . . . are usually fault-finders, fond of lawsuits and insolent."

Betrayal by traditional leaders was exacerbated by the continuous expansion of friar estates. The expansions were often made at the expense of surrounding farms and villages. Peoples threatened with usurpation, however, often resisted. And those who lost their lands frequently sought to regain them.⁶³ In response to the rising clamor, the colonial regime "sought at irregular intervals and with varying degrees of success, to make the orders prove titles to the lands in the same manner that was required of other corporations and individuals."⁶⁴

As reports of flagrant abuses piled up in Madrid, pressures grew for a substantive response. A royal cedula ensued on June 7, 1687. It directed the Manila *Audiencia* to investigate and report back to the Council of the Indies as to the amount, value and income of all lands held by the friars. In addition, the king asked for an estimate as to how much land was actually needed by the orders for their support. The *audiencia* responded by commanding each *alcalde mayor* to examine the situation in his district. The information they furnished indicated that the friar land-holdings constituted a grave problem and this was reflected in the *audiencia's* report.⁶⁵

Another royal cedula was promulgated on October 30, 1692. It authorized a Councilor of the Indies to survey the status of property rights throughout the Spanish empire. The councilor was empowered to subdelegate his authority to *oideres* in the colonies.⁶⁶ Upon receipt in Madrid of the *audiencia's* report from Manila, Juan de Sierra Osorio, an *oider* of the Mexican *audiencia*, was commissioned to go to the Philippines and investigate the land situation. When he arrived in 1695, Sierra summoned the friars and gave them one year to prove their legal right to the lands they occupied and claimed. The friars refused to comply, claiming that pursuant to a 1627 papal bull, Sierra had no authority over them.⁶⁷

Controversy erupted anew. Sierra, the *audiencia*, and the archbishop of Manila were pitted against the friars and the papal *nuncio*.⁶⁸ Round one was won by Sierra and his allies. Five friar provincials were summoned before the

⁶³C. CUNNINGHAM, THE AUDIENCIA IN THE SPANISH COLONIES AS ILLUSTRATED BY THE AUDIENCIA OF MANILA 440-441 (1979). For other reports of friar encroachments see 1 MONTERO, HISTORIA GENERAL DE FILIPINAS DESDE EL DESCUBRIMIENTO DE DICHOS ISLAS HASTA NUESTROS DIAS 385-389 (1887); N. CUSHNER, *supra* note 2, at 58-64; D. ROTH, *supra* note 8, at 97, 102-114, 148; Roth, *supra* note 44, at 140-142; C. CUNNINGHAM, *supra*, at 103; B. FENNER, *supra* note 10, at 43-48; 48 B&R 27-36.

⁶⁴C. CUNNINGHAM, *supra* note 63, at 467, 469.

⁶⁵Nothing in the cedula, or the subsequent Sierra commission indicated that the friars or, more generally, the church had been or were illegal landgrabbers. The documents merely noted that reports of abuse were growing and called for amelioration. *Id.*, at 468-469.

⁶⁶The bull, which was promulgated in 1627, *De La Cena*, censured temporal authorities who usurped religious property, wealth or jurisdiction.

⁶⁷Documents pertaining to *The Camacho Ecclesiastical Controversy* are compiled in 42 B&R 25-116.

⁶⁸C. CUNNINGHAM, *supra* note 63, at 472-474.

audiencia and severely reprimanded for their defiance of royal commands. Sierra's inquiry, however, proved fruitless and in 1698 he was replaced by another Mexican *oider*, Juan Ozaeta y Oro. Ozaeta was instructed to modify the stringent demands of Sierra. But he went much further. He repudiated Sierra's acts and made peace with the friars. He also found their titles to be in proper legal form.⁶⁹

Although the friars had won an important battle in the struggle over legal rights to land, controversies continued. Native peoples in the Philippines, as well as other Spanish colonies, continued to endure and resist illegal usurpations. As a result of their resistance, and the threat which it posed to the empire, complaints on behalf of native land rights continued to be heard in Madrid. The Crown's concerns, however, were not limited to the threats posed to peace and order. It also worried about the financial viability of the colony. This required that native control over land resources could not be completely usurped. The colonial regime, therefore, was obliged to ensure

that native holdings did not entirely disappear. Native tribute or taxes in kind or in specie, paid out of meager farm incomes, constituted an important source of revenue for the perennially depleted Philippine treasury.⁷⁰

In 1736, another Councilor of the Indies was commissioned to survey the status of property rights in the empire. The councilor's jurisdiction extended over "all suits and questions which arise pertaining to the adjustments of lands . . . which have not been alienated with just title." Power over Philippine affairs was delegated to a Manila *oider*, Pedro Calderon Enriquez.⁷¹ On March 6, 1739, Calderon requested the friars to provide him with records and titles to all lands they claimed to own. The orders were recalcitrant and the struggle resumed.

Calderon's most famous inquiry occurred in 1745 as a result of large agrarian uprisings in the vicinity of Manila. His actions highlighted "the activity of the *Audiencia* in protecting the Indians, both by trying suits involving them and by actually intervening on their behalf."⁷² The friars, as before, were uncooperative. They claimed ecclesiastical exemption from Calderon's inquiry and refused to submit their documentary titles for investigation. Cal-

⁶⁹N. CUSHNER, *supra* note 2, at 69.

⁷⁰C. CUNNINGHAM, *supra* note 63, at 476. The quotation is from a letter from the councilor to Calderon dated October 19, 1737.

⁷¹C. CUNNINGHAM, *supra* note 63, at 103. The 1745 revolt was the largest uprising by Hispanicized indigenes prior to 1896. For a detailed description see D. ROTH, *supra* note 8, at 100-114.

⁷²D. ROTH, *supra* note 8, at 114. N. CUSHNER, *supra* note 2, at 63, however, observed that after the 1745 revolt Calderon merely ordered some illegally usurped lands to be "restored" to the Crown and that he then intended to sell the land "to the Tagalogs at extremely low rates." For another reported instance wherein Calderon restored land to native occupants see 48 B&R 29.

deron proceeded without them and ultimately ordered the friars to vacate and restore to the rightful owners land which had been illegally usurped.⁷³

Complaints against the Spanish usurpations, were not usually so successful. When confronted by clerical opposition, *oideres* "frequently abandoned their commissions and recommended that the friars be left alone."⁷⁴ Even Calderon eventually opined that it was advisable to discontinue the royal claims. He recommended "that the friars should be left in possession of such estates as they had . . . without the interference of the government except in cases of notorious injustice."⁷⁵ Such attitudes naturally dampened the native populations' faith in colonial legal processes.

Tagalog protests were weak and sporadic precisely because the Spanish courts regularly ruled in favor of the Spanish defendants. The legal complications involved in a suit discouraged common folk from seeking justice through ordinary channels. Probably because the likelihood of success was slight, the number of court cases against the religious orders was relatively small.⁷⁶

Other than litigation or direct intervention by higher authorities, the only means within the colonial legal system for preventing illegal encroachment was the *composicion de tierras*. The *composicion* originated in late sixteenth-century Mexico and Peru. Its rationale was "to help fill King Philip II's empty coffers."⁷⁷ It was not surprising, therefore, that its major effect was to further undermine efforts to protect ancestral property rights and secure justice for those whose lands had already been illegally encroached upon.⁷⁸

⁷³C. CUNNINGHAM, *supra* note 63, at 441. D. Wurfel, *supra* note 48, at 33, citing the 1936 FACT FINDING REPORT of the Department of Labor, *supra* note 12, noted that "even with the presence of Calderon at least one friar estate . . . acquired largely through fraud, was given a *Titulo Composicion con el Estado* which was confirmed by a royal decree two years later in 1748."

⁷⁴C. CUNNINGHAM, *supra* note 63, at 447. Calderon, however, continued to fight against prospective encroachments and usurpations until his commission expired in 1751. A royal cedula dated November 7, 1751 formally approved Calderon's and the Manila *Audiencia's* efforts to restore the lands of the indigenes. See 48 B&R 27-34.

⁷⁵N. CUSHNER, *supra* note 2, at 57. See also E. ROBLES, *supra* note 59, at 120 and R. CONSTANTINO, *supra* note 40, at 70-73. T. DE COMYN, STATE OF THE PHILIPPINES IN 1810: BEING AN HISTORICAL, STATISTICAL, AND DESCRIPTIVE ACCOUNT OF THE INTERESTING PORTION OF THE INDIAN ARCHIPELAGO 22 (1969 reprint of the 1878 ed., 1810) implied, however, that during the first years of the nineteenth century, natives often won their suits. He considered it "the greatest subject of regret . . . that in cases when the Indians definitively succeed in obtaining verdicts in their favor regarding disputed lands . . . the successful litigants neither clear the land nor attempt to comply with any [legal] conditions." *Ibid.* See generally *id.* 20-25. See also J. DE ZUNIGA, *supra* note 65, at 296, stated that "Whenever an estate brings a lawsuit against the natives regarding ownership of lands, it is usually followed by disturbances in the towns concerned. The Augustinian fathers have won over them several lawsuits in Parañaque, but due to the existence of these kinds of revolt, they have succeeded in delaying possession of the lands under litigation up to this time."

⁷⁶N. CUSHNER, SPAIN IN THE PHILIPPINES: FROM CONQUEST TO REVOLUTION 125 (1971).

⁷⁷N. CUSHNER, *supra* note 2, at 56, 64. For a general discussion of the *composicion de terras*, see *id.* at 64-66. See also 52 B&R 296-297. See also note 65 *supra*.

The Rise of Mono-Cropping and Production Intermediaries

The Spanish Bourbon Monarchs, beginning with Philip V, assumed the throne in 1700. The Bourbon kings were eager to make the colonial endeavor economically profitable. They placed less emphasis than their royal predecessors on religious proselytization and the protection of native land rights. Nevertheless, the Spanish Crown retained its theoretical, legal protection of undocumented customary rights.

The Royal Decree of October 15, 1754, outlined various modes for acquiring and conveying land rights within the Spanish colonies. It declared that "justified long and continuous possession" was sufficient basis for recognition of native ownership. The decree also stressed that indigenes need not possess documentary titles in order for their land rights to be recognized. Proof of ancient possession was deemed to suffice as a valid title.⁷⁹

As with earlier laws, the decree was ineffective, and illegal usurpations of ancestral domains continued. Governor-General Simon de Anda (1762-64, 1770-76) confirmed as much in his 1771 memorial. "It is certain," Anda averred, "that, by public report, if [those holding documented land-rights] had to show their titles to those lands it would be found that many, if not all of them, had been usurped from the Indians."⁸⁰

That same year, the Ordinance of Roan was enacted and "published by proclamation in the villages." The ordinance was named after Governor-General Jose Roan (1765-70). It declared, among other things, that "it was of great importance to the State that all the Indians have the necessary lands." To accomplish this goal, the ordinance proclaimed that "the territory of native reductions and villages . . . is communal." It also expressly prohibited the sale of customarily-held lands, unless permission was first secured from the *fiscal* of the *audiencia*.⁸¹

Subsequent governors, by contrast, were not sympathetic to native land rights. Foremost in this regard was the much-praised Governor-General

⁷⁸The *composicion* was conducted in the Philippine Islands during periodic visits by insular Spanish officials to private estates, including those held by church institutions. A measurement was taken and if it was determined that the actual size of a landholding was larger than that stated in the recorded title a fee was exacted. The amount depended on the size of the area usurped. In essence, therefore, the *composicion* was another form of purchase: defective titles were legitimized upon payment of a fee to the insular regime.

⁷⁹MANALAC, THE DEVELOPMENT OF LAND LAWS AND REGISTRATION IN THE PHILIPPINES 10-12 (1960). See also *Africa v. Africa*, 42 Phil. 1934, 1942 (1921). F. VENTURA, *supra* note 30, at 13-15, refers to this law as a *cedula*, not a decree.

⁸⁰*Anda Memorial*, in 50 B&R 137-190, 55. N. CUSHNER, *supra* note 2, at 56 reported that "In 1723 Julian Ignacio de Velasco, a land commissioner, went so far as to say that all land grants made by former governors in the Philippines had been made at the expense of Tagalog communal holdings."

⁸¹*Ordinances of Government*, in 50 B&R 244-245.

Jose Basco y Vargas.⁸² Upon commencement of his nine years in office (1778-1787), Vargas published a "General Economic Development Plan" which was designed to stimulate and encourage the involvement of private enterprise. To this end, the Basco regime supported numerous projects geared towards agricultural intensification, primarily by the issuance of monopoly licenses for the cultivation of coffee, spices, indigo, tobacco and other crops.⁸³

The tobacco monopoly was immediately profitable. It was held by the regime and endured for one hundred years. Its establishment was perhaps Basco's most significant achievement because it "put the Philippines fiscally on its feet."⁸⁴ Sugar also contributed to the regime's growing prosperity. Monopoly licenses for sugar production were not issued by Basco or his immediate successors, but the regime made substantial investments in sugar production enterprises, primarily through the Royal Philippine Company.⁸⁵ The results were dramatic, and sugar exports rose from 100 tons in 1788 to 4,500 tons in 1796.⁸⁶

Although these developments boded well for the regime, few natives benefitted. Governor Basco considered indigenes in general to be an obstacle to his economic objectives. According to Basco, a typical native farmer was an unscrupulous transient. "His field has no great value for him . . . The facility with which he can abandon one tract to take possession of another is very detrimental to the development of agriculture." Basco also believed that the natives, "through testimonies covered with signatures" often cheated landed proprietors who had invested time, capital and energy to develop "land which was before entirely untitled and wasted." As an outgrowth of Basco's disdain of native potentials, and the ever more intense competition for prime agricultural land, there was a perceptible increase in "outlawry and highway

⁸²N. CUSHNER, *supra* note 76, at 187-188. Cushner observed that Basco and other Philippine governors of the time "Concentrated on developing the natural resources of the country [*sic*] and attempted to implant principles which would favorably affect agriculture and industry."

⁸³For a discussion of the projects and plans of Basco and his contemporaries see Ma. Lourdes Diaz-Trechuelo's five part series on the colonial Philippine economy in the 1963-66 editions of *Philippine Studies*.

⁸⁴B. Legarda, *The Philippine Economy Under The Spanish Rule*, SOLIDARITY 8 (1967). For a comprehensive overview of the monopoly and its impact, see E. DE JESUS, *THE TOBACCO MONOPOLY IN THE PHILIPPINES: BUREAUCRATIC ENTERPRISE AND SOCIAL CHANGE, 1766-1880* (1980); N. CUSHNER, *supra* note 79, at 201-204.

⁸⁵For background on the Company see B. Legarda, *supra* note 84, at 8-10; N. CUSHNER, *supra* note 76, at 190-195.

⁸⁶T. McHALE & M. McHALE, *EARLY AMERICAN AND PHILIPPINE TRADE: THE JOURNAL OF NATHANIEL BOWDITCH IN MANILA, 1796* at 3 (1962); J. FAST & J. RICHARDSON, *supra* note 60, at 7. In 1893 one million tons were exported, mostly on British ships. N. CUSHNER, *supra* note 76, at 201. Up to 1850 most cane production was by small native landowners in Pampanga, Cebu and Panay, while refining was done almost exclusively by Chinese entrepreneurs. N. CUSHNER, *supra* note 76, at 200.

robbery." In a hardline response, Basco "appointed prosecutors, sheriffs and judges-extraordinary to assist in the preservation of order."⁸⁷

The commercial export-economy encouraged by Basco was "crucial for the spectacular and dramatic appearance of great rural estates."⁸⁸ It foreshadowed "an increase in the concentration of land ownership and in the number of sharecroppers," particularly in the provinces near Manila.⁸⁹ Beneficiaries of the expansion included native and mestizo elites, as well as the friar orders. Less fortunate were native rights-holders adjacent to the large estates.

The growing profitableness of the estates was paralleled by an enlargement of their areas. Usurpation was responsible for some of these increases in size. Expansion was favored when an [estate] was surrounded by independent towns and was inhibited when it had other haciendas as its neighbors.⁹⁰

The new breed of large landowners, or *hacenderos*, could not possibly manage their estates without outside help. The preferred management strategy was to lease a portion of the estate to *inquilinos* (fixed-rent tenants) who, in turn, sublet the land, often to *kasamas* (sharecroppers).

The emergence of production intermediaries was advantageous to estate owners. They found it much easier to collect rent from a few intermediaries than from each tenant-cultivator. The cultivators, however, were disadvantaged. Their already meager incomes were further "diminished by the two non-producing strata" above them.⁹¹ In the words of an Augustinian friar, the emerging pattern of land allocation was "pernicious to the poor people who actually work the land."⁹² On most large estates the sharecroppers (and landless laborers) occupied the bottom rung on the *hacienda* social order. Their position on the estates was economically and socially more insecure than that of the *inquilinos*. In the eyes of the colonial judiciary, the sub-leasing agreement had no binding effect on the *hacienda* administration.⁹³

These transformations in the character of rural societies were not felt everywhere, nor did they occur with any uniform degree of intensity in the communities affected. Many people still continued to live traditional lifestyles within their ancestral domains, especially outside of southern Luzon. In other words, overall progress in the development of export-oriented agriculture was sporadic. "[F]or many years commercial production was limited to tiny

⁸⁷C. CUNNINGHAM, *supra* note 63, at 282.

⁸⁸L. Bauzon, *19th Century Foreign Influences On Philippine Agriculture*. SOLIDARITY 47 (1976).

⁸⁹D. Roth, *supra* note 44, at 143.

⁹⁰D. ROTH, *supra* note 8, at 99.

⁹¹D. Roth, *supra* note 44, at 143.

⁹¹J. DE ZUNIGA, *supra* note 62, at 64.

⁹³D. ROTH, *supra* note 8, at 130.

enclaves located mostly in the immediate environs of Manila. . . The influence of the new commercial policies on the lives of most Filipino workers was slight."⁹⁴

Nevertheless, the land usurpation phenomenon continued and grew in scope. More and more of the lowland rural landscape in Luzon and the Visayas, and the northern coast of Mindanao, was transformed. Subsistence farming was displaced by production for foreign markets, while legal control over agricultural land resources was increasingly concentrated in the hands of a comparatively small number of people.

The Penultimate Century

As the nineteenth century commenced, Tomas de Comyn observed that there were four distinct classes of estate-proprietors. The "most considerable" consisted of the religious orders. The second class was composed of about twelve Spanish entrepreneurs.⁹⁵ The third consisted "of the principal Mestizos and Indians and is in fact that which constitutes the real body of farming proprietors." The last "included all other natives."⁹⁶

Members of the third class were popularly referred to as the *caciques*.⁹⁷ The *caciquismo* label originally referred to traditional native leaders in Haiti,⁹⁸ but Spanish officials were quick to extend it to native leaders throughout the empire. Eventually the word became synonymous with

⁹⁴J. FAST & J. RICHARDSON, *supra* note 12, at 90. The effects of commercialization were not felt in any significant degree outside of southern Luzon until the latter half of the eighteenth century, and in many places even later. See N. OWEN, PROSPERITY WITHOUT PROGRESS: MANILA HEMP AND MATERIAL LIFE IN THE COLONIAL PHILIPPINES 35-41, 35 (1984); A. CUESTA, A HISTORY OF NEGROS 361-367 (1980); D. STURTEVANT, POPULAR UPRISINGS IN THE PHILIPPINES, 1840-1940 at 59 (1976); D. ROTH, *supra* note 8, at 140-178, 199-206; E. DE JESUS, *supra* note 84, at 147-154; B. FENNER, *supra* note 10, at 64-105; W. WOLTERS, *supra* note 10, at 21. For an example of commercialization within the Philippines but outside the Spanish colonial realm see J. WARREN, THE SULU ZONE 1768-1898: THE DYNAMICS OF EXTERNAL TRADE, SLAVERY, AND ETHNICITY IN THE TRANSFORMATION OF A SOUTHEAST ASIAN MARITIME STATE (1981).

⁹⁵Except for the friar estates, the incidence of foreign "ownership" of Philippine land resources was minimal throughout the Spanish area. The activities of foreign entrepreneurs were largely limited to trade and financing. see e.g., J. FAST & J. RICHARDSON, *supra* note 12, at 28, 33.

⁹⁶T. DE COMYN, *supra* note 75, at 20-21.

⁹⁷For background on Philippine *caciquismo* as perceived by a U.S. colonial official see J. LeROY, PHILIPPINE LIFE IN TOWN AND COUNTRY 172-201 (1905). See also Miyagi, *Neo-Caciquismo: Origin of Philippine Boss Politics, 1875-1896*, 1 PACIFIC ASIAN STUDIES 20-34 (1976).

⁹⁸5 B&R 299. LI 6:7 contained seventeen laws promulgated between 1537 and 1609 which obliged colonial officials to respect the traditional rights and privileges of the *caciques*. Law 6 prohibited mestizos from becoming *caciques*. But the prohibition was largely ignored in nineteenth-century Philippines. For contemporary insights into the role of the *cacique* and patron-client relations in Southeast Asia see particularly Friedrich, *The Legitimacy Of The Cacique*, in FRIENDS, FOLLOWERS AND FACTIONS: A READER IN POLITICAL CLIENTILISM (1977).

municipal and provincial landowners. Nineteenth-century Philippine *caciques*, therefore, not only referred to many traditional leaders, but to a growing number of Chinese mestizos.⁹⁹

The economic clout of Chinese mestizos had become so pronounced as the nineteenth century dawned that one Spanish observer was warning that they were going to take over half of the land in the colony.¹⁰⁰ The land rights of mestizos were often acquired at the expense of traditional indigenous elites.¹⁰¹ In Pampanga, for example, mestizos and native elites existed side by side until around 1820. But soon after, the mestizos "were thriving at the expense of a tradition-bound class that could not or would not cope with the new economy." In response, many families among the indigenous Pampangan elites arranged marital alliances with mestizos.¹⁰² Besides retaining some of their traditional influences, the effect was to further blur the ethnic boundaries separating Malay and Sino-Malay *caciques*.

Besides securing documented, land-ownership rights, the *caciques* also played an increasingly important role as non-cultivating tenants, particularly on the friar estates.

Because of their previous accumulation of commercial capital, the Chinese mestizos were in a position to finance agricultural production. . . . Once the tenant cultivator had parted with some of his surplus to the hacienda, it was much easier to pry loose the rest from him and for the non-cultivating tenant to insinuate himself between the hacienda and the former tenant. In turn, the hacienda administrators reacted to these developments by preferring to rent to the new class of tenants who could be counted on to pay, even if this sometimes clashed with their professed policy about subleasing.¹⁰³

The emergence of production intermediaries correlated with an ever more common incidence of absentee ownership. The latter phenomena may have originated in pre-contact institutions of debt-servitude.¹⁰⁴ During the first two centuries of the Spanish regime, however, absentee ownership was

⁹⁹E. WICKBERG, *THE CHINESE IN PHILIPPINE LIFE, 1850-1898* at 143 (1965); M. McLennan, *Changing Human Ecology On The Central Luzon Plain: Nueva Ecija, 1705-1939*, in 1982 PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND LOCAL TRANSFORMATIONS 87-89. Prior to Wickberg's research, some scholars assumed the *cacique* was only composed of traditional native leaders. See e.g., K. PELZER, *PIONEER SETTLEMENT IN THE ASIATIC TROPICS: STUDIES IN LAND UTILIZATION AND AGRICULTURAL COLONIZATION IN SOUTHEAST ASIA* 89 (1945).

¹⁰⁰J. DE ZUNIGA, *supra* note 62; E. WICKBERG, *supra* note 99, at 143. See also M. McLennan, *supra* note 99, at 212.

¹⁰¹J. LARKIN, *supra* note 1, at 54-62; W. WOLTERS, *supra* note 10, at 12-13; R. CONSTANTINO, *supra* note 40, at 127-132; M. McLennan, *supra* note 99, at 212.

¹⁰²J. LARKIN, *supra* note 1, at 41-55.

¹⁰³D. Roth, *supra* note 44, at 145.

¹⁰⁴P. FERNANDEZ, *CUSTOM LAW IN PRE-CONQUEST PHILIPPINES* 61-62 (1976); J. PHÉLAN, *supra* note 2, at 119; W. WOLTERS, *supra* note 10, at 24; M. McLennan, *supra* note 99, at 38. J. LARKIN, *supra* note 1, at 38, however, stated that the existence of debt peonage "cannot be documented before the late eighteenth century."

generally based on "face-to-face associations, with sentimental ties between superiors and inferiors." By the late eighteenth century, many people recognized by the regime as owners no longer had any personal contact with their tenants. This development undermined the reciprocity which had traditionally characterized patron-client relationships. It "created a kind of emotional vacuum in agricultural hamlets... Traditional symbiosis gave way to an unhealthy condition verging on parasitism."¹⁰⁵

Another new phenomena, one not based on any indigenous precedent, was the landless laborer. The problem was most evident on the island of Negros, and it greatly increased the already onerous pressures on tenants. After 1850, Negros became the primary producer of Philippine sugar cane, most of which was grown on large estates.¹⁰⁶ Negros *hacenderos* reaped enormous profits, and many of the larger owners led opulent lifestyles while their tenants lived in squalor.

As the global market for sugar cane began to shrink during the late 1880's, *hacenderos* began to sever their ties with tenants and employ day laborers. The reason was economic. "[W]age laborers, unlike tenants, would not have to be supported during 'slack time' when there were few tasks to be performed."¹⁰⁷

Finally, the penultimate century was characterized by the opening up for cultivation of large forested plains in central Luzon and the western Visayas. Although many of these areas were first homesteaded by small tenant-cultivators, they too were soon taken over by large *haciendas*.¹⁰⁸ The prior rights of many pioneer-cultivators, like those of their indigenous counterparts, were usurped by people familiar with Spanish legal procedures. "Throughout the

¹⁰⁵D. STURTEVANT, *supra* note 94, at 57.

¹⁰⁶A. CUESTA, *supra* note 94, at 364-399; A. McCoy, *A Queen Dies Slowly: The Rise And Decline of Iloilo City*, in PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND SOCIAL TRANSFORMATION 307-308, 311-326 (1982); J. FAST & J. RICHARDSON, *supra* note 12, at 31-35.

¹⁰⁷J. FAST & J. RICHARDSON, *supra* note 12, at 44.

¹⁰⁸M. McLennan, *supra* note 99, is the foremost description and analysis of the Ilocano and Tagalog migration to, and subsequent development of, Central Luzon. See also *id.* at 63-67; B. FEGAN, *The Social History of a Central Luzon Barrio*, PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND LOCAL TRANSFORMATION 91-129 (1982).

L. BAUZON, PHILIPPINE AGRARIAN REFORM, 1880-1965 at 5-6 (1975), described the *denuncia* as "the oldest and most common form of land acquisition.... This was the process wherein a person walked into an area which he knew was uncultivated, untilled, and unoccupied (*sic*).... If he established his prior and effective occupation of the place, and if he rendered it productive for at least two years, he could have the land titled and legally acknowledged as his own." Bauzon added that, "Filipinos who acquired lands through the *denuncia* almost always never came to hear about possessory information proceedings.... By not having legal documents it was easy for landgrabbers to lay claim on the lands they had already cleared and occupied for years." Bauzon also reported that the "*modus operandi* of landgrabbers was very simple but devastating. They took advantage of a 'judicial' process known as the *indefinito de despojo* [summary deprivation], by which they could present false claims based on fake documents, testified to by bribed or coerced witnesses and accepted as 'valid' by judges who were likewise bribed or generally showered with gifts." *Id.* at 9.

nineteenth century, consequently, prominent families devoted a large portion of their energies to the accumulation of agricultural properties. The thrust of these activities started the wholesale dispossession of village populations."¹⁰⁹

Pacto de Retroventa

The primary, but by no means exclusive, "legal" tool by which owner-cultivators lost their land during the last century of Spanish rule was the *pacto de retroventa*, or in Tagalog, the *sanglang-bili*.¹¹⁰ In essence, the *pacto* was a usurious mortgage.¹¹¹ Privately owned, undocumented land rights were used as collateral for loans of less value by a *prestamista* (money lender). Cash-starved mortgagors were frequently unable to pay back the money loaned, plus interest, in timely fashion. The lender, therefore, effectively acquired ownership by paying out only one-third to one-half of the prevailing market rate.

In 1768 the colonial government passed a law against the use of the *pacto* by Chinese and Chinese mestizos.¹¹² Sixteen years later, Governor Basco, the champion of agricultural monopolies and large estates, publicly condemned the *pacto* as an evil used "by a great multitude of usurers who overrun the island with great offense to God and injury to their neighbors." Basco decreed "that in the future such contracts shall not be made, either by writing or in words; for they are null and void and usurious."¹¹³ These laws failed, however, "to break the power of the mestizo moneylender, who lived close to the indio and knew his needs."¹¹⁴

By 1866, according to the German traveler, Feodor Jagor, the *pacto*'s effect on public welfare had been profound and detrimental. In Jagor's words "a considerable part of Pampanga, Bataan, Manila, Laguna, Batangas, and other provinces [had] within a few years changed owners" as a direct result of the *pacto*.¹¹⁵ By the second half of the eighteenth century, the *pacto* "was so common that it was a major headache to Spanish judicial officialdom because mortgages [*sic*] were often piled on top of each other in such profusion that it

¹⁰⁹D. STURTEVANT, *supra* note 94, at 37.

¹¹⁰F. JAGOR, *supra* note 7, at 304; J. DE ZUNIGA, *supra* note 62, at 276, 238; R. CONSTANTINO, *supra* note 40, at 127-128; D. Wurfel, *supra* note 48, at 36; J. LARKIN, *supra* note 1, at 53-54, 75-76; B. FENNER, *supra* note 10, at 86-88, 94, 137; M. McLennan, *supra* note 99, at 87-89, 97-99; J. FOREMAN, THE PHILIPPINE ISLANDS: A HISTORICAL, GEOGRAPHICAL, ETHNOGRAPHICAL, SOCIAL AND COMMERCIAL SKETCH OF THE PHILIPPINE ARCHIPELAGO AND ITS POLITICAL DEPENDENCIES 306 (1899, 2d ed.); L. BAUZON, *supra* note 108, at 4-5; J. FAST & J. RICHARDSON, *supra* note 12, at 37-38; E. WICKBERG, *supra* note 99, at 77.

¹¹¹J. FOREMAN, *supra* note 110, at 306, noted that interest rates varied "as a rule from 12 to 24 percent."

¹¹²50 B&R 241. E. WICKBERG, *supra* note 99, at 77.

¹¹³52 B&R 295.

¹¹⁴E. WICKBERG, *supra* note 99, at 30.

¹¹⁵F. JAGOR, *supra* note 7, at 302-307, 304.

was impossible to determine who actually had rights to the land in question."¹¹⁶

Soon after, the regime gave up any pretense of trying to redress the mounting problems in a manner which might benefit small-scale owner-cultivators. But rather than just giving up, the regime opted to legalize the problem by giving the *pacto* official sanction in the Civil Code of 1889. Perhaps to soften any adverse reactions from the increasingly disenfranchised peasantry, the *pacto* was renamed in the code as a contract of "conventional redemption."¹¹⁷

Land Registration

Land registration, i.e., official documentation, was considered to be a prerequisite for capital investment and the rapid expansion of agricultural production, especially for commercial export. No systematic and comprehensive registration scheme was established, however, until 1880. In the absence of a scheme, or the bureaucratic structures to implement it, many owners and would-be-owners had begun to have their property transactions notarized. In Bicol, the "volume of notarized land transactions increased spectacularly—roughly eightfold—after 1867."¹¹⁸ In Negros, by contrast, the number of registration petitions as of 1875 was a mere seventeen. But within five years the estimated number of pending petitions on Negros would soar to 10,000.¹¹⁹

The earliest efforts to register property were motivated by a desire to secure the rights of creditors whose loans were guaranteed by land. In 1563

¹¹⁶D. ROTH, *supra* note 8, at 118. It is a mistake, however, to equate the *pactos* with mortgages. The Philippine Supreme Court stressed in 1905 that "there is a radical difference between a contract of *pacto de retro* and a mortgage. Under the former if the seller does not repurchase the property upon the very day named in the contract, by the very express terms in article 1509 [of the 1889 Civil Code] he loses all interest therein, whereas by provisions in regards to mortgages the mortgagor does not lose his interest in the property if he fails to pay the debt at its maturity. It is the duty of the mortgagee to foreclose the mortgage... and before foreclosure, the mortgagor has a right to redeem." *Villaruel v. Encarnacion*, 5 Phil. 360, 361 (1905).

¹¹⁷Sections 1507 to 1520. Unless otherwise stipulated, a *pacto* was deemed to last for only four years but in no case could it last longer than 10. If the money loaned was not repaid in a timely manner, the lender acquired ownership of the land used as collateral. After passage of Act No. 1108 on April 5, 1904, a lender could also register his rights pursuant to the land registration Act of 1902. This right was upheld by the Philippine Supreme Court in 1905. See *Villaruel v. Encarnacion*, 5 Phil. 360 (1905). As of year end 1988, the *pacto* remains enconced in sections 1601-18 of the Philippine Civil Code.

¹¹⁸N. OWEN, *supra* note 94, at 84. "Many of these transactions involved fields of nipa palms (*nipales*) or other useful plants of the type held communally earlier in the century, possibly reflecting some form of silent 'enclosure'." *Id.* at 85.

¹¹⁹A. CUESTA, *supra* note 94, at 379, 381. Cuesta, however, citing apathy and the shortage of "duly titled property" concluded that the Negrenses "were not enthusiastic about land registration." *Id.* at 387. McCoy, *supra* note 106 at 320, by contrast, stated that "During the first three centuries of Spanish rule, native Filipinos, or *indios*, were generally barred from titling lands outside their own residence, a law which prevented the early peasant pioneers from registering their claims."

the king had ordered that an office of *escribania de cabildo* (secretary of the municipal council) be established in the Spanish colonies. Among its functions was the duty to register all *repartimientos* (apportionments) made by the municipal councils.¹²⁰ On February 5, 1768, the Crown ordered the establishment of *contadurias de hipoteca* (mortgage registration offices) to be manned by the *escribanos de Ayuntamiento* (municipal secretaries). Seventy years later, a Royal Order dated December 13, 1838, required that all public documents pertaining to land be registered in the *contaduria*, which was more popularly known as the *oficio de hipotecas*.¹²¹

Mortgage registration generated little political opposition. It posed no threat to elite interests. Instead, it provided a guarantee that, once registered, those who loaned money or goods would have their investment protected by the regime. Comprehensive land registration was another matter. The church, and presumably other sectors of the landed elite, opposed the establishment of land registration offices and the issuance of documentary titles based on mere possession.¹²² In view of the anomalous practices which were often employed to secure property rights, the opposition was not surprising. The regime, however, was determined to promote registration.

The Royal Decree of June 25, 1880, heralded the modern era in land registration.¹²³ For the first time it imposed limits on the size of lands which could be acquired by purchase or *composicion*.¹²⁴ Pursuant to sections four and five, *bona fide* possessors of royal lands for ten years or more "were considered the owners. . . for all legal purposes."¹²⁵ Article 8 of the decree provided a one-year period for the voluntary, colony-wide registration of pri-

¹²⁰LI 4:12:8. The *repartimientos* were then to be presented to the colony's viceroy or president for approval.

¹²¹F. VENTURA, *supra* note 28, at 36-37. A Royal Cedula of 1802 establishing mortgage offices in the Spanish colonies was not applied in the Philippines. In 1804 a mortgage office was established in Manila. At the same time the function of *escribanos receptores de hipotecas* or mortgage registrars was entrusted to the *alcaldes mayores*. "[B]ut the said offices were not organized nor were registries kept." *Ibid.*

¹²²J. FOREMAN, *supra* note 110, at 640.

¹²³Statement made by Gregorio Basa, n.d. (circa 1900), included in a letter of the Philippine Commission to the Secretary of War, October 15, 1903, explaining the framing of the first Public Land Act (hereinafter referred to as PLA letter). The letter was published in S. DOC. No. 7, 58th Cong., 2d Sess. (1903).

¹²⁴F. PONCE, *supra* note 28, at 21. The limits were 1000 hectares on arid lands, 500 hectares on lands with trees, and 100 hectares on irrigable lands.

¹²⁵Twenty-year and thirty-year uninterrupted occupants of uncultivated land were also considered owners. PLA letter, *supra* note 123, at 12. See also MANALAC, *supra* note 79, at 17-21; F. PONCE, *supra* note 30, at 22-25; V. FRANCISCO, COMMENTARIES ON THE LAND REGISTRATION ACT 3 (1950). F. VENTURA, *supra* note 28, at 17-18, interpreted the decree as applying to "All those who were in possession of royal lands on June 25, 1880, who could not exhibit title deeds from the government, were *wrongfully withholding* the same and were therefore required to seek an adjustment thereof [emphasis in original]."

vate property rights over what had once been Crown lands.¹²⁶ But unless registered, ownership rights were vulnerable to usurpation.

Registration petitions were referred to as *expedientes*. They were processed, and a relatively small number were approved, by the *Inspeccion General de Montes* (Department of Forestry), a bureau under the General Directorate of Civil Administration.¹²⁷ By 1883, thousands of *expedientes* had been filed. The bureaucratic backlog, however, was big and growing. Delays were excessive.

In an effort to redress the problems, the registration process was decentralized in a decree dated December 26, 1884. The decree classified *expedientes* into three categories. Areas under ten hectares which were free from conflict fell into the first category. The second included lands between ten and fifty hectares, while the third applied to all applications for more than fifty hectares.¹²⁸ The forestry department retained jurisdiction over the third category. The second fell under *juntas provincial de composiciones de terrenos realengos* (provincial boards of royal land adjustments), while the first were handled on the municipal level, free of charge, by *juntas local*.¹²⁹

The registration scheme was hampered from the outset by a shortage of licensed surveyors. Undaunted, the *juntas* enlisted the services of unlicensed ones, many of whom were incompetent and dishonest. Not everyone suffered, however, from the incompetence and corruption.

The large landholders, both lay and ecclesiastical, were so well represented on the boards that it is not surprising that the administration of the *Reglamento* of 1880 amounted in large part, to the legalization of past usurpations and the perpetrations of new ones.¹³⁰

By 1888 the Spanish regime acknowledged once more that the registration processes were not working well. On August 31, 1888, a Royal Decree abolished the *juntas local* and narrowed the jurisdiction of the provincial

¹²⁶This period was extended for one year in 1881 and 1882. Royal Order of April 19, 1881 and Royal Order of July 28, 1882. PLA letter, 13-14.

¹²⁷All registrations made by the Directorate were ostensibly recorded in a compilation referred to as the *Tomas de Razon* and published in the GACETA DE MANILA. See Figueras v. Comandante General, 6 Phil. 573 (1906) (as of May 22, 1897 all provincial records published except for Iloilo); Insular Government v. Avila, 46 Phil. 146 (1923).

¹²⁸Remarks by Gregorio Basa, Assistant Forester, in SPANISH PUBLIC LAND LAWS IN THE PHILIPPINE ISLANDS AND THEIR HISTORY TO AUGUST 13, 1898 (hereinafter referred to as LAND LAWS) at 51 (1901). D. Wurfel, *supra* note 48, at 41.

¹²⁹PLA letter, 14: F. PONCE, *supra* note 28, at 24. See also M. BERRIZ, DICCIONARIO DE LA ADMINISTRACION DE FILIPINAS: ANUARIO DE 1893 at 5-7 (1894). The *junta provincial* included the local governor, the *gobernadorcillo* of the provincial capital, the oldest member of the municipal board, and a local priest. The *junta local* included the parish priest as honorary president, the *gobernadorcillo* as president, a former *cabeza*, a current *cabeza*, and the oldest resident of the *barrio* in which the land to be registered is located.

¹³⁰D. Wurfel, *supra* note 48, at 44.

boards to applications covering fewer than thirty hectares. Applications for larger areas were to be coursed through the forestry bureau.¹³¹ The decree also ordered the governor-general to establish and levy fines against errant officials.

The colonial registration processes proved to be impervious. In the words of Gregorio Basa, a long-serving native forestry official, "persons soliciting adjustment of lands, weary of endless delay and subjected to extortions by rapacious officials on every side, generally abandoned further efforts and contented themselves with remaining on their lands."¹³² As for the erring officials, Basa claimed to have "never known of but one instance where a chief of province or a higher official was punished for irregularities committed in the cases of adjustments of lands."¹³³

Native and mestizo elites, meanwhile, continued to lobby for a more efficient and effective means to document their claims, primarily so that they could use the land as collateral.¹³⁴ Their efforts met with some success when registration offices were set up for the first time in several *pueblos* during the 1890s.¹³⁵ In addition, on July 14, 1893, the Spanish Mortgage Law was promulgated in Madrid and made effective in the Philippines.¹³⁶

The Mortgage Law provided for a comprehensive registration of all existing rights and possessory claims. Under its provisions "owners who lacked recorded title of ownership" could register their interests during an *informacion posesoria* proceeding. If everything was in order, the registrant would be issued an *inscripcion de informacion posesoria* (record of possessory

¹³¹Lineau v. Insular Government, 6 Phil. 230, 231 (1906). The decision held that a deed issued by the *alcalde* of Isabela, in accordance with the provincial land adjustment board, for over thirty hectares was, pursuant to the 1868 royal decree, void as to the excess.

¹³²PLA letter, *supra* note 123, at 15. Basa referred to these occupants as "simple quatters." This appears to have been a professional forester's incorrect predilection.

¹³³PLA letter, *supra* note 123 at 16. Spanish officials were never publicly reproved, if at all, because of "the false idea that by so doing Spanish prestige would be lowered." Basa added that "If all in charge of this matter, from the governors to the lowest officials, had done their duty, better results would have been obtained."

¹³⁴D. Wurfel, *supra* note 48, at 44.

¹³⁵E. ROBLES, *supra* note 59, at 213. F. VENTURA, *supra* note 28, at 37, cited four laws enacted between 1881 and 1888 which provided that "titles to lands were required to be registered in the *Escribanias* of the provinces and in the *Juzgados Receptores*."

¹³⁶F. VENTURA, *supra* note 28, at 39, commented that the law "should have been called Registration Law" since its primary purpose was "to establish a new and complete system of registration which guarantees the stability of ownership and possession." F. PONCE, *supra* note 28, at 16, likewise referred to the mortgage law as a misnomer. The chosen name may have been intended to lessen political opposition to comprehensive registration. The original Mortgage and Registration of Property Law was made effective in the colony on December 1, 1889. It provided for the establishment of land registration offices in the provincial capitals and municipalities where Courts of First Instance were located. E. ROBLES, *supra* note 62, at 205. Due to conflict between some of its provisions and the Civil Code which was promulgated a week later, however, the Spanish Cortes decided to amend the Mortgage Law, the latter version being enacted on July 14, 1893. F. PONCE, *supra* note 28, at 15-16. THE OFFICIAL HANDBOOK: DESCRIPTION OF THE PHILIPPINES 129-130 (1903), however, erroneously assumed that the 1889 law had been enacted and was in force.

information) by a nearby Court of First Instance or Municipal Court. The *inscripcion* was a mere record of possession. It could be converted into a title in fee simple absolute twenty years (later reduced to ten) after its date of issue, provided that certain conditions were met.¹³⁷ Significantly, by the time Spain ceded its sovereignty over the colony in 1898, no more than 200 *inscripcion de titulo informacion posesoria* (titles) had been registered in final form.¹³⁸

Fraudulent registration, or any other registration not in accordance with law, was legally null.¹³⁹ In addition, any record of possession made was without prejudice to third parties with better rights.¹⁴⁰ But the effective onus to challenge a fraudulent registration was on those adversely affected. And despite the ostensibly public nature of the proceedings, there were no effective guarantees that actual occupants of the lands registered would be personally notified.

The Maura Law of 1894

By 1894 as many as 200,000 applications for official documentary recognition of ownership were estimated to be pending. Most of these applications predated the Royal Decree of August 31, 1888.¹⁴¹ The "large majority" of natives, however, "could only show their title by actual possession."¹⁴² This majority presumably never knew about colonial legislation pertaining to registration of land rights. The uneven Spanish impact, abuses by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares and legal prerequisites, e.g., filing fees, attorney's fees, survey costs, etc., presumably kept most people unaware of, and without access to, the registration/documentation processes.

¹³⁷MANALAC, *supra* note 79, at 35-39, 50-80. See also F. VENTURA, *supra* note 28, at 38-60.

¹³⁸PLA letter, *supra* note 123, at 17. F. VENTURA, *supra* note 28, at 39, averred that each parcel of land covered by a registered title was legally understood to have an independent juridical existence. This separate jural being arose "from the registry book and [gave] to the estate the status of registered property."

¹³⁹Articles 30-31.

¹⁴⁰Articles 392-394. The good faith acquisition of a fraudulently registered right, however, theoretically extinguished any colonial legal rights held by third parties, a category which could include actual occupants. *Merchants v. Lafuente*, 5 Phil. 638 (1905).

¹⁴¹PLA letter, *supra* note 123, at 17. Basa claimed that the number of renewed applications between 1888 and 1894 did not exceed 3,000. *Id.* at 16. See also 2 RPC 321 (1901), wherein the Director of Lands estimated that "In the year 1894 the number of uncompleted titles that were delayed by proceedings in the different offices having cognizance of land matters was over 200,000." It is difficult, however, to believe that these estimates were accurate. The higher figure implied that nearly 50% of the estimated number of farming households in the colony had applied for registration. (See note 11, *supra*.) Meanwhile, the incoming U.S. regime would misuse the estimates and claim that they actually referred to the number of "squatters" living within the so-called public domain. See "The Invisible Indigenes" in the next, i.e., third, article of this four part series.

¹⁴²United States-Philippine Commission Executive Minutes 171 (unpublished); J. FOREMAN, *supra* note 110, at 640.

The last official Spanish attempt to address the disarray in the documented property regime was to impose a unilateral registration deadline. This was accomplished by the Royal Decree of February 13, 1894, which was more commonly referred to as the Maura Law. The decree was published and became effective in the colony on April 17 of the same year.

The Maura Law was the last law pertaining to land enacted by the Spanish colonial regime.¹⁴³ Its preamble averred that the decree was enacted to "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages." Article 4, however, revealed a much different purpose. It provided that the "title to all agricultural lands which were capable of adjustment under the Royal Decree of . . . 1880, but the adjustment of which has not been sought at the time of promulgation of this decree . . . will revert to the State. Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the above mentioned date, will not avail themselves in any way nor at any time."¹⁴⁴ Those whose applications for possessory information titles were pending were given one year to secure their documentation. No extensions were made and any titles issued after April 17, 1895 were deemed to have no force and effect.¹⁴⁵

The decree's primary author and namesake, the Minister of Colonies, Antonio Maura y Montaner, hailed his creation and gloated that "it must be looked upon as one of our most important legal works."¹⁴⁶ The minister's rhetoric was not excessive. But from the perspective of the masses, the importance of the Maura Law did not emanate from any benefits received. Instead, the Maura Law theoretically empowered the colonial regime to deny, for the first time ever, legal recognition of customary property rights. The immediate symbolic effect was to disenfranchise several million rural farmers.¹⁴⁷

To the great majority of peasants, accustomed to unwritten rules of land tenure, the land law was too involved, the idea of a [documented] land title too strange . . . The comparatively few people who acquired legal titles were mostly persons belonging to the cacique group, and these often laid claim to more land than they actually had a right to. Thus in many cases peasants who had felt secure in their possession of their land and had not known or cared about [documentary]

¹⁴³V. FRANCISCO, *supra* note 125, at 7.

¹⁴⁴MAÑALAC, *supra* note 81, at 38-49; V. FRANCISCO, *supra* note 125, at 5-8. An English translation of the Maura Law can be found in LAND LAWS, *supra* note 128, at 917. For an English translation of the implementing regulations *see id.* at 19-36.

¹⁴⁵*See* Baltazar v. Government, 40 Phil. 267, 271 (1919).

¹⁴⁶G. MALCOLM, THE GOVERNMENT OF THE PHILIPPINE ISLANDS 55 (1916). For an overview of Maura's life, and the very peripheral role the Philippines played in it, *see* C. SILIO, MAURA: VIDA Y EMPRESAS DE UN GRAN ESPANOL (1934).

¹⁴⁷Minister Maura estimated, in a preface to the law when it was presented for the Queen Regent's signature, that as of 1894 there were 200,000 "*expedientes*."

titles were suddenly confronted with the fact that a wealthy person, with the law behind him, was claiming their land. These peasants were then driven from it or forced to become tenants.¹⁴⁸

Enactment of the Maura Law demonstrated the colonial regime's insensitivity to the plight and potentials of the masses. There was nothing new in this. The decree's novelty lay in the fact that the government in Madrid, during the waning years of Spain's Pacific empire, reneged on its centuries-old commitment to respect customary land rights. This virtually unnoticed betrayal of Spain's self-imposed historic trust had repercussions which endured long after Spanish sovereignty over the Philippine Islands was relinquished. The Maura Law provided the legal basis by which the U.S. colonial regime denied any effective recognition of ancestral property rights. More significantly, the philosophy behind the Maura Law provided the legal foundation for the prevailing twentieth-century version of the Regalian Doctrine.

A Revolutionary Denouement

Two years after the Maura Law was enacted a revolution against Spanish colonial rule erupted. Many people were eager to throw off the Spanish yoke. Their goal, however, "emanated from contrary sources of estrangement." Landowning elites holding documented property rights had generally prospered as export-production and trade expanded during the nineteenth century. Many of their sons were *ilustrados* who agitated for reform under Spanish aegis. Significantly, Filipino elites were generally content with the colonial bureaucratic and legal infrastructure, so long as they controlled it.

The *ilustrados*' efforts for reform failed but their agitations had a profound impact on the Philippine masses, particularly in the Tagalog provinces where Hispanization and the commercial economy were most pronounced. The rural poor "yearned for a restoration of a less complicated world... the re-creation of the simple clarities inherent in [their] moral order."¹⁴⁹ These aspirations converged with those of urban laborers and slum dwellers who were prepared to risk their lives to sever the Spanish tie and secure independence, or *kalayaan*, by force of arms if necessary.

One of the principal causes of rural discontent was the inequitable allocation of legal rights to arable land resources. The Spanish regime had actively contributed to the imbalance by its belief that exclusive, individual ownership was a means to promote greater efficiency and profitability. The regime also attached great importance to its power to grant legal rights to land, and thereby reward and retain the support of, native and mestizo collaborators.

¹⁴⁸K. PELZER, *supra* note 99, at 90. See also D. STURTEVANT, *supra* note 96, at 37.

¹⁴⁹D. STURTEVANT, *supra* note 94, at 48. Sturtevant characterized the peasants' moral order as "a defunct" one. Such a label tends to ignore the processes of cultural amalgamation which occurred, and still occur, and include in varying degrees the moral orders of peasants. In acknowledgement of this fact, the possessive "their" was substituted for "a defunct."

Philippine historiography, however, has tended to place an inordinate amount of responsibility for the revolutionary ferment on the large landholdings of the religious orders.¹⁵⁰ Life was harsh for most workers on the friar estates, and support for the revolution was particularly strong within and around them. By the end of the nineteenth century, however, the religious orders held less than ten percent of the officially documented private property rights in the colony. In other words, if official estimates of the Spanish and U.S. regimes are to be believed, the overwhelming majority of documented property rights were held by mestizos and native elites.¹⁵¹ It should come as no surprise, therefore, that "outbreaks of violence in the countryside during the first half of 1898 were directed not only against the Spanish friars but also against the *principalia* and their property."¹⁵²

On July 7, 1892, a secret meeting was held in Manila and the *Katipunan* was formed.¹⁵³ Led by Andres Bonifacio, "the legitimate Father of the Revolution,"¹⁵⁴ the *Katipunan* set about to stir up nationalist sentiment and sever the Philippines' ties to Spain.¹⁵⁵ Its successes were considerable and soon revolutionary fervor extended, in varying degrees, to the Visayas and even parts of Mindanao. On the eve of the revolutionary outbreak in 1896, it was estimated that membership in the *Katipunan* had swelled to 400 thousand.¹⁵⁶

Alliances between the elites and the masses, led in many areas by the *Katipuneros*, showed strains from the outset. The symbolic rupture occurred on May 10, 1897, when Bonifacio was convicted of trumped up charges and executed on the orders of the titular leader of the revolutionary army, Emilio

¹⁵⁰See, e.g., R. CONSTANTINO, *supra* note 40, at 162-163; I. DE LOS REYES, LA SENSACIONAL MEMORIA DE ISABELO DE LOS REYES 48 (1899). Portions of an English translation of the Reyes memorial can be found in H. DE LA COSTA, READINGS IN PHILIPPINE HISTORY 234-235 (1965).

D. ROTH, *supra* note 8, is devoted entirely to an examination of conditions on the lands of the religious orders. No comparative study, whether on a regional or pan-Philippine basis, has ever been made on the extent and working conditions on the estates and other holdings owned by mestizo and native elites during the nineteenth century. T. AGONCILLO & M. GUERRERO, HISTORY OF THE FILIPINO PEOPLE 110 (7th ed., 1986), however, cited the "landed gentry as well as the religious orders."

¹⁵¹See note 12, *supra*.

¹⁵²M. Guerrero, Luzon at War: Contradictions in Philippine Society, 1898-1902 at 25 (Ph.D. dissertation, University of Michigan). See generally *id.* at 127-8, 143-4. See also C. MAJUL, MABINI AND THE PHILIPPINE REVOLUTION 49-51, 61 (1960).

¹⁵³The group's complete name was *Kataastaasan Kagalanggalang na Katipunan ng mga Anak ng Bayan* (Highest and Most Respectable Society of the Children of the Nation).

¹⁵⁴T. AGONCILLO & M. GUERRERO, *supra* note 152, at 159. See generally T. AGONCILLO, THE WRITINGS AND TRIAL OF ANDRES BONIFACIO (1963).

¹⁵⁵T. AGONCILLO, THE REVOLT OF THE MASSES: THE STORY OF BONIFACIO AND THE KATIPUNAN (1956), is the first scholarly account of the *katipunan*. For additional insights concerning the *Katipunan*, see T. AGONCILLO & M. GUERRERO, *supra* note 150, at 149-180; R. CONSTANTINO, *supra* note 40, at 164-236; R. ILETO, PASYON AND REVOLUTION: POPULAR MOVEMENTS IN THE PHILIPPINES 1840-1910 at 93-139, 197-244 (1979).

¹⁵⁶2 RPC 399 (1900) quoting Trinidad Pardo de Tavera.

Aguinaldo.¹⁵⁷ Bonifacio's untimely death exacerbated festering tensions and suspicions between the elites and the masses. By definition, the elites were politically dominant and mass-based participation in the policy-making processes of the revolutionary government was almost completely curtailed.

The situation did not improve, insofar as the masses were concerned, when a congress was convened in Malolos, Bulacan on September 15, 1898, to draft a constitution for the new government. The Malolos Congress was dominated by affluent and educated Filipinos, many of whom also held colonial legal rights to large tracts of land. The "sole concern" of the delegates was to demonstrate "Filipino preparedness for political independence and prove that the Philippines was worthy of recognition by the world of nations."¹⁵⁸

Mass-based concerns, by contrast, were focused around internal inequities and injustices. "In particular, the use of the Spanish title system in the consolidation of the elite's control over farm lands was greatly resented; for many the Spanish title system was a weapon of the educated against the non-*ilustrados*."¹⁵⁹ The revolutionary government paid scant attention. Except for Apolinario Mabini,¹⁶⁰ the leadership "was content to perpetrate the legal and customary colonial approach to land acquisition."¹⁶¹ As such, the Malolos Congress "did not even once address itself to any serious debate about the country's economic future, much less address itself to the manifest agrarian discontent."¹⁶²

The inertia was not a result of ignorance. The "leadership in Malolos was certainly aware of but refused to acknowledge" that the masses expected social and economic restructuring after the break with Spain.¹⁶³ The lack of response promoted even more tension and division between the entrenched and conservative elites and the progressive aspirations of the masses.

As the political elite were quick to claim the leadership of the Revolution, so too did members of the peasant masses demand that they also should partake in the rewards of the Revolution through the implementation of good government and the abolition of taxes and forced labour. When these were not forthcoming or were consistently blocked by provincial and municipal elites, many peasants joined tax riots, demonstrations and messianic movements.¹⁶⁴

¹⁵⁷ See R. CONSTANTINO, *supra* note 40, at 139-190; T. AGONCILLO & M. GUERRERO, *supra* note 150, at 178-180.

¹⁵⁸ M. Guerrero, *supra* note 152, at 233. The Malolos constitution was promulgated on November 29.

¹⁵⁹ M. Guerrero, *supra* note 152, at 142.

¹⁶⁰ C. MAJUL, *supra* note 152, at 52-56 (1964); M. Guerrero, *supra* note 152, at 231-233.

¹⁶¹ M. Guerrero, *supra* note 152, at 140-141. See generally, *id.* at 123-149.

¹⁶² *Id.* at 146. For additional background on the Malolos Congress see generally T. AGONCILLO, MALOLOS: THE CRISIS OF THE REPUBLIC (1960); C. MAJUL, THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION (1957); Kalaw, *The Constitutional Plan Of The Philippine Revolution*, 1 PHIL. L. J. 5 (1914).

¹⁶³ M. Guerrero, *supra* note 152, at 128.

¹⁶⁴ M. Guerrero, *The Provincial And Municipal Elites Of Luzon During The Revolution, 1898-1902*, in PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND LOCAL TRANSFORMATIONS 115-190, 179 (1982).

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