CONSTITUTIONAL REDEMPTION AND THE ROAD TO RECOGNIZING INDIGENOUS FILIPINOS IN A TRANSPLANTED CHARTER*

*Allan Chester Nadate***

> *"In every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and to diffuse their influence universally and equally."*
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> —Cesare Beccaria[1]

As a result of colonial and post-colonial legislation mired in Western ethnocentrism, indigenous Filipino communities suffered deeply from the effects of marginalization. For hundreds of years, they were denied considerable social, economic, and political involvement in the administration of national affairs and in the charting of their own fates as distinct peoples.

The recent recognition of some of their rights, however, alleviated the ignominy of the injustices they have faced. The passing of the Indigenous Peoples' Rights Act[2] crystallized the country's sincere though belated attempt to empower cultural minorities. Accordingly, *Cruz v. Secretary of Environment and*

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* Cite as Allan Chester Nadate, Review, *Constitutional Redemption and the Road to Recognizing Indigenous Filipinos in a Transplanted Charter*, 88 PHIL. L.J. 640, (page cited) (2014). This article is a review of Owen J. Lynch, Jr., *Native Title, Private Right and Tribal Land: An Introductory Survey*, 57 PHIL. L.J. 268 (1982).

** J.D., University of the Philippines (2018, expected); B.S. Nursing, University of the Philippines Manila (2012). Projects Associate, Health Futures Foundation, Inc. Academic Excellence Awardee for the Visayas, Vice President Academic Excellence and Exemplary Leadership Awards (2008); Awardee, Philippine Information Academy IWAG Award (2008).

The author would like to thank Professor Dante Gatmaytan of the University of the Philippines College of Law for his valuable insights. The author would also like to acknowledge the assistance of Dr. Jaime Z. Galvez Tan, Gian Carlo Velasco, Anne Janelle Rabe, and Efren II R. Resurreccion.

[1] CESARE BECCARIA-BONESANA, AN ESSAY ON CRIMES AND PUNISHMENTS BY THE MARQUIS BECCARIA OF MILAN WITH A COMMENTARY BY M. DE VOLTAIRE (1972).

[2] Rep. Act No. 8371 (1997).

Natural Resources[3] ("*Cruz*"), which upheld the same law's constitutionality, became more than just an ordinary case resolved on procedural grounds; the En Banc resolution, as well as the separate opinions of Justice Santiago M. Kapunan and Justice Reynato S. Puno, created a defining shift in constitutional law, reaffirmed the same law's redemptive value, and established a canonical discourse on pragmatic jurisprudence.

The separate opinions of Justices Kapunan and Puno greatly relied on the legal research published more than 30 years ago in the PHILIPPINE LAW JOURNAL ("PLJ") by Professor Owen J. Lynch. As part of the *Special Centennial Issue* of the PLJ, this review will discuss the impact of Professor Lynch's articles on *Cruz* and demonstrate how his theses were adopted and made the critical bases of the arguments that redefined ancestral and cultural rights and enhanced the self-determination of the indigenous peoples[4] of the Philippines.

I

Legal transplantation and Western ethnocentrism in colonial and post-colonial political philosophy grafted one of the most obstinate forms of institutionalized injustices in the nation's history.[5] The pervasive and enduring colonial imprint on Philippine culture left by almost four centuries of subjugation has reduced indigenous cultural communities into indigenous peoples with "no hope for the future [...] unless their historical and legal claims [...] are meaningfully recognized and protected."[6]

For decades, the subject of their fate was brushed aside under the rug of obscurity, a cavalier and systematic approach to a problem that is neither temporary nor insignificant. Only recently has the nation recovered from this

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[3] Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, 347 SCRA 128, Dec. 6, 2000.

[4] Owen J. Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws (1900-1913)*, 63 PHIL. L.J. 249 (1988).

[5] *See generally* OWEN J. LYNCH, JR., COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION (2011); Dante B. Gatmaytan, *Ancestral Domain Recognition in the Philippines: Trends in Jurisprudence and Legislation*, 5 PHIL. NAT. RES. L.J. 43 (1992) [hereinafter "Ancestral Domain Recognition"]; Owen J. Lynch, Jr., *The Philippine Colonial Dichotomy: Attraction and Disenfranchisement*, 63 PHIL. L.J. 112 (1988); Owen J. Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era (1565-1898)*, 63 PHIL. L.J. 82 (1988); Owen J. Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L.J. 279 (1987); Ma. Lourdes Aranal-Sereno & Roan Libarios, *The Interface Between National Land Law and Kalinga Land Law*, 58 PHIL. L.J. 420 (1983) [hereinafter "Interface"].

[6] Owen J. Lynch, Jr., *Native Title, Private Right and Tribal Land: An Introductory Survey*, 57 PHIL. L.J. 268, 306 (1982) [hereinafter "Native Title"].

"legal irritation"[7] by espousing a firmer resolve to better respect human rights and make more equitable the redistribution of the state's resources.

It is to the credit of the present Constitution's framers that they took steps to transform the country's nomocracy towards a "legal regime whose chief characteristic is its indigeneity,"[8] founding a new republic defined by the antecedent disestablishment of civil liberties under the 1973 Constitution.

The reconstruction of the nation's democracy signaled a historical vindication and affirmative action for the rights of indigenous Filipinos. Rather than being a mere general provision, the present Constitution "recognizes and promotes the rights of indigenous cultural communities *within the framework of national unity and development*" as a mandate of state policy.[9] A decade after the ratification of the present Constitution, Congress solidified this largely directory provision into an effective legislative pronouncement by passing the Indigenous Peoples' Rights Act of 1997. This denouement for the legal recognition of indigenous Filipinos has, however, also provoked a tide of conflicting interests and a surge of novel constitutional questions.

II

The Indigenous Peoples' Rights Act ("IPRA") serves to "protect the rights of [indigenous cultural communities or indigenous peoples] to their ancestral domain to ensure their economic, social and cultural well being."[10]

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[7] *See* Gunther Tuebner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11 (1998).

[8] Frederick Schauer, *The Politics and Incentives of Legal Transplantation*, Harvard University Center for International Development Working Paper No. 44, at 1-2 (2000). *See also* Atong Paglaum, Inc. v. Commission on Elections, G.R. No. 203766, 649 SCRA 477, Apr. 2, 2013 (Sereno, *C.J., concurring and dissenting*); Antonio La Viña, *The Creation of the Bangsamoro: Issues, Challenges, and Solutions*, 2 PHIL. L & SOC'Y REV. 3 (2013); Marvic M.V.F. Leonen, United Nations Development Programme, *The Irony of Social Legislation: Reflections on Formal and Informal Justice Interfaces and Indigenous Peoples in the Philippines* (2007) [hereinafter "Irony of Social Legislation"]; Marvic M.V.F. Leonen, *Law at its Margins: Questions of Identity, Rights of Indigenous Peoples, Ancestral Domains and the Diffusion of Law*, 83 PHIL. L.J. 787 (2009) [hereinafter "Law at its Margins"]; Vicente Paolo B. Yu III, *Undermining Indigenous Land Rights: The Impact of Mining Rights on Private Land Rights of ICCs/IPs in the Philippines*, 74 PHIL. L.J. 658, 658-62 (2000).

[9] CONST. art. II, § 22. (Emphasis supplied.) *Compare* CONST. (1973) art. XV, § 11. It provides: "The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of state policies."

[10] Rep. Act No. 8371 (1997), § 2(b). It provides: "The State shall protect the rights of [indigenous cultural communities and indigenous peoples] to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary

Besides giving formal and comprehensive recognition to their unique traditions, it was noted:

> The landmark enactment of IPRA signaled two paradigm shifts in the way the government regarded indigenous peoples. First, it challenged the notion that the state had a monopoly on the exercise of the law. [It] recognizes indigenous legal systems which can be used for dispute resolution, identification of the extent of ancestral domains, and decisions on the exploitation of resources, among others. It also recognizes their right to self-determination. Second, it abandoned the perception that indigenous peoples caused the degradation of forests.[11]

Shortly after its enactment, critics of the law assailed its validity by claiming that its provisions violated the "constitutionally guaranteed right of the state to control and supervise the exploration, development, utilization and conservation of the country's natural resources."[12]

The Court's resolution in *Cruz* upheld the statute and inspired a constitutional shift. The separate opinion of Justice Santiago M. Kapunan[13] and the separate opinion of Justice Reynato S. Puno[14] marked out an exception to the long-held doctrine of *jura regalia* and solidified the indigenous Filipinos' rights to ancestral lands, particularly by extending judicial recognition to native titles. As noted by observers, the Court ruled that ancestral lands were private lands because they were presumed never to have been public:

> The decision of the Philippines Supreme Court recognized the private nature of ancestral domains, segregating them from the public domain and the legal concepts that were used to challenge the [Act's] constitutionality. [...] [C]learly, the new law strengthened indigenous peoples' rights to their ancestral domains and cultural integrity.[15]

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laws governing property rights or relations in determining the ownership and extent of ancestral domain."

[11] Cielo Magno & Dante B. Gatmaytan, *Free Prior and Informed Consent in the Philippines, Regulations and Realities*, Oxfam America Briefing Paper, at 5 (Sept. 2013). (Citations omitted.) *See also* Irony of Social Legislation, *supra* note 8, at 17-30; June Prill-Brett, *Contested Domains: The Indigenous Peoples' Rights Act (IPRA) and Legal Pluralism in the Northern Philippines*, 55 J. LEGAL PLURALISM 11, 16-17 (2007).

[12] *Id.* at 6 n.15. *See generally* Marvic M.V.F. Leonen, *Implications of Constitutional Challenges to the Indigenous Rights Act of 1997*, 30 J. INTEG. BAR PHIL. 153 (2004).

[13] Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 247 (Kapunan, *J.*, *separate*).

[14] *Id.* at 162 (Puno, *J.*, *separate*).

[15] Magno & Gatmaytan, *supra* note 11, at 6-8.

In both the enactment of the law and the release of the decision, the legislators and the Court relied heavily on the colonial case of *Cariño v. Insular Government*[16] *("Cariño")* promulgated by the Supreme Court of the United States, with Justice Oliver Wendell Holmes, Jr. as the *ponente.*

Senator Juan Flavier, in his sponsorship speech, asserted that the doctrine laid in *Cariño* provided the exemption to the Regalian doctrine "reinstated in Section 2, Article XII of the 1987 Constitution."[17] Representative Gregorio Andolana, in his sponsorship speech in the House of Representatives, referred to *Cariño* when he opined that native titles had resulted to ownership of lands long occupied by members of indigenous cultural communities.[18]

The separate opinion of Justice Santiago M. Kapunan, in which Chief Justice Hilario G. Davide, Jr., and Justices Josue N. Bellosillo, Leonardo A. Quisumbing, and Consuelo Ynares-Santiago concurred, recognized the apparent conflict between the Regalian doctrine and *Cariño*, but categorically concluded that:

> The Regalian theory [...] does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Cariño vs. Insular Government*, the United States Supreme Court, reversing the decision of the pre-war Philippine Supreme Court, [...] institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia.*[19]

The separate opinion of Justice Reynato S. Puno likewise accepted the validity of the concept of native titles in *Cariño* and declared that ancestral lands and ancestral domains are not part of the lands of the public domain, having been "occupied, possessed and utilized by individuals, families and clans who are members of the [indigenous cultural communities and peoples] since time immemorial."[20] He added that "*Cariño* firmly established a concept of private land title that existed *irrespective of any royal grant from the State*[.] [...] *Native title*

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[16] 212 U.S. 449 (1909) [hereinafter "*Cariño*"].

[17] Sen. Juan Flavier, Sponsorship Speech of S. No. 1728, 10th Cong., 2nd Sess. (Oct. 16, 1996).

[18] Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 194-95 n.114-115 (Puno, *J., separate*).

[19] *Id.* at 268-269 (Kapunan, *J., separate*).

[20] Rep. Act No. 8371, § 3(b). *Compare* Rep. Act No. 8371, §§ 3(a), (h), (p) & 56.

presumes that the land is private and was never public. Cariño *is the only case that specifically and categorically recognizes native title."*[21]

Cruz fundamentally crystallized *Cariño* as a constitutional canon to legitimize indigenous and customary laws—long delegitimized by impositions in the legal order and long misinterpreted to defeat its very purpose[22]—and make them viable sources of rights in the nation's young democracy. Pre-*Cruz* interpretations of *Cariño* construed this historical case not as a canon establishing the legality of indigenous people's native titles to ancestral lands, but merely as a land registration doctrine.[23] It is in the repudiation of this misreading that *Cruz* rediscovered *Cariño.* And a large measure of the credit goes to Professor Owen Lynch, Jr. and to his papers published in the PLJ.

III

The rediscovery of the true *Cariño* doctrine by Professor Owen J. Lynch, Jr. became the ground upon which the Philippines' Brandeis brief for upholding ancestral land rights would take root.[24] The revisiting of *Cariño* remains one of the most important contributions of the academe in the entire discourse on indigenous peoples' rights. This event was as serendipitous as it was momentous. To quote Professor Lynch:

> [W]hile I was in the law library researching Philippine Supreme Court decisions on property rights, I came across a little known, and often interpreted, 1909 decision of the U.S. Supreme Court titled *Cariño v.*

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[21] Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 199, 215 (2000) (Puno, *J., separate*). (Emphasis supplied.)

[22] *See, e.g.*, Director of Lands v. Buyco, G.R. No. 91189, 216 SCRA 78, Nov. 27, 1992; Susi v. Razon, 48 Phil. 424 (1925); Director of Lands v. Manila Electric Company, G.R. No. L-57461, 153 SCRA 686, Sept. 11, 1987.

[23] *See, e.g.,* Director of Land Management v. Court of Appeals, G.R. No. 94525, 205 SCRA 486, Jan. 27, 1992; Director of Lands v. Bengzon, G.R. No. 54045, 152 SCRA 369, 376, July 28, 1987; Director of Lands v. Intermediate Appellate Court, G.R. No. 73002, 146 SCRA 509, Dec. 29, 1986; Mesina v. Pineda vda. de Sonza, 108 Phil. 251 (1960).

[24] *See* Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 204-205 (Puno, *J., separate*). Justice Puno opined: "It is observed that the widespread use of *the term 'native title' may be traced to Professor Owen Lynch, Jr.*, a Visiting Professor at the University of the Philippines College of Law from the Yale University Law School. In 1982, Prof. Lynch published an article in the *Philippine Law Journal* entitled *Native Title, Private Right and Tribal Land Law.* This article was made after Professor Lynch visited over thirty tribal communities throughout the country and studied the origin and development of Philippine land laws. *He discussed* Cariño *extensively and used the term 'native title' to refer to* Cariño's *title as discussed and upheld by the U.S. Supreme Court in said case.*" (Citations omitted, emphasis supplied.)

> *Insular Government.* [...] My heartbeat quickened. I couldn't believe it, and I couldn't understand at that time why the decision was not widely known or understood, as it should be, by the Philippine Supreme Court and others in the legal community. [...] Meanwhile, I was greatly affected, encouraged and inspired by the *Cariño* decision.[25]

This epiphany and the subsequent publication of *Native Title, Private Right and Tribal Land Law: An Introductory Survey* ("*Native Title*") by Professor Lynch in the PLJ catalyzed the indigenous peoples' rights movement in the nation. It became a seminal piece in anti-colonial academic literature, a prelude to a fomenting indigenization and reformation of Philippine law, and the nation's contribution to the "internationalization of indigenous rights from the environmental and human rights perspective."[26]

In the University of the Philippines College of Law, Prof. Lynch encouraged and inspired students in his course *Philippine Indigenous Law*,[27] a class which included the current Chief Justice Ma. Lourdes P.A. Sereno, whose paper with Atty. Roan Libarios was cited in the Puno separate opinion in *Cruz*,[28] Justice Marvic M.V.F. Leonen,[29] and Dean Antonio G.M. La Viña.

In the years that followed, Justice Leonen, with Dean La Viña and classmates Atty. Augusto B. Gaymaytan and Atty. Antoinette G. Royo, formed the Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth-Philippines[30] ("LRC-KSK"), a "policy and legal research and advocacy institution" whose goal was to "empower the marginalized and disenfranchised peoples directly dependent on our natural resources."[31]

The LRC-KSK published the *Philippine Natural Resources Law Journal*, and issued numerous research articles that clamored for the recognition of the ancestral land rights of Filipino indigenous peoples.[32] The LRC-KSK also

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[25] Owen J. Lynch, *An American Professor at U.P. Law: Memories and More, 1981-2011*, *in* IN THE GRAND MANNER: LOOKING BACK, THINKING FORWARD 77-78 (D. Concepcion, M. Leonen, C. Jardeleza & F. Hilbay, eds., 2013) [hereinafter "Memories and More"].

[26] Jose Paulo Kastrup, *The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective*, 32 TEX. INT'L. L.J. 97, 99 (1997). *See also* Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 238-41 (Puno, *J.*, *separate*).

[27] *Memories and More*, *supra* note 25, at 79-80.

[28] Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 190 n.102 (Puno, *J.*, *separate*). *See Interface*, *supra* note 5.

[29] *See Law at its Margins*, *supra* note 8, at 788.

[30] *Id.* at 789; *Memories and More*, *supra* note 25, at 85-86.

[31] Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth-Philippines, *About Us*, *at* http://www.lrcksk.org (last visited July 7, 2014).

[32] *See, e.g.* Augusto B. Gatmayan, *Land Rights and Land Tenure Situation of Indigenous Peoples in the Philippines*, 5 PHIL. NAT. RES. L.J. 5 (1992); *Ancestral Domain Recognition*, *supra* note 5; Marvic

became instrumental in the drafting and enactment of the Indigenous Peoples' Rights Act.[33] As Professor Lynch recalled:

> I was aware from afar that the movement in favor of legal recognition of ancestral domain rights was gaining steam in the Philippines in the 1990's, thanks in large measure to LRC-KSK[.] [...] I still think it absolutely incredible that they successfully navigated a bill in 1997 through both houses of [C]ongress[.] [...] I could not have reasonably hoped for its enactment—in a best case scenario—before the 2020s, if ever, but it happened more than two decades earlier than I had even imagined possible.[34]

The members of the academe, through painstaking and careful exegeses of jurisprudence, spearheaded the production of a body of legal literature that analyzed ancestral domain as a concept in law and substantiated the theoretical positions assumed by their fellow reformists. In the words of Professor Dante B. Gatmaytan, who used to be a staff lawyer of LRC-KSK:

> Instead of filing land registration cases which would have failed since few judges were even aware of *Cariño*, we decided to saturate the literature with research on *Cariño* and its progeny. By the time *Cruz* reached the Supreme Court, there was a discourse on ancestral domains that the Justices could not ignore. I joined LRC-KSK's policy advocacy unit. We provided the research to persuade Congress to enact laws to protect the indigenous peoples' ancestral domains. My motivation then was to illustrate that the *Cariño* doctrine is firmly entrenched in jurisprudence.[35]

The strategy worked. In the years after the publication of *Native Title*, ancestral domain rights have become a prominent subject in legal research, converging in scholarly dialogues on environmental management, human rights, political reform, legal history, and public international law.[36] This outcome was

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M.V.F. Leonen, *On Legal Myths and Indigenous Peoples: Re-examining Carino v. Insular Government*, PHIL. NAT. RES. L.J. 1 (1990); Antoinette G. Royo, *Regalian Doctrine: Wither the Vested Rights?* 1 PHIL. NAT. RES. L.J. 1 (1988); *Land Classification: Preliminary Notes on Implications for Upland Populations*, 1 PHIL. NAT. RES. L.J. 18 (1988).

[33] *Memories and More*, *supra* note 25, at 86-87.

[34] *Id.* at 86.

[35] Interview with Professor Dante B. Gatmaytan (June 23, 2014).

[36] *See* OWEN J. LYNCH, MANDATING RECOGNITION: INTERNATIONAL LAW AND NATIVE/ABORIGINAL TITLE (Rights and Resources Initiative ed., 2011); AUGUSTO B. GATMAYTAN, NEGOTIATING AUTONOMY: CASE STUDIES ON PHILIPPINE INDIGENOUS PEOPLES' LAND RIGHTS (2007); June Prill-Brett, *Contested Domains: The Indigenous Peoples' Rights Act (IPRA) and Legal Pluralism in the Northern Philippines*, 55 J. LEGAL PLURALISM 11, 16-17 (2007); Owen J. Lynch, *Concepts and Strategies for Promoting Legal Recognition of Community-Based Property Rights: Insights*

not a result of a largely passive academe building on new knowledge, but rather a "deliberate effort" to pave "the road to *Cruz*"[37] and to promote social justice, self-governance, empowerment, and cultural integrity.

In fact, even prior to the Indigenous Peoples' Rights Act, the *Cariño* doctrine mainstreamed by *Native Title* was already adopted in the Organic Act for the Cordillera Autonomous Region,[38] which sanctioned ancestral lands "possessed or occupied by indigenous cultural communities since time immemorial."[39] During the drafting of the Organic Act, "it was pointed out that the provisions on ancestral domains were actually 'a restatement of th[e] principle enunciated in the case of *Cariño*.'"[40]

Thus, more than lending "historical legal details," discussing the term "native title," or bolstering statements of fact,[41] *Native Title* and the slew of literature it engendered advanced the noble cause of a neglected segment of the population by energizing an army of conscientious activists and urging them to capitalize on the unique tools of the academe to extract from confusion a doctrine long aspired for, and to move forward with laws long delayed.

The textual history of *Native Title*, the rediscovery of *Cariño*, the implementation of the Indigenous Peoples' Rights Act, and the decision in *Cruz* reveal the potential of the academe and the PLJ to shape the destiny of Philippine legal history.

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from the Philippines and Other Nations, *in* COMMUNITIES AND CONSERVATION: HISTORIES AND POLITICS OF COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT (J.P. Brosious, A. Tsing & C. Zerner eds., 2005); Jose Mencio Molintas, *The Philippine Indigenous Peoples' Struggle for Land and Life: Challenging Legal Texts*, 21 ARIZ. J. INT'L. & COMP. L. 269 (2004); Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 HARV. HUM. RTS. J. 57 (1999); Frank Hirtz, *The Discourse that Silences: Beneficiaries' Ambivalence towards Redistributive Land Reform in the Philippines*, 29 DEV'T. & CHANGE 247 (1998); Malcolm Cairns, *Ancestral Domain and National Park Protection: Mutually Supportive Paradigms? A Case Study of the Mt. Kitanglad Range National Park, Bukidnon, Philippines*, 25 PHIL. Q. CUL. & SOC'Y 31 (1997); Roberto Benedito, *The Emerging International Standard on Indigenous Peoples' Rights: Issues and Implications for Mission Work in Third World Countries*, 24 MISSIOLOGY 227 (1996); OWEN J. LYNCH & KIRK TALBOTT, BALANCING ACTS: COMMUNITY-BASED FOREST MANAGEMENT AND NATIONAL LAW IN ASIA AND THE PACIFIC (World Resources Institute, 1995); Owen J. Lynch, Jr. & Kirk Talbott, *Legal Responses to the Philippine Deforestation Crises*, 20 N.Y.U. J. INT'L. L. & POL. 679 (1987-1988).

[37] *Ancestral Domain Recognition*, *supra* note 5.

[38] Rep. Act No. 6766 (1989). An Act Providing for an Organic Act for the Cordillera Autonomous Region. *See, however,* Ordillo v. Commission on Election, G.R. No. 93054, 192 SCRA 100, Dec. 4, 1990.

[39] Rep. Act No. 6766 (1989), art. XI, § 1.

[40] *Ancestral Domain Recognition*, *supra* note 5, at 75 n.90.

[41] Oscar Franklin Tan, *Sisyphus' Lament, Part I: The Next Ninety Years and the Transcendence of Academic Legal Writing*, 79 PHIL. L.J. 7, 8-9 (2004).

IV

Cruz follows a string of cases that slowly transformed the legal environment, making it more hospitable to the reification of the rights of those who have been, and continue to be, mistreated by extant institutions.[42] It neutralizes a heteronomy established and pursued to accommodate imperialism and exclusivism.

Beyond *Cruz* and countermanding racist and discriminatory pre-war anti-canons,[43] the rediscovery and reapplication of the *Cariño* doctrine makes real the inspired prose of the petitioner himself:

> The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. [...] A new spirit is now upon our land. A new vision limns the horizon. Now we can look forward with new hope that under the Constitution of the future every Filipino shall be truly sovereign in his own country, able to express his will through the pristine ballow with only his conscience as his counsel.[44]

The positive fiat of Congress has created vested rights by recognizing the weight in law of native titles, rights which cannot be abrogated by either the Legislative or the Executive without due process. The presumptive constitutionality of the Indigenous Peoples' Rights Act has neutralized a monopoly of legality that has left generations of indigenous Filipinos and their communities without remedy in the courts.

The protection of the Filipino *katutubo* in an era of fragmentism and inchoate democracy that *Native Title* once yearned for has now inched into an observable reality. At the very least, it has transformed a previous attitude of abandonment and disregard into one of "awareness and pride in the indigeneity

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[42] Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, 175 SCRA 343, July 14, 1989; De Chavez v. Zobel, G.R. 28609, 55 SCRA 26, Jan. 17, 1974; De Ramas v. Court of Agrarian Relations, G.R. No. 19555, 11 SCRA 171, May 29, 1964; Commonwealth v. De Borja, 88 Phil. 51 (1949); Guido v. Rural Progress Admin., 70 Phil. 340 (1949); Antamok Goldfields Mining Co. v. Court of Industrial Relations, 70 Phil. 340 (1940).

[43] Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919); People v. Cayat, 68 Phil. 2 (1939); Cariño v. Insular Gov't, 8 Phil. 150 (1907), *overturned by Cariño*, 212 U.S. 449 (1909).

[44] Javier v. Commission on Elections, G.R. No. 68379, 144 SCRA 194, 198, 209, Sept. 22, 1986.

of the Philippines, and its importance to law, justice, and the promotion of human dignity."[45]

V

Notwithstanding the magnitude of the changes discussed in this paper, much remains to be done to fully realize the equality of rights that the Constitution guarantees to indigenous Filipinos. Even with the passing of the Indigenous Peoples' Rights Act, the road to effective recognition of their rights remains exceedingly littered with substantial legal and administrative roadblocks.[46]

Meaningful legal reforms are still necessary to completely effectuate the provisions of the Act and the Constitution. In this respect, legal scholars should continue to provide sober assessments of the law, guiding it towards a paradigm that protects the rights of indigenous peoples and reducing to the greatest extent possible the ignorance of history and recrudescence of prejudice.

It is in this vein that the prelude of Justice Puno quoted Chief Judge Richard Posner:

> Law is the most historically oriented, or if you like the most backward-looking, the most 'past-dependent,' of the professions. It venerates tradition, precedent, pedigree, ritual, custom, ancient practices, ancient texts, archaic terminology, maturity, wisdom, seniority, gerontocracy, and interpretation conceived of as a method of recovering history. [...] These ingrained attitudes are obstacles to anyone who wants to re-orient law in a more pragmatic direction. But, by the same token, pragmatic jurisprudence must come to terms with history.[47]

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[45] *Memories and More*, *supra* note 25, at 102.

[46] *See* Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth-Philippines, *A Report to the United Nations Special Rapporteur on Indigenous Peoples on Human Rights Violations Suffered by the T'Boli-Manobo Community of Barangay Ned, Lake Sebu, South Cotabato, Philippines*, *at* https://docs.google.com/file/d/0B2F40TVHmKeiZkR3U3dHX3BGWTg; Ruth Sidchogan-Batani, *Implementation of the Indigenous Peoples Rights Act (IPRA) in the Philippines: Challenges and Opportunities*, Background Paper for the Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples held in Geneva, at 4-9 (2003).

[47] Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 162-63 (Puno, *J.*, *separate*), *citing* Richard Posner, *Past-Dependency, Pragmatism, and Critique on History in Adjudication and Legal Scholarship*, 67 U. CHI. L. REV. 573 (2000).