LANDGRABBING AND THE PUBLIC LAND LAW

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I. *Introduction*

Tersely defined, landgrabbing is getting possession of land unlawfully or fraudulently. This implies that the holding of the previous possessor was either sanctioned by law or had the possibility of being sanctioned by law. For our purposes we will include that kind of possession which creates in the mind of the possessor a feeling that he ought to be respected in his rights. We use the word "ought" here with reasons. This latter kind of possessor may lie outside the letter of the law. But just because he is thus situated would not take him out entirely from the concern of the governing authorities. For the law that had been followed might have been defective, inadequate and unserviceable.

It is understandable why the land possessor should dearly hold on to his land. In a country that is still basically agricultural, land is a prime necessity. Being the primary source of livelihood, land is cherished by the possessor. And while the customary law of his forefathers ought to protect the original possessor in his claim, the present law enables usurpers to deprive him of his land. Thus, the victim of a landgrabber has more than enough reason to lose faith in the legal system.

This feeling of despair has become widespread and the problem is turning out to be more explosive than the situation in Central Luzon. In Cotabato, the center of the new controversy, the situation is getting out of control. Tribesmen of three minority ethnic groups, the victims of landgrabbing, have started arming themselves and have decided to make a last stand rather than be driven to the sea. They have already been forced to retreat to the mountain fastnessess by influential politicians and powerful millionaires allegedly using the dreaded Octopus Gang.[1] Though the other victims are less belligerent, they are as much dissatisfied as the others. Thus, forty scared and dazed refugees from Cadiz City recounted a tale of terror-filled flight thru little used trails at midnight to evade heavily armed men who had bulldozed and taken over their small farms.[2] These two instances

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1 EXAMINER, Issue No. 420, July 11, 1970, p. 31.
2 The Manila Times, June 6, 1970, p. 1.

do not exhaust the examples of landgrabbing. And the events which led to their rising up in arms and to their flight did not just happen. They were the products of intricate plans hatched by land swindlers.

II. *Modus Operandi in Landgrabbing*

One mode of landgrabbing is described by the following account:

"Isabela offers good examples of how landgrabbers operate. Three syndicates in connivance with government officials allegedly succeeded in cheating hundreds of farmers who had been tilling the land since 1935. Free patent titles covering about one thousand cadastral and public land subdivision lots with a total area of about ten thousand hectares were titled in favor of persons who by law were not entitled to the land. According to a report of the Bureau of Lands, employees are now facing forty-eight criminal charges before the Court of First Instance of Tarlac."[3]

The magnitude of the area involved in "free patent" landgrabbing can be seen in the continuation of the account. It was reported that a whole barrio site in Occidental Mindoro was titled in favor of one official allegedly thru a Bureau of Lands Inspector.[4] Two elements of this type of landgrabbing must be noted. First, the means by which it is perpetrated—through free patent, which is a specific provision of the law and the indispensable participation of an officer of the law—the bureau inspector. It can be seen that the law governing acquisition of land by free patent is not only inadequate but it is also susceptible of manipulation by the rich and the powerful against the poor and the deprived.

The customary pattern of land titles racketeering is for the landgrabber to "befriend" local officials of the lands bureau. This includes dining, wining, and wenching the said officials. The landgrabber would unfold his plan of liberating the employees concerned from their drudgery and poverty. If the employees of the Lands Bureau agree to play ball, they must see to it that all public land applications of the mastermind, including report of the investigation and all supporting documents be made to appeal legal thru forgery, falsification and fabrication.[5] The landgrabber, very keenly discerning, knows that he can work within the provisions of the law, and he makes no less than its officers as his instruments, the cooperation of whom he ensures. For nothing is left to chance. If the racketeer fails to "befriend" the employee, he resorts to blackmail. A dossier on the employee is accumulated. Failure to come across means an expose and a most probably loss of job. For people who have something to hide, this is a very effective inducement. But an honest employee is not necessarily free from the landgrab-

[3] Kiunisala, *The 5 Billion Landgrabbing Racket*, 55 PHIL. FREE PRESS 39, 57 (October 6, 1962).
[4] *Id.* at 129.
[5] Kiunisala, *Fake Land Titles*, 55 PHIL. FREE PRESS 10 (October 13, 1962).

ber's clutches, for the latter has almost inexhaustible repository of devices. He has political influence to back him up—to harass an uncooperative employee, like transferring him from one office to another. And if in spite of all these efforts the employee still refuses to be corrupted, then threats of physical violence are made. To prove that these threats can be made good, one need only to recall the mysterious death of a special prosecutor in 1961. What made his death specially significant was that at that time he was hot on the trails of suspected landgrabbers.[6]

Another legal means used by the landgrabber is the *titulo informacion possessoria.* Possessory information used to be obtained either under the Spanish Mortgage Law or under the Royal Decree of February 1894, otherwise known as the Maura Law. When duly inscribed in the registry of property possessory information could be converted into a title of ownership after the lapse of twenty years (later reduced to ten years from the date of its inscription).[7]

The documents of ownership and possessory information are made to appear as if they had been prepared as far back as 1895. The paper used, *papel de catalan,* can reportedly be obtained from a certain Catholic cathedral thru a sacristan and a priest. The ink used is supposed to be made from the soot of a petroleum lamp mixed with the juice of *tangan-tangan.* Sometimes black chinese ink mixed with certain chemical to make it brown is used. The pen may be either a turkey's feather or a draftsman's pen.[8]

A more recently devised way of landgrabbing is the resurvey and subdivision method. In the case of the resurvey method, the landowner causes the resurvey of a parcel of titled property by a private surveyor or a geodetic engineer. In going through the motions of resurveying the titled lands, the surveyor would include not only the area covered by the title but also the adjacent areas which in most cases happen to be public lands.

A similar method is followed in the subdivision method. A piece of titled property is subdivided into a number of lots. Each resulting lot sometimes exceeds the total area of the original titled property. To make matters worse, the various lots are again subdivided with each lot further encroaching upon the portion of the public domain.

Both the resurvey and subdivision methods of expansion are normally followed by the filing of petitions for the cancellation of the old title and the issuance of a new title in the case of the resurvey and as many new titles as the number of resulting lots in case of the subdivision.[9]

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[6] *Ibid.*
[7] Aguinaldo de Romero v. Director of Lands, 39 Phil. 814 (1919).
[8] Kiunisala, *The 5 Billion Landgrabbing Racket, supra,* note 3 at 39.
[9] Tutay, *Landgrabbing Unlimited,* 62 PHIL. FREE PRESS 69 (April 6, 1969).

Akin to the resurvey and subdivision methods is the illegal extension of boundaries like the alteration of landmarks and fences to include the adjoining land occupied and cultivated by the cultural minorities. Others survey land possessed by the cultural minorities and have such areas placed in the usurper's name.

The Senate Committee on Justice headed by Senator Salvador H. Laurel rounds up the list of devices for landgrabbing, thus:

1. By simply attaching, without benefit of any court proceeding, a debtor's land for non-payment of a debt, often inflated at usurious rates of interest.

2. By coercing or duping the illiterate and credulous natives into signing fictitious deeds of sale.

3. By borrowing, without any consideration, the land of the natives, purportedly for temporary cultivation but refusing to return the land later on.

4. By using outright violence in dispossessing the native landholders.[10]

III. *History of our Land Laws*

Having been introduced to the problem, our next concern is the law on the matter. Before conclusions are reached, though, an examination of the prototypes and history of the Public Land Law (Commonwealth Act 141) may be helpful.

Before the Spaniards came, the political unit was the *barangay* headed by the chief or *datu*. The disposition of lands was simply accomplished by the *datu* dividing the settled land among his followers.

After the conquest of the Philippines, the Spaniards became attracted to the vast tracts of fertile lands that they found here. There thus appeared a new divider and distributor in the person of the King of Spain. The King of Spain instructed his representatives here to divide the lands among the conquerors in order to encourage the soldiers to colonize and settle in the Philippines. The *Recopilacion de Leyes de las Indias* was extended to the Philippines. This was the first of a long series of legislative acts intended to compel those in possession of the public lands without written evidence of title or with defective title papers to present evidence as to their possession or grants, and obtain confirmation of their claim to ownership.[11] The Preamble of Law 14 Title 12 Book 4 of the *Recopilacion de Leyes de las Indias* reads:

> "We therefore order and command that all viceroys and presidents of praetorial courts designate, at such time as shall to them seem more expedient,

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[10] Ramirez, *Landgrabbing Problem*, The Manila Chronicle, January 18, 1971, p. 21.

[11] Valenton v. Murciano, 3 Phil. 537 (1904).

> a suitable period within which all possessors of tracts, farms, plantations and estates shall exhibit to them and to the court officers appointed by them for this purpose their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected and all the rest shall be restored to us to be disposed of at our will."[12]

The settlers were given absolute ownership of their holdings after four years of continuous occupation of the land. With a view to encouraging the sale and adjustment of land and developing agriculture more rapidly, the Royal Decree of October 15, 1754 was issued and enforced in the Philippines. Under its provisions all persons who had been in possession of "realengos" since the year 1700 were allowed to have their titles to their holdings confirmed by applying for adjustment or composition. Later on, the Royal Decree of September 21, 1797 was promulgated for the benefit of the natives. By virtue of this order, the natives were allowed to use some of the lands adjacent to the towns for communal labor and pasture (lenguas comunales).

In order to win back her prestige and supremacy in the realm of commerce and navigation, Spain sought to hasten the progress of her colonial possessions especially along the lines of economics and agriculture. As a necessary incident to this elaborate program of colonial domination and exploitation, it was found necessary to make some effective adjustment of private landholdings. The crown issued the Royal Decree of June 25, 1880 which provided that all persons who were in possession of "terrenos realengos" or Royal Patrimonies were to be considered owners thereof provided they could show occupation in good faith and just title for ten consecutive years. In default of good faith and just title, it was sufficient to show possession for twenty years if the land was cultivated or for thirty years if not cultivated. Those persons who could not comply with these requirements were allowed to legalize their occupation by applying for adjustment of their holdings.[13]

Notwithstanding the laudable aims of the different Royal Decrees, orders and instructions issued, it was found out that very few landholders had taken advantage of the benefits thereof. The abuses of the local officials and the many defects found in the system were no doubt responsible for the reluctance of the people to avail themselves of the means offered to adjust and quiet title to their holdings.[14]

To remedy the situation the Royal Decree of February 13, 1894 more popularly known as the Maura Law was promulgated. This decree substantially embraced all former land laws and instructions. Besides the adjustment of titles to lands by composition, this decree provided for two more methods of perfecting rights of ownership to land, namely by purchase and by possessory

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[12] *Id.* at 542.
[13] Articles 1, 4, 5 and 6 of the Royal Decree of June 25, 1880.
[14] *History of the Philippine Land Law*, LANDS GOLDEN BOOK, 69 (Manila, 1951).

information proceedings. The practice of surveying lands and of giving publicity to the proceedings preparatory to the issuance or confirmation of titles was inaugurated.[15]

The regime of the Americans brought about a new set of laws. This started with the Treaty of Paris, by virtue of which all the buildings, wharves, barracks, ports, structures, public highways and other immovable properties in the Philippines which in conformity with law belonged to the public domain were ceded by Spain to the United States.[16] A few years later, the Congress of the United States passed the Philippine Bill of July 1, 1902, which provided for the establishment of civil government in the Philippines. Section 12 of the same act provided that all the properties were to be designated by the President of the United States for military and other reservations were to be administered for the benefit of the inhabitants thereof. Section 13 of the said statute provided that the Philippine Government should classify, according to their agricultural character and productivity the public lands in the Philippines other than timber and mineral lands and make rules and regulations subject to the approval of the United States, for the disposition of said lands by means of lease, sale or other forms of concessions.

In furtherance of said Section 13 and of Section 14 to Section 16 of the Philippine Bill, the Philippine Commission enacted on October 17, 1903 the first Public Land Law, Act No. 926 which provided for the administration and disposition of public lands other than timber and mineral lands. The same provisions of Section 13 of the Philippine Bill of July 1, 1902 relative to the disposition of Public Lands in the Philippines was reincorporated in a condensed language in section 9 of the Act of Congress of August 26, 1916, otherwise known as the Jones Law.

On November 29, 1916 the Philippine Legislature passed the second Public Land Law (Act 2874) (repealing Act No. 926) which was consistent with the new form of government established under the authority of the Jones Law. The Tydings-McDuffie Law which was approved by the United States under the aforesaid treaty with Spain, granted all public lands to the Government of the Commonwealth of the Philippines when constituted except such lands or other property as had been designated by the President of the United States, for military and other reservations of the Government of the United States, and except such lands or other property or rights or interest therein as might have been sold or otherwise disposed of in accordance with law.

On November 15, 1935 the new government of the Commonwealth of the Philippines as provided for in the Constitution was inaugurated. In con-

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[15] *Ibid.* Narciso Peña outlines the requisites of and procedure of acquiring possessory information title in REGISTRATION OF TITLES AND DEEDS 30-31 (1970 ed.).

[16] Article VIII of the Treaty of Paris of December 10, 1898.

sonance with the organization of said new government and with Article XIII, Sections 1 and 2 of the said Constitution, as amended, the present Public Land Law (Commonwealth Act No. 141) was, on November 10, 1936 enacted by the National Assembly, repealing Act No. 2874.[17]

Let us go back to ancestral times as our first temporal consideration in the land acquisition pattern. Here we will not feel a sense of discovery for what happened then was but natural under the circumstances. The land to be acquired was too vast, the settlers too few. Indeed it was just a matter of pointing to what one believed would be enough for his own use. Of course there was the power of the *datu* and one's social class to contend with. We are speaking here though of those who could acquire land, and for all of them there was just one mode — occupation. There was as yet no government of sufficient sophistication which would rival or contest the occupants' claim. Only the personal limitations on one's capacity dictated the extent of the acquisition. Nor would the superiority of a neighbor be much of a hindrance, for the land was still too vast.

When Spain's quest for new territories brought western civilization here, the situation was radically altered. By force of conquest, the Philippines was brought under a foreign sovereign. An alien government was imposed. The lives of the natives had to be ordered according to the laws and decrees emanating from the Crown. But what is of great significance was that Philippine territory became the crown's property. This was made manifest by the following declaration:

> "We having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds or grant be restored to us according as they belong to us, in order that after reserving to us before all what to us, or to our viceroys, audiencias and governors may seem necessary for public squares, ways, pastures and commons in those places which are peopled, taking also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish."[18]

With one decree, the native's freedom of land acquisition was swept away. No longer would this natural capacity to acquire suffice. The Crown's approval had to be obtained. The case of *Valenton v. Murciano* thus tells us:

> "It will be noted that while the state had always recognized the right of the occupant to a deed if he proved his possession for a sufficient length of time, yet it has always insisted that he present proof before the proper administrative officers and obtain from them his deed, and until he did the state remained the absolute owner. The law was, therefore, premised upon

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[17] I. VENTURA, THE PHILIPPINE LAW OF NATURAL RESOURCES 5-7.
[18] Law 14, Title 12, Book 4 of the *Recopilacion de Leyes de las Indias.*

> the assumption that all lands belonged to the Crown unless they had been granted by the King or in his name, or by the Kings who preceded him. This statement excludes the idea that there might be lands not so granted that did not belong to the King. It excludes the idea that the King was not still owner of all ungranted lands, because some private persons had been in the adverse occupation of them. It is apparent that it was not the intention of the above quoted law that mere possession for a length of time should make the possessor the owner of the land possessed by him, without any action on the part of the authorities."[19]

The Crown thereby became the sole entity which could say whether one owned a piece of land or not. The concept of the "titulo" came into being. It was the thing which either completed or gave ownership over a piece of land. We will not delve into the intentions of the *titulo* system for it should be assumed that the Spaniards meant well and hoped that the natives be made secure in their landholdings. It is the result that should bother us more. The system, much more the procedure, of acquiring title to lands was no simple thing to a native who was just initiated into a foreign legal system. Let us for a while take a look at the various titles granted by the Spaniards.[20]

In order to have a *titulo real* or *royal grant,* an application had to be filed with the municipal council. If the latter should approve the application, two deputy magistrates were appointed, who would advise the viceroy or municipal president of the council's judgment in the matter. After consideration thereof by the viceroy or municipal president and the deputy magistrates, all would sign the grant in the presence of the clerk of the council, in order that it could be duly recorded in the council book.[21]

Title by *concession especial* was a special grant by virtue of which the governor general acting for and in behalf of the King, granted title to lands.[22]

To convert possession into ownership, title could be had by *composicion con el estado* or adjustment title. And one had to understand and follow legal provisions like these:

> "Art. 6. Interested parties not included within the two preceding articles may legalize their possession and thereby acquire the full ownership of the lands by means of adjustment proceedings, to be conducted in the following manner;

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[19] 3 Phil. 537, 544 (1904).

[20] This has already been partly mentioned in the earlier part of the paper dealing on the prototypes of the law.

[21] This was a special power the efficacy of which was upheld in view of the uniform construction given by the successive governors-general to the provisions of the Law of the Indies Book 2, Title 15, Law 11 defining the powers of that official and acquiesced in by the King of Spain as empowering him to do whatever the King could do were he present, except where otherwise specially provided, and of the failure of the Spanish authorities notwithstanding the lapse of considerable number of years to call the grant into question, meanwhile imposing taxes upon the land as private property. Jover v. Government, 40 Phil. 1094 (1911).

[22] Law 8, Title 12, Book 4, *Recopilacion de Leyes de las Indias.*

(5) Those who entirely without title deeds, may be in possession of lands belonging to the state and have reduced said lands to a state of cultivation, may acquire the ownership thereof by paying into the public treasury the value of the lands at the time such possessors or their representatives began their unauthorized enjoyment of the same.

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year or the adjustment having been granted by the authorities they shall fail to fulfill their obligation in connection with the compromise by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it reassert the ownership of the State over the lands and will, after fixing the value thereof, proceed to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as the State forest reservation."[23]

And land could not just be bought from the government. Under the regulations for the sale of public lands in the Philippines approved by the Royal Decree of January 26, 1899 it was required that the application to purchase be published in the *Gaceta de Manila* setting forth the description of the lands and giving sixty days within which anyone could present his objection to the sale. A similar notice in the dialect was required to be posted in the municipal building of the town in which the property was situated, besides making it public by the town crier. Any person whose interests might be prejudiced by the sale was required to present his objection with the executive department of the civil administration in charge. If after exhausting all his administrative remedies, the objected sale still should go through, the last resort available was to institute an action in court against the state. It was not permitted to institute the action against the purchaser because the title to the land thus acquired carried the guarantee of the state. The sale was conducted at public auction and awarded to the highest bidder and covered not only vacant lands but also public lands occupied without title.[24]

Possessory information proceedings under the Spanish Mortgage Law could be instituted before a judge of the court of first instance or a justice of the peace, where one claiming the right to possession of real estate was permitted after notice to the adjoining landowners to set forth the fact that he was in actual possession of such real estate and the nature of the title under which he claimed the right. He could call on such witnesses and produce such evidence in support of his claim as he thought necessary and proper. If the evidence thus submitted was satisfactory, and the applicant's claims were not successfully rebutted by some interested person, the proceedings would be approved by the judge, who would order their registra-

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[23] Royal Decree of June 25, 1880.
[24] Peña, *supra*, note 15 at 30.

tion "without prejudice to third persons having a better right in the premises."[25]

Those modes of land acquisition were so fraught with legal complexities and intricacies that they were incomprehensible to the natives. The rules formulated ostensibly for the Indio were not complied with because they could not be understood. Not knowing what the Crown was telling him, the native continued in his customary ways.

Not all, however, were ignorant of the law, and this started all the trouble. For one thing there were the Spaniards who, knowing the language in which the law was written, manipulated it to their advantage. And there were natives who were able to familiarize themselves with the provisions of the law. Between the original occupant and the scheming landgrabber the choice of the Crown was clear. Thus, landgrabbing started. The following account is quite revealing:

> "Late in the nineteenth century the Spanish government attempted to provide an easy means of registering land and obtaining title all without cost. It was hoped this would rectify the plight of the peasantry, most of whom possessed no title to the land they occupied, and who were frequently dispossessed by the *principalia*. Unfortunately the legislation had the opposite effect. The principalia used the opportunity of registering their land to claim extensive areas occupied by their smaller neighbors. Illiterate and ignorant of the processes of the law, the peasants were helpless to protect themselves."[26]

IV. *The Coming of the Americans*

The reign of Spain ended with the nineteenth century. By treaty the Philippines was ceded to the United States. Apparent at once is the fact that there was still one country owning the territory. Indeed it was nothing but a change of masters. And again, there was an apparent love for the natives, and President McKinley could not have expressed it in more endearing terms —

> "[b]ear in mind that the government which they are establishing is designed not for our satisfaction or for the expression of our theoretical views but for the happiness, peace, and prosperity of the people of the Philippine Islands and the measures adopted should be made to conform to their customs, their habits and even their prejudices, to the fullest extent consistent with the accomplishments of the indispensable requisites of just and effective government."[27]

Concern for the natives, though, seemed to have ended in the worded declaration. The stress was put on "the indispensable requisites of just and

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[25] *Id.* at 31-32, quoting the decision in Bishop of Nueva Segovia v. Municipality of Bantay, 28 Phil. 347, 350-351 (1914).

[26] McLENNAN, LAND AND TENANCY 673.

[27] President McKinley's Instruction to the Philippine Commission headed by William Howard Taft.

effective government", leaving much to be desired as far as the "customs, habits, and prejudices of the people" were concerned. The Americans finding themselves owners of the territory had to devise their own modes of land disposition — and so was passed the first Public Land Law (Act 926). The lands were to be disposed of by homestead sales, and leases to actual occupants and settlers. Free patents were to be issued to occupants without titles and provision was made for the completion of imperfect Spanish titles. The homesteader, the buyer and lessee would have to find an area of public land and designate its boundaries. Any citizen of the Philippines, or of the United States, or its insular possessions over 21 years of age or the head of a family might apply for a homestead on unoccupied, unreserved, unappropriated agricultural public lands not more than 16 hectares in area.[28] In so doing, he had to declare that the land was for his own use for the purpose of actual settlement and cultivation; that the land was non-mineral, did not contain valuable deposits of coal or salts and was more valuable for agricultural than for forestry purposes and was not occupied by any other person. The application also had to show as accurately as possible the location and boundaries of the land sought. When the application was filed the Chief of the Public Lands Bureau inquired of the Forestry Bureau and the available land records whether the land described was *prima facie* subject under the law to homestead settlement, and if nothing to the contrary was found the applicant was permitted to enter after payment of a fee. Five years of residence and cultivation were required before the applicant became entitled to apply for a patent. Another fee was required on the award of a patent. If the applicant complied with all requirements, he did not receive a patent until the land was surveyed and platted under the direction of the Bureau of Public Lands. The cost of the survey was borne by the Philippine Government. If at any time after the filing of the application and before the expiration of the legal period for the making of final proof it was proved to the Bureau of Public Lands that the land was under the law not subject to homestead entry, or that the applicant was not a qualified person, or that the homesteader had failed to comply with the law as to residence and cultivation, the entry was to be cancelled. A person proving charges against the application had a preferred right to entry for sixty days.

The purchaser like the homesteader had to locate and apply for a suitable tract. The Bureau of Public Lands after making its checks, appraised the land and advertised to sell by public bidding. No bid for less than the appraised value of the land was acceptable. The applicant who had started the proceedings did not receive the land unless his bid was at least equal to the highest received. Part of the purchase price might be paid in deferred

[28] What are reproduced here are the provisions of the first Public Land Law. These were discussed by Alice Morrissey McDiarmid in her work entitled *Agricultural Public Land Policy In the Philippines During the American Period*, 28 PHIL. L. J. 851-888 (1953).

payments over five years. No patent was issued until the land had been surveyed and platted. If the lands had not already been surveyed the cost of the survey was to be borne by the purchaser if a corporation, by the government if an individual. No patent was issued until after five years following the award and before its issuance the purchaser was required to show actual occupancy cultivation, and improvement for five years. In case of abandonment for more than one year of failure to comply with other requirements the land reverted to the government and all payments were forfeited.

The conditions of application and the procedure in granting a lease were similar to those for a sale, but there was no bidding for leases.

There were also provisions for the natives who had continuously occupied and cultivated a portion of the public lands since August 1, 1898 or for three years previous to that date and continuously since July 4, 1902. They were to be granted free patents and were not required to pay for their lands.

These procedures having been laid down by the law, let us see how the Filipinos reacted. The total number of homestead applications received between July 26, 1904, when the law went into effect and June 30, 1913 was 19,313. Of this small number, 4470 were rejected, cancelled or withdrawn. On June 30, 1913 over half (3,333) of the applications pending were being held for the reports of the forestry bureau and others for correction of the application (1,018) or payment of the fee (1,636). In the nine years 8,225 entries had been allowed and 58 patents for homesteads totalling 213 hectares had been granted. In the same period, 892 applications for sales had been filed and 170 patents for sales completed; the total area sold was 11,412 hectares. During these years, 722 free patents for 3,976 hectares were issued.[29]

An American observer, McDiarmid, has one word to sum up those figures: disappointing. And the result could not have been otherwise. The Filipino of the American regime was still the Filipino under the Spaniards. He was still the uncomprehending native unable to fathom the legalism imposed by the Americans. Moreover, understanding of the law alone could not have solved his land problems. For the new modes opened to him required two things: first was to break away from the tradition of living close together in one-family villages, and, second was the need of sufficient capital to live and cultivate the area thus acquired. But because somehow land has to be acquired, he had to do it his own way — occupation. For him homesteading, sales and lease existed merely on paper.

But then he had to reckon with a recurring problem. Some people knew not only the law but also how to use it to their advantage. They were able to explore and exploit whatever possibilities and opportunities

[29] These figures are taken from the REPORT OF THE PHILIPPINE COMMISSION, 1913, pp. 154-165 as quoted by McDiarmid in her work.

the law offered them. All could have been well and good if the uninitiated many and the assimilated few did not meet head on. But the conflict in the long run would be inevitable. And again, like before, the governing authority's choice was clear — the one who obeyed its mandates was rewarded for having done so. The persistence of the rest in following customary law left them without lands. Thus came about the second period of landgrabbing. The result is so vividly illustrated in the following account.

> "I've seen old men weep, tears streaming down their ancient care-worn faces, when they found out the government was not for them. Once in the not so distant past, they migrated down from the barren mountains of Ilocos, hoping to find land in eastern Pangasinan. They found the land; they felled trees, burned cogon, and on this new land they raised their families. But they didn't know what markers and Torrens titles were, to them, to their neighbors, the only markers that identify their farms were the mounds, the old trees which they spared at the turn of a creek, a clump of bamboo, an old dike – these were the markers which they and their neighbors respected. But some learned men who knew that the cadastral surveys could bring them new wealth ignored these landmarks. In the survey plans which they submitted, they gobbled up the farms of the settlers and when the titles were ready, the old landmarks – the trees, the mounds, the creeks – were abolished and the immigrants found themselves tenants."[30]

V. *The Present Unrest*

The Americans though did not stay longer to witness more tragedies. Dictated by their own interest, they granted political independence. But they made sure that the imprint of the American way of life would be indelible in the Filipino.

The system of laws and the laws themselves were therefore copies of the American original. The present land law is no exception; in fact it was enacted during the Commonwealth era. And so again the rules are: (1) homestead settlement; (2) sale; (3) lease; (4) confirmation of imperfect or incomplete titles thru (a) judicial legalization and (b) administrative legalization (free patent). There would thus be little need of discussing how these rules for acquisition operate. Glancing back at the first Public Land Law provisions would give us the idea and concept of acquisition in the subsequent law.[31] There is still the multiple variety of modes, each one with its own complexities and intricacies.

The Westernized Filipino ushered in the third period of landgrabbing, larger in scale, wider in scope and higher in incidence.

What happened to the Philippines all through the years? Let us first take a look at the population of the country, how it was, how it

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[30] F. Sionil Jose, *The Philippine Agrarian Problem*, 9 COMMENT, 102-103 (1959).

[31] It might be well to mention that the choice of the lot to be occupied is left to the government and that it would suffice if the homesteader just lived in the municipality where his lot is situated, but then, even these have been true as far back as Act No. 2874 (1919).

increased and how many more it would probably increase. The following data would be helpful:

Population of the Philippines Census Years 1903 *to* 1960[82]

Census Dates	*Population*	*Average annual rate (%)*
March 2, 1903	7,635,426	1.90
December 21, 1918	10,314,310	2.22
January 1, 1939	16,000,303	1.91
October 1, 1948	19,234,182	
February 15, 1960	27,087,685	3.06

Our rate of population increase places the Philippines among the ranks of the fastest growing countries of the world. Since the country's territory is not getting any bigger, the hunger for land is more intense at the present. In the years past, it may have been the thrill of adventure and the pioneering spirit which impelled our people to make settlements. Today necessity dictates it. Forests must be cleared so that a home may be built. A parcel of land must be tilled to secure the bare essentials of life. To emphasize the importance of land acquisition, one need only to note that the Philippines is still an agricultural country. We are still dependent on the products of the soil.

We will next consult the economic graph of the country. We will see a lopsided income structure that makes for an oligarchy in the following figures:[83]

Annual Income	*Percentage (in terms of families)*
over ₱100,000	.01
over ₱25,000	.09
between ₱5,000 and ₱2,000	19.9
under ₱2,000	78.12
under ₱1,000	17.7
under ₱500	11.6

The figures above constitute what is now familiar to us as the Philippine economic pyramid. Perched on top are the few super rich who live in luxury and abundance. Down below are the many 'many' who are either poor or "super poor" during whose lifetime the abundance of the rich is experienced only in hunger-induced hallucinations. These are the people who have been baptized as the *common tao.* Unskilled as a rule, they have to depend upon the products of the soil yielded through yet unimproved native

[82] The Population and Other Demographic Facts of the Philippines, Office of Statistical Coordination and Standard of the National Economic Council of the Republic of the Philippines, September, 1963, p. 2.

[83] Quijano de Manila, *The Ruling Money,* 63 PHIL. FREE PRESS 2 (August 29, 1970).

means of cultivation. And as said before, because of their number, the country is essentially an agricultural one. Thus it is said that "we are still an agricultural country of low productivity, with 58% of the labor force tied up in food production, only 11% engaged in manufacture. We have no capital goods industry to speak of; our industry was more assembly than manufacture and our manufacture limited to durables like furniture and non-durables like cigarettes."[34]

When we look into how the common people acquire land for their means of livelihood we would not be too surprised at their poverty. They have, with undiminished persistence, utilized an old mode — that of occupation. They either do not know that the law has prescribed other forms or they do not know how to acquire land in the form prescribed. By now, these statements should have grown familiarly repetitious. But this can not be helped, for poverty leads to illiteracy and ignorance. Proper education requires ample finances. Books have to be bought and tuition fees have to be paid. To people who have barely enough to secure the essentials in life, these things are luxuries they cannot afford. Though it may not have been their own choosing, they have to remain unlettered.[35]

Unfortunately for those people the present law on land acquisition needs literate subjects. And because there are those who can manipulate laws trouble is spawned. This is the same picture that we saw in the Spanish and the American regimes. The present version, however, is of bolder relief. With the exploding population pushing the hunger for land to its highest intensity ever, the present land disputes should be and are indeed oftener and more bitterly fought. The poor and the ignorant are determined to hold on to the land they have occupied. For them the Public Land Law does not exist or if it does, is irrelevant to them. The rich and the educated whose number has comparatively grown, can, on the other hand, use the law to advantage. Ample finances and political power enable

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[34] *Id.* at 3.

[35] The Office of Statistical Coordination and Standard furnishes us with the following data:

1960 *Percentage Literacy of Persons* 10 *Years Old or Over by Sex and Age.*

Age	Both Sexes	Male	Female
10 and over	72.0	73.6	70.6
10-14	72.0	70.7	75.2
15-19	85.3	84.1	86.4
20-24	84.6	85.3	84.0
25-29	78.1	80.2	75.0
30-34	75.2	77.9	72.7
35-39	68.0	71.3	64.8
40-44	64.7	68.4	61.1
45-49	61.6	66.3	56.8
50-54	57.1	63.5	50.3
55-59	52.1	59.8	44.0
60-64	43.2	51.1	34.1
65-or over	31.2	39.2	23.2

them to exploit the law. There are various modes of land acquisition for them and they can make use of one or all with facility.

It is clear that the present law affords opportunities for, if it does not in fact abet, landgrabbing. Somehow a change should be made. Of course, the fault is not totally the law's. For as T. A. Johnson observes,[36] the limitations of the law are evident.

VI. *Proposed Solutions*

Landgrabbing cases are not limited to circumvention and/or violations of the Public Land Act. There are other palpable ways by which interested persons acquire title to portions of the public domain, without applying for any patent to such portions. The more recent and the more controversial cases of landgrabbing have been accomplished through channels other than those provided in the Public Land Act.

A perusal of the recent land controversies shows that public lands have been titled by interested persons through the Land Registration Commission. There are two ways resorted to by interested parties obtaining titles to public domain: First, by the alleged resurvey and/or subdivision of titled properties, approved by the Commissioner of the Land Registration Commission and subsequently submitted to the court; second, the approval of resurvey and subdivision plans, together with the technical descriptions, by the Commissioner of Land Registration Commission and the covering order of the Commissioner of Land Registration to cancel the old title and issue new certificates of title over the resulting lots. It will be noted that in both cases, the interested parties started the resurvey or subdivision of a registered land, often of a small area, and proceeded to include adjacent lands of the public domain. The Commissioner of Land Registration Commission invokes Section 44 of the Land Registration Law as amended by Republic Act No. 440 (1950) as the authority to approve resurvey plans. The pertinent paragraph of section 44 of Act 496 (1902) as amended by Republic Act No. 440 (1950) provides that:

> "Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office (now Commissioner of Land Registration Commission) a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need of them and that the plan has been approved by the Chief of the General Land Registration Office (now Commissioner of Land Registration Commission), or the Director of Lands as provided in section fifty-eight of this Act, the register of deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets

[36] Johnson, *Reflections on Solving Social Problems*, 136 ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 48 (1928).

and/or passageways, no new certificates shall be issued until said plan has been approved by the CFI of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the GLRO, may grant the petition, subject to the condition, which shall be noted in the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval of the court first had, or may render such judgment or justice and equity may require."[37]

A cursory study of this section points out that the Commissioner of Land Registration Commission has the authority to approve subdivision plans only if no streets or passageways are indicated or no alteration of the perimeter of the land is made. It, therefore, follows that the Land Registration Commissioner cannot justify under said section the act of enlarging the area of a registered land by means of resurvey and subdivision.

A resurvey is a survey made of a previous survey for the purpose of tracing and marking the former location of its corners and boundary lines guided by evidence on the ground, maintaining as much as possible its former shape and area so as not to conflict with the adjoining properties, without using its former technical description as the same are either not available or disregarded. The resurveys approved in several controversial cases did not adhere to the standard definition of a resurvey as followed and defined by the Bureau of Lands. In some resurveys the former shape and area of the lots have not been maintained nor conflict with adjoining lots avoided. These resurveys encroached on the portions of the public domain.

By the simple expedient of resurvey and subdivision of registered lands, certificates of title have been issued to include areas which are not capable of registration. Alienable and disposable public lands can be disposed of only in accordance with the Public Land Act. There is no provision under the Land Registration Act nor under any other law which authorizes the Land Registration Commissioner to make a resurvey of a registered land whereby the original area is increased to a large extent.

Section 3 of Republic Act No. 1151, the law creating the Land Registration Commission provides for the general functions and powers of the Commissioner. Under said section "the Commissioner of Land Registration shall take over all the powers and functions as are now conferred upon the Chief of the General Land Registration Office, as well as the powers and functions of the Judge of the Fourth Branch of the CFI of Manila in all matters heretofore submitted to it for resolution under section two hundred of the Administrative Code."[38]

[37] Act No. 496 (1902), sec. 44, as amended by Rep. Act No. 440 (1950), sec. 1.
[38] Rep. Act No. 1151 (1954), sec. 3.

Section 200 of the Revised Administrative Code has been incorporated in section 4 of Republic Act No. 1151. Under the section above mentioned,

> "When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of Deeds with reference to any such matter, the question shall be submitted to the Commissioner of Land Registration either upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Registers of Deeds. *PROVIDED, HOWEVER,* that when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof."[39]*

It is very clear that whatever judicial power the Commissioner of Land Registration may exercise, it is limited to a *consulta* case brought by a party in interest relating to the steps or actions taken by the Register of Deeds on the instrument presented for registration. The approval of a resurvey plan and the subsequent subdivision of a registered land with a corresponding increase in land area is not a decision in *consulta* case within the contemplation of Section 200 of the Revised Administrative Code as amended by Section 4 of Republic Act No. 1151. The title issued in accordance with the resurvey and subdivision is therefore void.

In the case of *Legarda v. Saleeby,*[40] the Supreme Court emphasized that the nature and purpose of land registration is really to quiet title, to put a stop forever to the question of legality of title so that he who has a title may rest secure and he need not sit in the *mirador de su casa,* not wait in the portals of the court, because as long as a person has a Torrens title, that serves as an indefeasible evidence of ownership. But due to recent developments, the faith and credit given to a Torrens title is slowly being eroded. People who deal with registered land would hesitate to rely on the Torrens title but will look behind the history of that Torrens title.

To prevent repetition of anomalies in the Land Registration Commission, Section 44 of the Land Registration Commission should be amended, so that the approval and verification of resurvey and subdivision of registered land should be entrusted to the Bureau of Lands which shall be responsible

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[39] *Ibid.,* sec. 4.

* *Amendment.*

An interested person aggrieved by the decision of the Land Registration Commission may appeal to the Court of Appeals within 15 days from receipt of notice of the award, ruling, order, decision or judgment. As amended by Rep. Act No. 5434 effective September 9, 1968.

[40] 31 Phil. 590 (1915).

for the approval of the survey plans. The Commissioner of Land Registration should serve only as a counter-check to determine whether there is an overlapping of boundaries or encroachment on the public domain with power to recommend to the Bureau of Lands rectification of any discrepancy appearing in the plans.

The conflicting and overlapping functions of different agencies entrusted with the disposition and alienation of our public lands made it possible for speculators and landgrabbers to embark in large-scale and wanton landgrabbing. For instance, while public lands may be disposed of only in accordance with our Public Land Act[41] and while the administration and disposition of lands of the public domain has been placed under the Bureau of Lands,[42] nevertheless, if we examine the provisions of Republic Act No. 3844 (Agricultural Land Reform Code), we find an overlapping of functions between the Bureau of Lands and the Land Authority, two agencies at present entrusted with the implementation of the land distribution policies of the Philippine Government. A cursory study of the powers and functions of the Land Authority as set out in Section 51 Republic Act No. 3844 will show the grant of authority and powers traditionally vested in the Bureau of Lands. This authority in the main consists of both survey and land administration and disposition — the two principal functions of the Bureau of Lands. Thus, in Section 51 of Republic Act No. 3844, the Land Authority has been granted authority among others to help bona fide farmers without lands or agricultural owner-cultivators of uneconomic-sized farms to acquire and own economic family-sized farm units; to administer and dispose of agricultural lands of the public domain under the custody and administration prior to the approval of the Code and such other public agricultural lands as may hereafter be reserved by the President of the Philippines for resettlement and sale; to develop plans and initiate actions for the systematic opening of alienable and disposable lands of the public domain for speedy distribution and development by deserving and qualified persons or corporations; to give economic family-sized farms to landless citizens of the Philippines who seek, deserve, and are capable of cultivating the land personally; to reclaim swamps and marshes, obtain title thereto whenever possible and subdivide them into economic family-sized farms for distribution to deserving and qualified farmers; to undertake measures which will insure the early issuance of titles to persons or corporations who have actually settled and cultivated disposable and alienable lands of the public domain; to survey, subdivide and set aside lands or areas of landholding under its administration for economic family-sized farms, large-scale farm operations, town sites, roads, parks, government centers and other civic improvements as circumstances may warrant and to submit subdivision survey plans conducted either by the government or private surveyors on parcels of lands under its administration for

[41] Com. Act No. 141 (1936), sec. 2.
[42] *Ibid.*, sec. 3.

verification and approval either by the Director of Lands or by the Land Registration Commission; to conduct land capability surveys and classification of entire country and print maps.[43]

These powers and functions are duplication of the powers and functions given to the Bureau of Lands, and the same law, far from removing the identical duties and responsibilities from the Bureau of Lands, except as to lands formerly under the custody and administration of the NARRA, specifically requires the Land Authority to submit subdivision survey plans conducted either by the government or private surveyors on parcels of lands under its administration for verification and approval either by the Director of Lands or by the Land Registration Commission, and unless otherwise provided in Chapter VIII (Land Capability Survey and Classification) of the Code, "the provisions of law covering the survey and registration of land shall remain in full force and effect."[44] Significantly, in Article III (Distribution of Agricultural Lands of the Public Domain) of the Code, the Land Authority is likewise required to "furnish the Bureau of Lands with the duplicate records of proceeding on applications for the sale or other disposition of public agricultural lands under its administration."[45]

At present these two agencies independent of each other undertake the issuance and distribution of patents to various individuals often resulting in double issuance of title over the same parcel of public land. Since each agency acts on its own independent of the other, there is no way of checking or verifying whether the parcel of land under consideration has already been allocated to individuals. It is only when the two claimants find out that both have been issued individual patents over the same parcel of land that discrepancy is discovered.

Some of the present day confusion in the implementation of our land laws can be traced to the overlapping functions of the different governmental agencies charged with the disposition, management, and registration of titles on land both private and public. Remedial legislation is in order to check these conflicting and overlapping functions. The disposition and management of our public lands should be vested in only one agency. At present, the Land Authority is the most suitable department to be entrusted with this function taking into consideration its structural organization and the vast powers at present it already enjoys. The Land Authority should absorb the personnel of the Bureau of Lands performing land management functions.

With the transfer of its power to dispose and alienate public lands to qualified individuals, the Bureau of Lands can take charge of the survey and mapping functions together with the sole authority to approve and

[43] Rep Act No. 3844 (1963), sec. 51.
[44] *Ibid.*, sec. 38.
[45] *Ibid.*, sec. 72.

verify all subdivision plans of both public and private lands being presented to the Land Registration Commission and those undertaken under the supervision of the Land Authority. With its technical work of survey and mapping, the Bureau of Lands could hasten the survey of all lands in the Philippines which since 1901 up to the present only covered 1/3 of the 30,000,000 hectares of the total land area of the entire Philippines.[46]

The allocation and synchronization of functions between the Land Authority and the Bureau of Lands should result in a more scientific and organized disposition of our public lands and minimize if not totally eliminate the pernicious system of landgrabbing through double issuance of patents over the same portion and the prevailing purchase of overlapping of boundaries.

The establishment of an independent land court with the sole function of adjudicating controversies involving land will serve as a giant step to the resolution of landgrabbing so prevalent in our society.

At present, civil actions involving the title to or possession of real property, or any interest therein fall under the original jurisdiction of the Courts of First Instance except forcible entry and detainer cases which is vested with the city and municipal courts.[47] Courts of First Instance also act as Land Registration Courts in the approval of application for a Torrens title under Act 496.[48] Courts of First Instance have jurisdiction over cadastral cases originally vested in the defunct cadastral courts.[49]

While the jurisdiction of municipal courts over cadastral or land registration cases is now recognized in cases where there is no opposition or controversy or the value of the contested lots does not exceed ten thousand pesos, this concurrent jurisdiction has not, in the least, hastened the disposition of land cases in our Courts of First Instance.[50] The jurisdiction of the Courts of First Instance under the Land Registration Act (Act 496) and the Cadastral Act (Act 2259)[51] and other cases involving title to or possession of any interest in land should be transferred to an independent land court if we are to have a realistic and practical solution to the clogging of the dockets of our Courts of First Intsance.

Landgrabbing under the present state of the law will continue unabated if the disposition of land controversies will not be transferred to a court

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[46] BUREAU OF CENSUS & STATISTICS, 1960 CENSUS OF THE PHILIPPINES.

[47] Rep. Act No. 296 (1948) as amended, sec. 44(b).

[48] The original Land Registration Court has been abolished and its functions under Act No. 496 transferred to the Courts of First Instance; Sec. 2, Act No. 496 as amended by Sec. 1. Act No. 659; partly repealed by secs. 10 & 26(a), Act No. 2347 (1914); by secs. 161 et seq., Act No. 2711 (1917), as amended by Act Nos. 2941 (1921), 3107 (1923) and 3334 (1926), and sec. 88, Rep. Act No. 296.

[49] Rep. Act No. 296 (1948), sec. 44.

[50] Rep. Act No. 296 as amended by Rep. Act Nos. 644, 2613, 3090, 3828, sec. 88.

[51] Act No. 2259 (1913).

which shall devote its full attention to these matters. Courts of First Instance often take a long time in deciding civil cases involving land. This is true partly because land cases are usually relegated to last priority, as criminal cases, election cases and special civil actions are given priority. Another reason for the long delay in resolving land cases may be traced to the ignorance of some of our Court of First Instance judges of our land laws.

In cadastral cases alone, there are over 500,000 contested lots pending before the different Courts of First Instance in the Philippines awaiting adjudication.[52] Disposition of these cases alone will take ten to twenty years.

Of the 1,414 municipalities and 58 cities in the Philippines, so far only 425 have been surveyed and placed under the compulsory registration proceeding provided by the Cadastral Act. The Cadastral Act was passed in 1913, or sixty years ago. Up to the present only 1/3 of the whole country has been surveyed and is being adjudicated. At the rate lots are being titled and adjudicated to bona fide claimants, it will take more than a century before the entire Philippines is placed under a complete Torrens System.[53]

[52] Valdellon, *The Role of the Bureau of Lands in the Economic Development of the Philippines*, 16 ECONOMY AND INDUSTRIAL JOURNAL 12.
[53] *Id.* at 13.