LAW AND NATIONHOOD: TRANSCENDING THE CRACKS IN THE PARCHMENT CURTAIN

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> Custom must either grow to fit the law or it must actively reject it; law must either grow to fit the custom, or it must actively reject it. It is in these interstices that social growth and social decay take place.
>
> Bohannan, the differing realms of law.

I. INTRODUCTION

Dr. William Henry Scott coined the term "parchment curtain"[1] to denote the official documents and chronicles of the Spanish colonial regime which then had the monopoly and control of the production of source materials on Philippine history and culture (ancestry). This lamentable situation aggravated the difficulty of forming a real history, a clear picture of the Philippine colonial past. Yet these documents, being official statements or versions which were often biased colonial interpretations contain, according to Scott, "cracks" or "chinks" through which "fleeting glimpses of Filipinos and their reactions to Spanish dominion may be seen."[2]

The Filipino situation under American colonial regime was not any better. This led Filipino historian Renato Constantino to conclude that the Filipinos "were captive of Spanish and American historiography, both of which inevitably viewed Philippine history through the prism of their own prejudice."[3]

Thus it would not be difficult to see that part of this "parchment curtain" are the very laws once imposed by Spanish and, subsequently, American colonial powers which to the present have a pervasive influence on our national legal development. Only that we need not look for "cracks" or "chinks" in these laws to get a glimpse of Filipino reaction to colonial domination, because these laws form a cohesive whole which blankets the Philippine national legal order and, consequently, its national life. An example of this is the Philippine Civil Code enacted by the legislature in June 18, 1949 substantially a reproduction of the Civil Code of Spain, which was mandated by the King of Spain to take effect in the Philippines on 31 December 1889.[4]

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[1] SCOTT, CRACKS IN THE PARCHMENT CURTAIN 5 (1982).

[2] *Ibid.*

[3] CONSTANTINO, THE PHILIPPINES: A PAST REVISITED (1975).

[4] Balane, *The Spanish Antecedents of the Philippine Civil Code*, 54 PHIL. L. J. 1, 41-42 (1979). Professor Balane's research provides a detailed account of the law and its development with focus on the historical precursor of the Spanish Civil Code of 1889 and later the Civil Code of the Philippines.

According to Holmes,

> [I] t is perfectly proper to regard and study the law simply as a great anthropological document. It is proper to resort to it to discover what ideals of society have been strong enough to reach final form of expression, or what have been the changes in dominant ideals from century to century.[5]

This statement reflects the process by which supposedly civilized societies unfolded and how modern "democracies" emerged or created. Holmes believe that an idea or an expression of society reaches its final form only in the form of law at the national level. It seems that in the market place of contending ideas or expressions, that which finally wins out is expressed in the form of law. It goes without saying that such expression or ideal is subscribed to and assented by popular will in a democratic society.

Holmes' statement places great premium on the democratic process and was made in view of evolving democracies. It becomes particularly relevant in making clear that even if there is an expression of an ideal in its final form (which is law) in a given society, the same may not be the dominant ideal which is expressive of a genuine popular will.

Within the rivets of the parchment curtain are contained the law which, though final in form and official in character for being honed with colonial authority, may not have been the genuine will of the Filipino people.

However, for purposes of tracing these laws and their development, their final form and official character do not pose difficulty in the objective determination of what "ideals" or "expressions" may have been in a given historical period. In other words, one simply has to look at the law to know whether, legally speaking, such law was the accepted legal norm of a given society in a given historical period. Up to that point, whether or not that law was the legitimate expression of the people's will and aspirations is not an issue. Legally, therefore, the fact "that there was no Filipino government challenging *de jure* Spanish control of the archipelago in the 1600 is fairly obvious, but that the population was submissive to that control is not obvious."[6]

In another rather perplexing historical fact, historians do not have a record of the Filipino minority–majority division; yet their sources are limited to records compiled by Spanish-American chronicles.[7] As to how the concept "ethnic minorities" legally evolved and became accepted as a legal fact is still to be known. Research studies generally magnify the majority-minority differences but do not answer why these differences arose; while early jurisprudence refer to our ethnic minority brothers as "uncivilized, backward people,

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[5]HOLMES, LAW IN SCIENCE & SCIENCE IN LAW (1899).

[6]SCOTT, *History of the Inarticulate* in CRACKS IN THE PARCHMENT CURTAIN 22 (1982).

[7]SCOTT, *Creation of Cultural Minority* in CRACKS IN THE PARCHMENT CURTAIN 28(1982)

with barbarous practices and of a low order of intelligence."[8] But one thing has been established with certainty: that these Filipinos called "ethnic minorities," now referred to as "national cultural communities,"[9] have consistently "resisted assimilation into the Spanish and American empires, and therefore retained more of the culture and customs of their ethos, or tribe, than their colonized brothers who eventually outnumbered them."[10]

Scott would assert that as a matter of archelogical fact, there are no existing real cultural differences at the time of Spanish conquest.[11] Gowing would bolster this assertion by claiming two distinct similarities among the inhabitants of the Philippines: 1) that we all belong to the same *racial stock* (except for the negritos), and 2) we are all indigenous[12] at the time of Spanish conquest to the present.

The object of this article, is therefore, to clarify certain traditional and conservative viewpoints of law, combine it with that of the anthropological understanding of law in its various manifestations addressing specifically the problems and needs of a multi-ethnic society in its struggles for development and national unity.

II. LAW AND SOCIETY IN LEGAL ANTHROPOLOGY

The conflict of opinion on the meaning of law has been for centuries an object of raging definitional debate. In political theory, some define law as the minimal rules of conduct acknowledged by members of that society, while others would need the formal commands of a governing authority to identify it. Therefore, to Locke, there is law in primitive societies and to Hobbes, there is "no law without a political organization."[13] Marx and Engels would admit that law does exist in primitive communities.[14]

Among anthropologist, Radcliffe-Brown had defined law in procedural terms such that it is a means of "social control through the systematic application of the (physical) force of politically organized society."[15] Others would

[8] *See.* Rubi v. Provincial board of Mindoro 39 Phil. 660, 680 (1919); U.S. v. Tubban 29 Phil. 434, 436 (1915).

[9] CONST., Art. XV, Sec. II.

[10] Scott, *supra* note 6.

[11] Scott, *supra* note 6.

[12] Gowing, *Moros and Indians: Commonalities of Purpose, Policy and Practice in American Government of Two Hostile Peoples,* PHIL. QUARTERLY OF CULTURE AND SOCIETY 24 (1980).

[13] *See* Nader, *The Anthropological Study of Law* 67 AM. ANTHROPOLOGY 4 (1965).

[14] Moore, *Marxian Law in Primitive Society* in CULTURE AND HISTORY ESSAYS IN HONOR OF PAUL RADIN 642-662 (1960).

[15] RADCLIFFE-BROWN, PRIMITIVE LAW (1933).

define law in its broadest sense as "most processes of social control".[16]

Among legal scholars on the other hand, they would identify, as Hart does, the salient features of a legal system as follows:

> They comprise (i) rules forbidding or enjoining certain types of behavior under penalty: (ii) rules requiring people to compensate those whom they injure in certain ways; (iii) rules specifying what must be done to make wills, contracts, or other arrangements which confer rights and create obligations; (iv) courts to determine what the rules are and when they have been broken, and to fix the punishment or compensation to be paid; (v) a legislature to make new rules and abolish old ones.[17]

He goes on to explain that if the question "what is law" has persisted, it is because besides the clear standard cases constituted by the legal system of modern states, there exist cases of doubtful "legal quality." Foremost of these are primitive law and international law. Hart explains that

> [I]nternational law lacks a legislature. States cannot be brought before international courts without their prior consent, and there is no centrally organized effective system of sanctions. Certain types of primitive law, including those out of which some contemporary legal systems may have gradually evolved, similarly lack these features, and it is perfectly clear to everyone that it is their deviation in these respects from the standard case which makes their classification appear questionable.[18]

Although anthropologist are no longer attempting to prove the absence or presence of law in primitive societies by reference to any single definition of law, there are recurrent issues – or a common trend – that have become a constant focus of argument about the nature of law. Hart would outline them as: "(1) How is law related to orders backed by threats? (2) What are rules, and to what extent is law an affair of rules?"[19] Stone provides the following attributes usually associated with the phenomenon commonly designated as law: law is (1) a complex whole, (2) which always includes norms regulating human behavior, (3) that are social norms, (4) the complex whole is 'orderly' and (5) the order is characteristically a coercive order (6) that is institutionalized, (7) with a degree of effectiveness sufficient to maintain itself.[20] Pospisil examines several attributes of law: "the attribute of authority, that of intention of uni-

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[16] Nader, *supra* note 13.

[17] HART, H.L.A., THE CONCEPT OF LAW (1961).

[18] *Ibid.*

[19] Hart, H.L.A. *Definition & Theory in Jurisprudence* 70 LAW QUARTERLY REV. 37. Also cited in Bohannan, *The Differing Realms of Law* 60 AM. ANTHROPOLOGY (1965).

[20] STONE, SOCIAL DIMENSION OF LAW AND JUSTICE (1965)

versal application, that of *obligation* (the right-obligation cluster), and that of sanction."[21] In his view, "the legal comprises a field in which custom, political decision, and the various attributes overlap, though each may be found extending outside that overlapping field, and there is no firm line, but rather a "zone of transition", between that which is unquestionably legal and that which is not."[21A]

Methodologically, however, modern anthropological studies of law insists that law cannot be understood apart from its cultural context. It is here where Llewellyn and Hoebel (1941), as well as Bohannan (1957) made major constructive contributions. Llwellyn and Hoebel used the trouble-case method where in they assert that "it is in case of trouble which makes, breaks, twists, or flatly establishes a rule, an institution, an authority."[22] To them, it is the safest main road into the discovery of law. They see society and culture in the law but they do not seek to relate patterns of law with any other aspect of society.

Bohannan, on the other hand, strikes the very core of the translation and meaning problem in anthropology by attacking Gluckman's method of discussing tribal law using the principal concepts of Western jurisprudence. To Gluckman "the very refinement of English jurisprudence makes it a better instrument for analysis. . . than are the language of tribal law."[23] Bohannan contends that "to describe and analyze the system of justice and judgment of one culture through the interpretation of a system indigenous to a second society can only lead to confusion and distortion."[24]

The study of change and the law is another problematic area in legal anthropology. This has been

> pursued in terms of the evolution or development of particular system, in terms of the differences in growth between the ideal and real aspects of law and their relative rates of change and more recently, in terms of the contact between legal systems; such a study may also examine the change of law due to internal rather than external or acculturative influences; and such change may be directional, cyclical or repetitive.[25]

This brings us to consider the differing perspective of law between anthropologist and administrative legal specialist. While the former is not only interested in understanding and describing a changing situation in order to understand the

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[21] POSPISIL, THE KAPANKA & THEIR LAW (1958).

[21A] *Ibid.*

[22] LLEWELIYN,, and HOEBEL. THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE 21 (1941)

[23] Gluckman, M. *African Jurisprudence.* 75 THE ADVANCEMENT OF SCIENCE 439, 454 (1962).

[24] Nader, *supra* note 13, at 11.

[25] *Id.*, at 13.

implications that follow from change, he (or at least a third world anthropologist) is also latently concerned, if not manifestly, with the practical problems confronting new nations and in arriving at one truly national law.[26] On the other hand, the administrative legal specialist, according to Nader, "is principally concerned with policy questions, which *ipso facto* seems to mean that they do not carry out depth studies."[27] Of course, are excepted certain great legal minds like "Pound, to be remembered for his contributions to the analysis of the legal system; Brandeis, to be recalled in connection with his analysis of legal change arising in response to modern technology; and Oliver Wendell Holmes, a comparative ethnographer par excellence."[28]

> Reisman believes, and credits anthropologist with the fact that they are not likely to harbor the naive assumption that law, or any other institution, serves only a single function – say that of social control and that any other functions, which in fact it serves are excrescenes or 'contradictions.' The concept of ambivalence is part of his equipment he tends to search for latent functions, transcending the ostensible.[29]

Nonetheless, the functions of law have generally been assumed to be universally the same, the essence of which Aubert states: "law seems to have two distinct although interrelated functions: to create conformity with norms, and to settle conflicts."[30] The dynamics of the inter-relationship as it affects society is that custom, or norms for that matter, "must either grow to fit the law or it must actively reject it; law must either grow to fit the custom, or it must ignore or suppress it. It is in these interstices that social growth and socially decay takes place."[31]

These "interstices," which carry the ominous ring of social decay, are what this article seeks to focus in as we, in a society, begin to rationalize our national priorities and policies. Our attempt is necessary if we are to proceed *democratically*[32] towards social growth and nationhood from the viewpoint of law as

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[26] *Ibid.*

[27] *Id.*, at 14.

[28] *Id.*, at 15.

[29] REISMAN, D., INDIVIDUALISM RECONSIDERED AND OTHER ESSAYS 445 (1954).

[30] Aubert, V., *Researches in the Sociology of Law* 7 THE AM. BEHAVIORAL SCIENTIST 16, 17 (1963).

[31] Bohannan, *supra* note 19, at 37.

[32] Fernandez, P.V. *Towards a Definition of National Policy on the Recognition of Ethnic Law within the Philippines Legal Order* 55 PHIL. L.J. 383 (1980) Fernandez says that to proceed "democratically" is for our people as a whole "to participate fully in the task of continuing democratization; we must," he says, "incorporate in our national policy, specific strategies for the recognition of indigenous or ethnic law within the Philippine legal order."

an element and instrument of community and society, and legal institutions and processes as social strategies for unifying and for transcending social differentiation and complexity.

III. THE PROCESS OF LAW: FROM CUSTOM TO LAW

It seems that most researchers involved in an anthropological investigation of jurisprudence view indigenous systems of law against the backdrop of Western European law and, therefore, fail to fully appreciate and comprehend indigenous legal systems. Indigenous groups, on the other hand, and in a similar way, fail to appreciate and comprehend Western European law models which have been imposed upon them. The net effect of this situation to indigenous cultures is often characterized as an irreversible situation toward indigenous alienation which leads to cultural shock and disintegration.

Although Nader believes that Non-Western cultures cannot adopt wholesale Western jurisprudential categories of law for use it is possible that we are using an outline of anglo-American common law, for example against which or from which we view exotic legal systems.[33] She would go on to admit that "at least we would be clear about what our biases were." While such straightforward comparisons may be methodologically useful, the problem inheres in the unconscious assumption that because of the failure of indigenous law systems to meet the Western European legal systems' "standard" of law, indigenous law cannot be considered as law at all, but at best a mere custom or norm.

Bohannan would define a *norm* as "a rule more or less overt, which expresses 'ought' aspects of relationships between human beings"[34] while *custom* as "a body of norms including regular deviations and compromises with norms that is actually followed in practice much of the time."[35] He says that all social institutions are marked by "'customs" and these "customs" exhibit most of the stigmata cited by any definition of law with one salient difference: "whereas, custom continues to inhere in and only in, these institutions which it governs (and which in turn govern it), law is specifically recreated, by agents of society, in a narrower and recognizable context-that-is, in the context of the institution that are legal in character and, to some degree at least, discrete from all others."[36]

It is clear from Bohannan's conception, that for law to be considered as such or for custom to be elevated into law, the custom must be "recreated" or "reinstitutionalized." He, thereafter, defines law as "a body of binding obligations regarded as right by one party and acknowledged as the duty by the other which has been reinstitutionalized within the legal institution so that

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[33] Nader, *supra* note 13, at 25.

[34] Bohannan, *supra* note 19, at 34.

[35] *Ibid.*

[36] *Ibid*

society can continue to function in an orderly manner on the basis of rules so maintained." [37]

Fernandez, however, would immediately consider customs and usages as "ethnic" law, the distinctive characteristic of which is that it is "not enacted at any particular date but evolve over a long period of time, and that it is binding only among members of a particular community." [38] Bohannan's concept of double institutionalization as the means to making a particular custom into a law does not really counter Fernandez's concept to the extent that the latter seeks the recognition of ethnic law within the Philippine legal order. As such, therefore, double institutionalization is not expedient. However, it can be gleaned that even without reinstitutionalization, ethnic law has the force of law if only among members of a particular cultural community.

Bohannan had constructed a "four square" diagram in his examination of the realm of the legal: [39]

The Legal Realm

	UNICENTRIC POWER	BICENTRIC (Multicentric) POWER
One Culture	Municipal Systems of "Law"	Law in Stateless Societies
Two (or more) Cultures	Colonial Law	International Law

In brief, Bohannan would explain that municipal systems "of the sort studied by most jurists deal with a single legal culture within a unicentric power system. Subculture in such a society may create vast problems if law's being out of phase with the customs and mores of parts of the society, but it is a problem of phase." [40]

In case of law in stateless societies, it suffices to say for our purpose that it is marked by the "absence of a unicentric power system. All situations of dispute that occur between people not within the same domestic units *ipso facto* occur between two more-or-less equal power units." [41]

The situation in international law is more complex because of the existence of two or more unicentric power systems bound together by means other than a more inclusive unicentric power system. In each of them custom is 'legalized'.

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[37] *Id.*, at 36.

[38] Fernandez, *supra* note 32, at 387. "Ethnic Law refers to the body of customs and usages of the various cultural communities within the Philippines."

[39] Bohannan, *supra* note 19, at 38.

[40] *Id.*, at 37.

[41] *Id.*, at 39.

In international law, then, the process of "reinstitutionalization" must yet take place again - but with the qualitative difference that this time it must be done within the limitations of a multicentric power system. The difficulties in this secondary reinstitutionalization of international law are compounded because there are likely to be cultural differences in the two or more primary legal systems.[42]

As for colonial law, Bohannan says that it is marked by a unicentric power system with greater or lesser problems of conjoining the colonial government with the local government, and more and less overt theories (such as the British "indirect rule") of accomplishing the conjunction. All are marked, however, by two (or more) legal cultures. Sometimes this situation is recognized, as it was in pre-independence Kenya with its two hierarchies of courts, one for "European" law and the other for African law joined only at the top by the Supreme Court. The mark of a colonial situation might be said to be a systematic misunderstanding between the two cultures within the single power system, with constant revolutionary proclivities resulting from what is, at best, a "working misunderstanding."[43]

Evidently, it is in this last analytic legal realm, where we can classify the Philippine legal situation. While there may no longer exist any covert colonial influence, "revolutionary proclivities" due to a "working misunderstanding" continue to exist as the vestiges of Western European legal system are perpetuated and preferred by major interests in the Philippines over and above indigenous Philippine law systems. The reason for this is obvious: it serves the interests of neocolonialists and their ruling elite counterpart, as well as facilitate the exploitation of the country's natural resources.

It cannot be denied that, to a certain extent, there is experimentation in the legal content of laws enacted and in the law-making process[44] itself in the post-colonial administration. However, there is very little indication that there is a conscious law-making process reflective of the changes in the indigenous economic and social order, there is rather a continuing internalization by the legal elite of the legal traditions of a former colonial power.

This phenomenon of wholesale legal "transplantation"[45] is not a unique Philippine experience but is common among the formerly colonized nations of Asia and Africa. They have a shared characteristic of being politically integrated befor their socio-cultural integration,[46] i.e., each was first declared a state ahead of nationhood.

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[42] *Id.*, at 40.

[43] *Id.*, at 38 - 39.

[44] For related researches on this point *see* MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION: DOCUMENTS ON THE PHILIPPINE CONSTITUTIONAL SYSTEM 1 - 33. (1978); Fernandez. *From Javellana to Sanidad: And Odyssey in Constitutional Experimentation*, in THE 1976 AMENDMENTS AND THE NEW CONSTITUTION 38 - 84. (UP Law Center).

[45] FERNANDEZ, CUSTOM LAW IN PRE-CONQUEST PHILIPPINES iv (1976).

[46] *Ibid.*

It was earlier mentioned that social institutions are marked by "customs" and these "customs" exhibit most of the stigmata cited by any definition of law. It is implicit therefrom that whatever ideals reach final form of expression as law contain and form part of "custom" which has evolved over a long period of time. This is just an affirmation of Holmes belief, speaking of Western legal systems, when he asserted that "the life of the law has not been logic. it has been experience."[47]

Western European law is obviously marked by Western customs. Such law and legal concepts reached final form of expression after years of experiential usage and finally adopted as forming part of national law when the functional need therefor was exigent.

Thus, it would be safe to say that the present Philippine legal system being transplanted from the ways of Western European law is marked with Western European customs generally foreign or alien to the Filipinos and their indigenous law ways and styles. Of course we should take as an exception certain jurisprudential ideas which may be considered as having universal application. n.

A. COLONIZATION IN AFRICAN AND ASIAN COUNTRIES.

The process of colonization necessarily carried with it the *displacement* of indigenous customary usages of the colonized inhabitants by the extension and imposition of the legal institutions of the colonizing state to the colony. Varga observed that *codification* was the instrument used as it was found to be the most appropriate form of exploiting and imposing foreign law to the colony and its native inhabitants.[48] It is clear that the colonial regimes did not bother to consider the development of indigenous laws but instead concentrated their efforts in the operation and perpetuation of their laws and legal institutions.

The preference for the code-form is patent. It gave ease to the implementation of foeign law as well as facilitated the study and assimilation by the ruling elite of the legal concepts embodied therein and the nuances thereof. In fact upon gaining independence, the system having been suited to serve the interest of the neocolonialists and the ruling elite, the code-form now constitutes the medium of organization used for various methods of "modernizing" the legal system. Ironically the scheme for "modernization" even after independence was by means of adopting foreign models coming from the country exercising the strongest economic and political influence. Imperialistic influence and pressure would not allow any other alternative, even if this be the indigenous legal system, in the important processes of Afro-Asiatic legal development. The trend in Afro-Asian legal development had not allowed significant, far reaching and radical (i.e., the preference for the indigenous over traditional Western legal concepts) legal developments in terms of techniques of administering justice,

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[47] HOLMES, THE COMMON LAW 1 (1881).

[48] *See* Varga, *The Modernization of Law and Its Codificational Trends in Afro-Asiatic Legal Development* (1976).

content of law and the law-making process, and the working methods of lawyers or the manner of training jurists.

> The makes law.
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> If not the legal expression, at least the framework of social and economic relations at a given historical moment. In this way it is a screen hiding the interests of the ruling class and if this class does not represent the vast majority of the people of the society, the law is necessarily an egoistical and partial law (and consequently unjust) which, as an ideological expression of society, unquestionably represents the interests of the social class which promulgated it.[49]

At this point it is well to state the thesis of this paper which has become more apparent. If we as a people are to be socially, culturally and politically integrated to evolve a truly democratic society, there must be an efficient and effective *indigenization* of the Philippine legal order.

The "indigenization" of the Philippine legal order is founded on the principle of self-determination which, in Fernandez' words, "embraces the major ideas of civility and liberty, because it supports the concept of Nationhood as well as the concept of local autonomy, as well as the concept of collective freedom, which is Democracy, as well as the concept of individual freedom, which is liberty."[50]

However, it must be made clear at the outset that to the extent the prevailing legal order is functional and efficient it must be made applicable to certain "cultural communities" who have imbibed the present legal order as forming part of their cultural history having been conquered and naturally had to adopt, under colonial pressure, the imposed colonial legal institution.

IV. CULTURAL MINORITY OVERVIEW

It was earlier noted that historians do not have a record of the beginning of the Filipino minority-majority division despite the fact that historical sources were Spanish and American chroniclers. Scott would assert that there were no real differences at the time of Spanish conquest. This concept of cultural minorities, he explains, is nothing more than a myth:

> Some people think the cultural minorities are a scientific category based on biological or racial characteristics. They are not. Far from being similar to one another, the different cultural minorities don't even look alike, they don't speak the same language, and they don't practice the same religion. Some

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[49] Villena, Carlos. *Ethical Problems Facing the Peruvian Barrister.* 58 REV. OF CONTEMPORARY LAW 59 - 61 No. 7 (1967).

[50] Fernandez, *supra* note 32, at 387.

> wear G-strings and some wear pants, some are muslims and some are pagans It's hard to see what the sultan of sulu has in common with an Ifugao terrace-builder or an Ilongot headtaker or a Negrito in the forest, or what any of them have in common with Manila Elizalde's Tasadays. The concept of the cultural minorities is, in short, a myth.[51]

The only plausible historical explanation is that at the time of Spanish "discovery" of the Philippines, the colonizers were overwhelmed by the local customs being varied from place to place, "but in comparison to Spaniards and Spanish customs, they seemed very similar to one another. . . . then, under colonial pressure, they began to be divided into two categories – the conquered and the unconquered."[52] The unconquered of course refused and fought off colonial influence and still lived and dressed like their ancestors while the "conquered," under colonial pressure, began to change – "they paid taxes, went to mass and acted as much like the Spaniards as possible."[53]

Legal proof to this fact is the decision upheld by the Philippine Supreme Court in 1906 in the case of *Cariño v. Insular Government*[54] where the court upheld the denial of the petition for land registration of an Igorot as owner of 146 hectare parcel of ancestral land. The Court through Justice Charles A. Willard, an American, declared:

> The surrounding circumstances are incomplete with the existence of a grant. It is known that for nearly three hundred years, all attempts to convert the Igorots - - - to the Christian religion completely failed, and that during that time, they remained practically in the conditions as they were when the islands were first occupied by the Spaniards. To presume as a matter of fact that during the time. . . the provision of the laws relating to. . . the public lands were taken advantaged of by these uncivilized people. . . would be to presume something which did not exist.[55]

The statement was premised on the need to comply with the requisite of *submission* to Spanish colonial authority to avail of legal rights established and recognized by Spain in the Philippines. The consequent denial of the application for land registration was for the simple reason that the Igorot frontier was never conquered by the Spanish colonial regime.

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[51] Scott, *The Myth of the Cultural Minority* SANDUGO 3rd quarter p. 20.

[52] *Ibid.*

[53] *Ibid.*

[54] 7 Phil. 132 (1906). This decision was appealed to the U.S. Supreme Court which reversed the Philippine Supreme court. The U.S. court, speaking through Justice Holmes, recognized petitioner Cariño's right over the lands on the ground of ownership over the same since time immemorial.

This brings as to our basic postulate that being multi-ethnic and, therefore, culturally diverse as a society the Philippines needs a suitable legal order fit for its peculiar character. We now find use of Fernandez concept of ethnic law[56] which would readily "embrace all the indigenous legal orders evolved by all tribal/linguistic groupings in the Philippines. This will include not only the non-Christian tribes, and the Muslim tribes but also include lunguistic tribal groupings among Christian Filipinos, such as the Tagalog, Ilocano, Cebuano, Bicol, Pampanga, etc."[57] As such, indigenous or ethnic legal concepts as ethnic law would make inroads towards the establishment of an indigenous national legal order. Instead of the civil code of the Philippines, we could envision other laws or ethnic laws for that matter such as the ethnic law on family relations of the peoples of the Cordillera, the law on property relations of Pampango, the civil code of Metro Manila, to operate similarly but more effectively as it was done with the Muslim code of the Philippines. The territorial application of these laws is the "cultural community," a term which Fernandez prefers over the accepted legal concept of "cultural minority." He believes that the former "should be taken in its widest sense, as comprising any human group within the Philippine territory, sharing the common bonds of language, customs and traditions, distinctive culture traits, and also physical contiguity in that group or large numbers thereof live within a definite area of territory."[58]

As against Fernandez's conceptualization, our basic postulate is that of indigenization vis-a-vis recognition. The policy of recognition assures that the cultural community will be allowed to operate on an identifiable and limited juristic community within a prevailing supreme legal framework. For reasons already mentioned, such policy, though it may be to a certain extent accurate, is not necessarily fair. It may be accurate in the sense that Western European laws have undergone the benefit of the process of experience and centuries of evolutionary refinement. It will not be fair or just because though it may be considered as the very "refinement" of all modern legal systems, we are not privy to the process, i.e., in that experience, and the consequent evolution of the legal concepts within which it evolved. The experience as well as the legal concepts are therefore uniquely theirs and completely alien to us.

The difficulty in "recognition and proteciton" as a legal strategy is basically two-fold: (1) in the area of privity of evolutionary experience of the legal concepts (mentioned in the preceding paragraph)) and (2) in the area of administration and implementation. To illustrate the second, Lynch's general argument to strengthen his position for the recognition of Native titles hinges on the dysfunction in land law administration and implementation:[59] the legal structure

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[55] 7 Phil. at 134.

[56] Fernandez, *supra* note 50.

[57] *Ibid.*

[58] *Ibid.*

[59] Lynch, *Native Title, Private Right & Tribal Land Law: An Introductory Survey.* 57 PHIL. L.J. 268 - 306 (1982).

and concepts rooted in Western jurisprudence "reflect the shared imperatives of humanities' common quest for a just and equitable social order."[60] This position while pointing the blame on the executive's mishandling of the land law situation unconsciously or consciously exonerates Western European law as part of the culprit, and makes indigenous cultural communities mere passive receptacles of the law and the colonial regime's graces. While recognition and protection would often stop short of implementation, indigenization on the other hand would allow the communities to take active participation in engaging with legal concepts of easy identification and comprehension to them (for these have roots in the community itself) as well as effectively protect their rights. In other words, the indigenous people themselves would be the guardians of their rights as they would no longer be subjects and easy preys of legal machination. Furthermore, indigenization as an alternative seeks not only the suspension and abrogation of all capitalist Western European law ways inimical to the interest of juristic cultural communities but also to embrace the indigenous legal experiences and concepts and bring these to the realm of national law. The operation of the Western European laws, like the Civil Code should be limited to those who have embraced them and consequently abandoned their indigenous law ways. This situation is compelled by the force of cultural diversity.

The operation and application of laws heavily laden with Western European law ways among "conquered" juristic communities must not be seriously questioned regarding their adequacy and degree of fitness. It cannot be over-emphasized that the content of Philippine law is "mostly foreign in origin or derivation. This is true not only in public law, but in private law and remedial law as well. In administration, its institutions and techniques are likewise of foreign derivation."[61] Thus, their suitability must undergo serious reconsideration.

Machado, in his investigation of personal disputes filed with the Batangas municipal Courts and Courts of First Instance,[62] made the following conclusions:

> The comparatively limited reliance on state adjudication and the very extensive reliance on "amicable settlement" of all kinds of dispute is clear. Specific cases have been presented primarily to indicate the influence of disputant's intention in determining the way in which may particular dispute is ultimately processed. One reason for the high incidence of "amicable settlement" with the initiation of legal proceedings is that formal complaints are frequently made primarily to influence the outcome of the "settlement" process rather than to secure a judicial verdict. . . .

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[60] Lynch, *The Philippine Indigenous Law Collection: An Introductory and Preliminary Bibliography* 58 PHIL. L.J. 457 (1983).

[61] Fernandez, *supra* note 50, at 385.

[62] Now called Municipal Trial Courts and Regional Trial Courts respectively, under Batas Pambansa Blg. 129, The Judiciary Reorganization Law.

> The case also indicates the very personal purposes to which ostensibly impersonal legal institutions are regularly used. The disposition of disputes is much more likely to be determined by the interested behavior of officials or the intentions of the disputants than by the legal norms or the requirements of the legal procedures. If the disputants are approximately equal in status and resources, the intentions of the offended party are likely to be most important. If they are not, the intentions of the more powerful are likely to be most important. When the requirements of state law and Filipino social practice are inconsistent, the latter frequently carries the largest weight in determining the outcome of personal disputes.[63]

This makes obvious that the prevailing cultural and social characteristics are incompatible of the norms underlying legal institutions transplanted by Western imperial powers.[64]

V. BRIEF SURVEY OF PHILIPPINE CUSTOM LAW: SOME SUMMARY EXCERPTS FROM THE LITERATURE

The ethnic minorities[65] of the Philippines include more than six million people or over 12% of the national population.[66] The indigenous people of the country comprises more than 40 ethnolinguistic groups. These ethnic communities have retained a high degree of cultural, political and economic independence because they chose to stand up and resist efforts of colonial conquest and domination. Immersed in these tribal communities are indigenous legal concepts. We discern these significant legal notions in the following researches.

A. The Ifugao Land Law[67]

> Ifugao law has two main sources: pani-o or taboo (which is essentially religious) and custom. The customary law is more important from the greater frequency of its application.

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[63]Machado, K. *State Institutions and Amicable Settlement in Rural Philippines*, PHIL. J. OF PUBLIC ADMINISTRATION 47, 66-67 (January 1980).

[64]*Id.*, at 52.

[65]Also known as Tribal Filipinos (a preferred term), hilltribes, national cultural communities or cultural communities.

[66]Data estimates from *Native Resource Control and Multi-national Corporate Challenge: Aboriginal Rights in International Perspective* 36. *Anthropology Resource Center (Boston) 1982.* Owen Lynch Jr.'s figure is 7.5 Million Tribal Filipinos comprising 15% of the Philippine's population. *See supra* note 59, at 268

[67]Excerpts from Lambrecht, Francis. *Property Laws of Custom Among Ifugaos*, 11 SILIMAN JOURNAL 57 (1964).

If asked, Ifugaos say that taboo is to steal; to burn or destroy the property of another; to cause death or injury to another by sorcery or witchcraft.

The scope of customary law pertains to property, inheritance, water rights and to a great extent family law and procedure. The relation of religion and law appear conjointly in a) transferals of family property; b) ordeals; c) certain taboo; d) payments of larger fine; e) peace-making.

The Ifugao clearly distinguishes between two classes of property. He bases his classification upon the difference in the method of transferring property by sale. The one class he calls *ma-ibuy* - "those who transfer by sale require an ibuy ceremony" and the other, *adi ma-ibuy* - "those whose transfer by sale does not require an ibuy ceremony." Classifying them according to their essential differences in status in Ifugao law and culture lead us to what we term family property and personal property respectively.

Family properties consist of rice lands, forest lands; and heirlooms. The Ifugao attitude is that lands and articles of value that have been handed down from generation to generation cannot be property of any individual. Present holders possess only transient and fleeting possession or occupation, insignificant in duration in comparison with the decades and the centuries that have usually elapsed since the field or heirloom came into possession of the family. Their possession is more of the nature of a trust rather than an absolute ownership, i.e. holding on trust for the future generation.

Rice lands: A "field" consists of all the continuous paddies that are the property of one man. In sales and transfers arising out of family relationship, a field is never divided. If there are two heirs and only one field to be inherited, the elder of the heir takes the entire field on the basis of the rights to primogeniture in inheritance and assignment of property.

Forest lands: Such land, valuable principally because of the woods upon them, are often the common property of a group of kinsmen and their families. They are sometimes partitioned.

Heirlooms: Heirloom consist of such articles as gold neck ornaments, gongs, rice-wine jars, and bongsod, long strips of agates and bloodstone which are very rarely sold. These articles are used fully as much by the owner's kin as by the owner himself.

B. Kalinga Land Laws:[68]

The Kalingas live in the Cordillera mountain range in the North-central portion of Northern Luzon. Their classification of wealth is as follows:

Tawid, inherited property; *ginatang,* acquired property; *odon,* any

[68] Excerpts from BARTON, THE KALINGAS: THEIR INSTITUTIONS AND CUSTOM LAWS (1949).

property except animals. *siyaiyan* (literally "pets"), property in animals.

Cultivated lands are either *paiyao*, irrigated rice fields, or *uma*, hill farms – clearings on the mountain sides that are cultivated for a year or two and then adandoned to revert to jungle and regain their fertility.

Rice Lands:

The greater part of the Kalinga's wealth and that which gives the highest prestige is his irrigation systems and rice lands. The fields are very productive under the two-crops-a-year cultivation practiced in Kalinga.

Tenure of irrigated fields is perpetual. There are many restrictions, however, on ownership which reinforce the principle of Kalinga custom that inherited fields shall pass down the line of an owner's descendants. The custom permits sale only in certain designated crises. Concerning bequeathal, an owner having children may dispose of the land to none except them and to them only within rigid customary rules. His very possession and right of disposal automatically terminate when the child who ought, by custom, to receive them sets up a household of his own. If childless, a person has little latitude in bequeathing his inherited property to others except lateral relatives or the next of kin.

Hill Farms:

The Kalinga practices the *kaiyingan* system of cultivation of the hill lands: that is, clearing away the forest, cultivating a plot two or three years, and then abandoning it to revert to the jungle when its fertility diminishes and the grass become troublesome.

Pasture Lands:

One secures ownership of pasture lands by being the first to pasture his stock on it. Grazing a single carabao is sufficient for the purpose but his ownership does not exclude others from pasturing their stock on it also – it continues to be "for all the people."

Forest Lands:

The natural forest is free and common. Ownership of forest lands is about the same as that of rice fields, except that the owner has more freedom in alloting them among his children. Ownership of forest planted on another man's plot is a different case. When the trees are large enough to use, the land owner may order them cut off if he wishes to use the land.

Transfer of property for consideration.

The price of a field is reckoned in water buffaloes – in fact, all large values

are reckoned in terms of that animal and is paid in buffaloes, pigs, heirlooms and minor articles.

The purchase price may be regarded as consisting of the following major groups: 1) the *gatad* which is the seller's share; 2) the *so-ol*, also called *paiyak di mamlak* ("wings" of the seller), consisting of two divisions called *pangat di so-ol* (chiefs of the so-ol) and *biyun di-so-ol* (companion of the so-ol), go to the relatives; and 3) certain ritual payments.

The payments to the kindred may conceivably be descended from a former communal ownership. It is quite apparent that they serve the following functions: 1) they clear the title – no relative of the seller can claim the field as his after being feasted and given a present; 2) a Kalinga who sells a field has qualms of conscience; he is doing a dangerous thing, and his relatives may reproach him afterwards, for he is lowering his own prestige and that of kinship groups – but the edge of any reproach they might make is taken off by the fact that they have shared in the proceeds; 3) the presents give the buyer a chance to splurge, to elevate his prestige, and to ingratiate himself with the seller's whole kinship group.

Transfer of possession of property:

Transfer of possession of a field as a security for a loan and of the use of it as compensation to the lender in lieu of interest is the most ancient form of hypothecation to be found surviving with little change in modern legal systems where it is called *antichresis*.

Throughout the mountain country no role is so strongly entrenched as that "he who plants shall reap." It holds both in sales and in *banat*, a form of "mortgage" with an indefinite time limit. An owner cannot get a field that is in crop back from the creditor to whom it has been given in banat until the creditor has reaped the crop.

In Kalinga most instances of banat result from seizure to cover debt: the seized field acquired the status of banat automatically.

The *"salda"* as a form of possession differs from the foregoing in that there is a time limit for repayment of the loan, after which ownership passes to the creditor in case of non-payment. It is said that Lubwagan is the only region of Kalinga that has as yet adopted the salda.

C. Manuvu Batasan[69]

The Manuvu people live in Southern Bukidnon province, Northeastern Cotabato del Norte and Western Davao City in Central Mindanao.

In Manuvu the term *Batasan* encompasses three basic concepts of habit, custom and law. No distinction is made between these concepts because an individual is supposed to be a carrier of the tradition and any deviations from

[69]Excerpts from Manuel, *Manuvu' Batasan Related to Things and Property* 51 PHIL. L.J. 26 - 62 (1976).

the general norms are instantly checked by the elders of the kin group which means that right at the family and kin group level, general customs are already upheld.

The exclusive use of an article is not the common rule in Manuvu law. For the Manuvu usually shares his food, produce, articles with another, even his clothes, pots, bolos, and so on.

Borrowing is a common custom: the traditions and norms is that no person is supposed to refuse the use of any article or animal. But if anything happens to the article or animal, the borrower becomes responsible; if it is an article, this has to be replaced.

Manuvu law recognizes a common principle of law that while the owner is free to make use of his property, during such use it should not occasion harm or damage to another person or property. There are instances where the owner may be held liable for damages.

D. Tausug Land Law[70]

Conflict over land ownership is an important aspect of the law and order problem in Jolo. The physical conflict between men is an aspect of wider ideological conflict between two legal systems: Traditional Tausug customary law on the one hand, and Westernized Philippine law on the other.

Rural Tausug are predominantly dry-rice farmers and fishermen, with increasing amount of cash-crop income derived from coconut , abaca and sometimes smuggling. They are an extremely litigious people, with a very large proportion of their non-subsistence activities devoted directly or indirectly to law and politics. In the eastern half of the island almost all contacts with the Philippine government concern relations with the courts or the Constabulary. While most rural Tausug reject the presumptions of Philippine law in the abstract, preferring to give loyalty to the canon law of Islam and its local interpretations, individuals often make use of Philippine courts when it suits their purpose to do so. But solutions to disputes are usually achieved through traditional procedures, even though government officials may be involved in them outside of their official roles.

The Tausug self-consciously view their own culture in terms of the concept of *adat*, which could be roughly translated as "typical or customary conduct which is sanctioned by cultural values." It includes almost anything an individual would normally do which was not idiosyncratic, and is referable in some senses to things other people would do. When the resolution of the Tausug customs which have a bearing on it, such that conflict between norms are resolved and there is a more explicit statement of what in fact the norms bearing on the case are, then the Tausug refer to it as a case of *sara adat*, or customary law.

The law of farms and sites for the Tausug is traditionally a part of *adat;* it is not subject to any specific religious sanctions other than the very general

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[70]Excerpts from KIEFER, FROM FARM TENURE TO LAND TENURE IN JOLO: SOME ASPECTS OF CHANGE IN TAUSUG LAND LAW.

notion that it is better for them to live in peace and that conflicts should be settled as quickly as possible.

The most general traditional term for rights and obligations in property and persons is *mustahak* meaning worthy possession based on merit in the law of God and man. With reference to geography, it refers to the ultimate right of disposal within a specified situation. The person who holds *mustahak* in land (the *tagmustahak)* is the individual from whom permission must be obtained for certain kinds of disposal or use. Its operation is seen most clearly in the permission required for an individual to make use of some otherwise vacant or unused site. If the unused site lies within a tract in which the individual has rights through inheritance or kinship, he would normally ask permission of the kinsman generally accepted as the *tagmustahak* of the tract. Permission to use unused sites not claimed by others within the general territory of a community would be granted by the headman of that community.

There are several reasons for the fact that land in rural Jolo is very rarely sold by voluntary agreement. In the first place there· are the general moral sanctions againsts the alienation of land. Second, the ability to derive benefit from the land is always dependent on political alliance. To buy a piece of land in an area where one had no kinsmen or political allies is unthinkable. Finally, many apparent sales are actually not completely voluntary, but are part of a compromise worked out in the settlement of a dispute.

E. The Tiruray Concept of Land[71]

The Tiruray live in the Northern part of the Cotabato Cordillera, a range of low mountains which arc along the south-western coast of Mindanao facing the Celebes Sea. The largest of the Philippines' 56 provinces, Cotabato is also the nation's most striking frontier area.

The Tiruray concept of land ownership cannot and should not be divorced from their swidden system of agriculture. Swidden agriculture is a system of farming which guarantees a tiruray of a right over the land he is cultivating until such time that the swidden site if left fallow for forest regeneration. Tirurary concept of land ownership is then, interlinked with their concept of the system of land utilization.

Presently, however, a Tiruray is forced to uphold the system of land ownership sanctioned by Philippine Government Laws. Though the Philippine Government Laws on land ownership has been imposed, the dominant or prevailing concept is still that of the Tiruray Customary Laws.

To describe the Tiruray understanding of use-right and property, it is necessary to introduce a Tiruray concept. The central term in their language pertaining to property is *gefe.* To be *gefe* of something is to have exclusive rights over its present use. A person's belongings – his *Entingayen* – include all the things we call his own, in the sense that he stands to them in relation of *gefe*. . . .

[71] Excerpts from THE TIRURAY & THE CONCEPT OF LAND. (Based on a study by the Philippine Episcopalian Church Research Group, 1981)

in short, he is *gefe* of any object, person or even a ceremony in which he not only has an economic and emotional interest but also has a legitimate personal oversight. . . . The word may be glossed in English as legitimate user or, more simply and loosely, as "owner" but the essence of the Tirurary concept is right-of-use.

Tenure of land among traditional Tiruray employs this concept directly in the sense of right of usufruct. A swidden site belongs to a man who is its *gefe* until the harvest is completed and the site no longer bears cultivated produce, after which time he is no longer *gefe* over the site. . . . Land selected by an individual for a swidden becomes his to use for a crop cycle, once it has been publicly claimed and marked. . . . The family head is thus *gefe* of that particular plot in terms of an exclusive private right of use.

Thus, the traditional Tirurary do not conceive of themselves as formally holding any private possessory right over specific swidden sites beyond the produce from a single cropping cycle. Among the Tirurary, use-right is not inherited by the children or other descendants. Land no longer harvested refer to the public domain and has the same free-good status as any wild forest area. . . .When the forest growth has been sufficiently restored to be reworked, anyone may select the site without regard of the former *gefe*. With regard to swidden land, in short, the Tirurary employ a pure concept of right of usufruct.

The Tirurary concept of land ownership, therefore, is deeply rooted in the value they attach to it:

1. No individual can claim ownership over the land. It is not given to a single individual. . . . Conversely, it is given to the community and the community has the obligation to take care of it. Whatever fruit a person may reap from its bounty, he has to share to the community, especially those who need them most.
2. It is the source of existence. The spring of its bounty is the source of livelihood. Without it people will die.
3. It is where their ancestors lived, and where they are now buried. As such, it is very sacred for it is where the spirits of ancestors roam. Their ancestors help them take care of the land.

VI. NATIONAL LAW & POLICY ON ETHNIC LAW: A BRIEF OVERVIEW

The aforementioned cultural communities are just but a few of the ethno-linguistic groups from whom we can draw upon a wealth of indigenous legal concepts and systems of genuine Filipino roots and of proven workability (at least to the extent that such ethnic laws are binding among members of the same community).

The recurring subject in most of these indigenous legal concepts centers upon the theme of tribal man-land relationships. At the heart of this is their very existence or survival and any modification of this relationship would have tremendous impact on all other aspects of tribal culture.

It should be noted that although native land rights are evidently obscure and confused to outsiders, this is simply not true. The complex network of

kinship relationships in tribal culture controlled access to land, and group boundaries are well-defined and defended against alien encroachment. "Access to and use of land was virtually guaranteed to all tribal members and even though specific rights were often overlapping and subject to numerous conditions, land allocation remained both well regulated and flexible."[72]

This brings us to the most critical of all government policies affecting tribal Filipinos: those relating to tribal Filipinos' possession of their lands. The general effect of land policies by the government is the reduction of available territory for tribal populations and the modification of indigenous systems of tenure in favor of Western European land utilization concepts.[73] The present land laws of the Philippines have virtually declared the Tribal Filipinos as squatters of their own land.[74] This makes native "economic systems and related social and ideological patterns extremely difficult if not impossible to maintain. It should be emphasized that none of these changes were due to mere contract and simple diffusion, but rather to deliberate state policy."[75]

Libarios and Aranal-Sereno's study on the Interface between National Land Law and Kalinga Land Law[76] provides a depth view of the seriousness of the continuing dysfunction and antagonism between indigenous law ways and Western European legal concepts on the subject of land utilization. The conflict centers on the dynamics between the indigenous people's culture, its survival, and its economic base, which is land. These inter-relationships determine their very existence as a people – "cultures are inconceivable without an economic base. Even spiritual life revolves to a considerable extent around the ways that people see their lives supported. In the absence of culture, there is no economy. In the absence of economy there is no culture. All that remains is the memory of culture."[77]

Overall, there is obviously, consciously or an unwritten state policy of continuing disregard (short of ethnocide) for the indigenous. This continuing disregard of indigenous laws as well as the intensified usurpation of the Tribal Filipinos' ancestral domain has crystallized the hiatus between Western European law as against indigenous law ways and has ushered the conflict between the government and the indigenous peoples beyond imaginary levels.

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[72] BODLEY, J.A. VICTIMS OF PROGRESS 83 (1975).

[73] *Ibid.*

[74] There are Supreme Court rulings such as *Valenton vs. Murciano*, 3 Phil. 537 (1906), laws such as the Public Land Act (Com. Act No. 141) and decrees (Pres. Decree No. 410, Ancestral Lands Decree) which produced this effect on the ownership of lands by Tribal Filipinos. For an overview of these national land laws, as well as the history and development of the Regalian doctrine which justified the act of arrogation, by virtue of conquest, of all lands to the sovereign (the King of Spain then), refer to: Aranal-Sereno and Libarios *The Interface between National Land Law & Kalinga Land Law* PHIL. L. J. 420-456 (1983).

[75] Bodley, *supra* note 72.

[76] 58 PHIL L.J. 420-456 (1983).

[77] *Traditionalism & the Redevelopment of Native Economies* in NATIVE RESOURCE CONTROL & THE MULTINATIONAL CORPORATE CHALLENGE: ABORIGINAL RIGHTS IN PERSPECTIVE *supra* note 66, at 7.

To add a final note of advocacy for the indigenization of the Philippine legal order, lawyers and jurists would agree that the very refinements of Western European jurisprudence make it the better model for the Philippine legal order knowing that these very "refinements" cause the perpetuation of the continuing alienation of our people to the present legal order, facilitating our people's exploitation and oppression and the extinction and decay of the very foundation with which we can be proud of as a nation – that of a genuine Filipino identity. To reiterate, the Western European legal model may work best for Westerners and Europeans but certainly not for us. The advocacy for recognition and protection of indigenous legal systems is a noble objective, if it is at all to be a starting point for indigenization. Recognition and protection is not enough, however, if we continue to adopt and use foreign legal concepts and models without determining their suitability for domestic fitness and applicability. This goes to the very core of our struggle for self-determination and nationhood.