INVISIBLE PEOPLES AND A HIDDEN AGENDA: THE ORIGINS OF CONTEMPORARY PHILIPPINE LAND LAWS (1900-1913)*

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The Legal Landscape

The United States Government was legally bound by the 1898 Paris peace treaty, which declared in Article VIII that the Philippine cession

> cannot in any respect impair the property or rights which by law belong to peaceful possession of property of all kinds, of provinces, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire or possess property.[1]

The origins of Article VIII remain uncertain, but in 1914 the general assumption was "that the Spanish commissioners secured its insertion at the instigation of monastic orders which had acquired large holdings in the Philippines."[2] Similar sentiments had been openly expressed for more than a decade. In 1902, a liberal U.S. weekly, THE NATION, opined in an editorial that the U.S. commissioners in Paris, "with incredible lightness of heart and lack of foresight...tied up the [U.S.] Government by a sweeping guarantee of the personal and property rights of the very men who had done most to drive the Filipinos to insurrection."[3]

The friars, of course, were not the only beneficiaries of Article VIII. Tens of thousands of natives and mestizos had secured documented property rights during the Spanish regime. Like the friars, their rights

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[1] A copy of the Treaty of Paris can be found in 2 W. FORBES, THE PHILIPPINE ISLANDS 431-436 (1928) or V. MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION: DOCUMENTS ON THE PHILIPPINE CONSTITUTIONAL SYSTEM 56-63 (1978). For additional background on its passage and provisions see the first part of this series in 62 PHIL. L. J. 279 (1987).

[2] 1 J. LEROY, THE AMERICANS IN THE PHILIPPINES: A HISTORY OF THE CONQUEST AND THE FIRST YEARS OF THE OCCUPATION WITH AN INTRODUCTORY ACCOUNT OF SPANISH RULE 376 (1914).

[3] Gowing, *The Disentanglement Of Church And State Early In The American Regime In The Philippines*, in 1969 STUDIES IN PHILIPPINE CHURCH HISTORY 207-8.

had oftentimes been secured through usurious dealings, by the outright usurpation of other peoples' prior rights, or some other anomaly.[4] At the same time, a substantial portion of the colony's land mass continued to be covered by undocumented rights held by indigenous and migrant farmers.

The Schurman Commission received inklings in 1899 of the huge size of the customarily private domain from elites in Manila who belonged to the "landowning class."[5] The commissioners, however, were more interested in gathering information on the size of land rights acquired by the United States. They focused their attention on the private domain's counterpart and reported that

> [f]rom general information gathered from various sources, particularly from natives acquainted with the provinces, the opinion has formed that the public domain in the archipelago is very large. Some place it is as high as one half of the area of the archipelago.[6]

If half of the colony's land was public, and this was the high side of early estimates, the other half was private. Documented private rights recognized by the Spanish regime, however, covered no more than ten percent of the total land mass, and most of this property was in southern Luzon. The remaining portions of the private domain belonged to hundreds of thousands of people who held, or were believed to hold, undocumented customary rights or some local variation of a customary/colonial right which lacked proper documentation.[7]

Any interpretation of Article VIII consistent with the U.S. Constitution would have required that, whatever their actual extent, customary land rights, particularly those held by indigenous occupants, would be recognized and protected.[8] President McKinley's instructions to the Taft Commission provided additional legal protection. In April 1900, McKinley ordered the Commission to impose, regardless of custom, "upon every branch and division of the colonial government" the "inviolable" constitutional mandates that no person shall be deprived

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[4]Usurpations and laws enacted during the Spanish era are described in the second part of this series in 63 PHIL. L. J. 82 (1988).

[5]4 REPORTS OF THE PHILIPPINE COMMISSION 92 (1900) [hereinafter RPC].

[6]*Id.* at 91.

[7]These rights would have included the 200,000 *expedientes* discussed *infra* in "Invisible Peoples," as well as people customarily recognized within their communities, although not necessarily by the colonial government, as owning their land. Customary rights were generally based on usage, possession, and inheritance. Customary/colonial rights were based on customary criteria and some degree of compliance with colonial criteria, e.g., an unrecorded *pacto de retrovenda.*

[8]*See, e.g.*, Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810); Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823); United States v. Alcacea Band of Tillamooks, 329 U.S. 40 (1946).

of property without due process of law and that just compensation be paid for all private property taken for public use.[9] The U.S. Congress reiterated the principle in the Organic Act of 1902.

Although its rhetoric implied otherwise, the Taft Commission ignored these legal precepts, as well as its predecessor's implied estimate of the size of the private domain. Instead, the new Commission interpreted Article VIII in an extremely narrow manner. In one of its earliest reports, the Commission claimed that Article VIII vested ownership of 92.3% of the total Philippine land mass, or approximately 27,694,000 hectares, in the U.S. Government.[10] These lands, including their forestal and mineral resources, were deemed to have become part of the U.S. public domain.

Unless a very expansive definition is used, it is, of course, improbable that undocumented customary property rights, even if paired with recognized and documented rights, encompassed half of the archipelago in 1899. But it is also evident that the Taft Commission's official estimate of the size of the public domain was absurdly high.[11] The estimate reflected complete disregard of undocumented property rights, including those held by indigenes within ancestral domains.

Unfortunately, the Taft Commission's estimate could be defended on legal grounds, especially after the U.S. Supreme Court rendered its decisions in the Insular Cases in May 1901 and held that the U.S. Constitution did not extend to the Philippine Islands and its peoples. Along with the confiscatory Maura Law of 1894, these decisions contributed to a loosened "constitutional" standard of private property rights, including rights to due process, just compensation, and even the meaning of person.[12]

The ostensibly indiscriminate guarantee of the documented private property regime, meanwhile, sent a powerful message to landed elites who had prospered during the Spanish era. The message was simple, clear, and reassuring: like the Spaniards, the North Americans were prepared to make colonialism mutually profitable. This eased, as well as hastened, the elites' accommodation of the new sovereign power.

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[9]Instructions of the President to the Philippine Commission dated April 7, 1900.

[10]RPC 49-50 (1900). The total land mass was estimated to be 29,694,000 hectares.

[11]Compared with official government estimates in the 1980s, however, the 1900 figure appears more credible. See the Introduction.

[12]*See, e.g.*, Valenton v. Murciano, 3 Phil. 537 (1904) and Cariño v. Insular Government, 7 Phil. 132 (1906). *See also* Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).

It also submerged the rights, aspirations, and even the existence, of the rural masses in an unfounded–and profoundly mistaken–assumption that Filipinos who held documented rights to large tracts of land represented the interests of the poor rural majority. As Norman Owen explained,

> [t]he wealthy agriculturalists succeeded in defining their own interests as those of the Philippines. They spoke for the Philippines, and neither American administrators nor Filipino 'public opinion' ever successfully contested this right.[13]

Building on the Taft Commission's narrow view of Article VIII, the U.S. Congress in 1902 placed "all the property and rights which may have been acquired" in the Philippine Islands by the United States under the treaty of peace with Spain "under the control" of the insular regime. The regime, however, did not have free reign to dispose of these assets. Its control was to be exercised in a fiduciary manner. According to Congress, "public" lands were "to be administered for the benefit of the inhabitants thereof."[14] Other restrictions provided that only "public agricultural" lands could be privately alienated, and limited the size of public property rights which could be recognized, granted, or sold.[15]

Pursuant to these conditions, the Commission devised a bureaucratic and procedural framework for recognizing and allocating legal rights to natural resources. The recognition *qua* registration of private property rights was provided for by the Land Registration Act of 1902.[16] Property rights over public lands could be established pursuant to the provisions in the Public Land Act of 1903 and the Forest Act of 1904.

Invisible Peoples

The processes of recreating an insular natural resources bureaucracy commenced soon after the arrival of the U.S. military

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[13]Owen, *Philippine Economic Development And American Policy*, in 1971 COMPADRE COLONIALISM: PHILIPPINE-AMERICAN RELATIONS, 1898-1946, at 56. *See also* M. Cullinane, Nineteenth Century Filipino Social Structure And The *Ilustrdo* 37 (1985) (The essay comprises Chapter I of the author's as yet unfinished Ph.D. dissertation in history at the University of Michigan, which is tentatively titled "*Ilustrado* Politics And The Rise Of The *Partido Nacionalista*: The Response Of The Philippine Educated Elite To American Rule, 1899-1907.").

[14]Sec. 13.

[15]Individual ownership rights of actual occupants and settlers could not exceed forty acres (sixteen hectares). In the case of corporations, the limit was 2,500 acres (1,024 hectares.). Secs. 15, 18.

[16]Act No. 496 (1903). The effectivity of the Act was delayed until February 1, 1903. Act No. 572 (1903).

governor. Although issues pertaining to the recognition or allocation of legal rights to land were not addressed, the military regime promulgated regulations and authorized the commercial extraction of certain forest and mineral resources. For its part, the Schurman Commission had noted "a great need" to revise the Spanish laws pertaining to the tenure and transfer of land.[17]

The Taft Commission began its own property-rights inquiry soon after its arrival in the colony on June 3, 1900. The Commission recruited a former U.S. lands official, William M. Tipton, and appointed him as chief of the Bureau of Public Lands. Tipton had eighteen years' experience in the office of the surveyor-general of public lands in New Mexico and over eight years' experience in the U.S. Court of Private Land Claims.[18] Tipton knew from his past experience that the great mass of people had probably not secured official documents recognizing their land rights from the Spanish regime. In a report dated October 3, 1901, Tipton called the commissioners' attention to the fact that

> [i]n addition to those persons who had documentary evidence of the origins of their titles under the Spanish and Mexican governments there was a much greater number who were occupying comparatively small tracts of land, and who were absolutely unable to trace their chains of title to either of the former governments, although in many instances...they were able to show that they and their grantors or ancestors had been in the possession of the premises in question for long periods and had commonly been considered to be the owners thereof.[19]

Insofar as Philippine conditions were concerned, Tipton believed that "a very large number of landholders have absolutely no documentary evidence of title." He was "almost certain that in a vast majority of cases no other evidence of title can be produced than the mere facts of occupancy and cultivation."[20]

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[17] 4 RPC 92 (1900). Documented transfers, of course, had no immediate relevance to most people. The issue was a concern of elites who were described by the Schurman Commission as belonging to the "landowning class." *Id.*

[18] 1 RPC 30 (1901).

[19] Tipton, *A Sketch of the Difficulties Encountered in the Application of the American System of Surveys to the Public Lands in New Mexico, Arizona and Colorado, and in the Adjudication of the Rights Acquired under Spanish and Mexican Grants in Those Territories*, Appendix F in 2 RPC 313-318, 315 (1901). *See also* Tipton, *Memorandum as to the Spanish land system in the Philippines with observations as to certain advantages of the land system in the United States*, Appendix G in 2 RPC 325-332 (1901).

[20] Tipton, *supra* note 19, at 84-85. In his *Memorandum*, Tipton specifically noted at 321 that the 200,000 estimate referred to "the number of uncompleted titles that were delayed by proceedings in the different offices having cognizance over land matters."

Tipton's insight was reiterated by Commissioner Ide in October 1902 when the proposed Land Registration Act was presented in a public hearing. According to Ide, "[o]nly a comparatively small portion of the landowners in the Islands have ever had any written title to their land, the rights of the great majority of landowners are resting on occupancy." An OFFICIAL HANDBOOK published by the insular regime in 1903 also called attention to the "recognized fact that comparatively few holders of real estate in the Philippines can trace their titles to their origin in the Spanish Government."[21]

The Taft Commission said as much in its first formal report which was completed in November 1900. In its words:

> A very large percentage of the lands are occupied and claimed by individuals without any record title whatsoever. Many never had a record title, and those who had them have largely lost them through the vicissitudes of war, the burning of records, and the ravages of insects.[22]

A year and a half later, the Commission, through Secretary Worcester, was downplaying this official perception. In its stead, the Commission invoked an 1894 population estimate by the Spanish Overseas Minister, Antonio Maura. In a preamble to the then pending Maura Law, the Minister estimated that there were 200,000 unfinished "*expedientes*," i.e., legal actions relating to the sale and adjustments of Crown lands.

The estimate of *expedientes* had been first alluded to in the new regime by Gregorio Basa, an *ilustrado* attorney and a former forestry official. Prior to his appointment in October 1901 as chief clerk of the Bureau of Public Lands, Basa "had acquired an intimate knowledge of the Spanish land laws during eighteen years of service as an employee of the Spanish government."[23] In the opinion of the commissioners, Basa was "in a position to know the facts" and render a credible estimate

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[21] OFFICIAL HANDBOOK OF THE PHILIPPINES AND CATALOGUE OF THE PHILIPPINE EXHIBIT AT THE LOUISIANA PURCHASE /EXPOSITION 128 (1904) [hereinafter OFFICIAL HANDBOOK]. (The publication's cover page noted that it had been compiled in the Bureau of Insular Affairs, War Department, Washington, D.C.) Chapter IX had been revised by Daniel R. Williams, ex-Commissioner Moses's personal secretary and an attorney for Mateo Cariño in the landmark U.S. Supreme Court decision, Cariño v. Insular Government, which is discussed *infra*.

[22] RPC 84 (1901).

[23] REPORT OF THE SECRETARY OF THE INTERIOR TO THE PHILIPPINE COMMISSION FOR THE YEAR ENDING AUGUST 31, 1902, at 56 [hereinafter SECRETARY OF INTERIOR'S REPORT].

concerning the number of unfinished *expedientes* relating to adjustments. In Basa's opinion the number exceeded 400,000.[24]

Incredibly, the Commission invoked Basa's estimate of pending applications for documentary titles as an estimate of the number of people occupying lands within the so-called public domain.[25] According to official estimates, therefore, a mere five percent of the colonial population was deemed to reside on over ninety-two percent of the colonial land mass.[26] Basa's misused estimate, however, was not sacrosanct. For example, in a testimony before the House Committee on Insular Affairs in January 1902, Secretary of War Root reverted to the earlier figure and estimated that there were "two or three hundred thousand 'squatters'" on so-called public lands.[27]

That the figures were absurdly skewed must have been evident. Taft, while testifying before the House Committee in March 1902, provided a rough estimate of about one million Moros and perhaps as many as one and a half million hill tribes. These populations were almost by definition considered by the regime to be residing on "public" lands.[28] The failure of anyone to notice, let alone complain about, their

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[24]Basa's undated statement was incorporated into a letter of the Philippine Commission to the Secretary of War, dated October 15, 1903, explaining the framing of the Public Land Act and giving the reasons for its various provisions [hereinafter PLA letter], in UNITED STATES NATIONAL ARCHIVES - BUREAU OF INSULAR AFFAIRS (NA-BIA) 212-46 at 16.

[25]RPC 33-34 (1901). A manuscript-draft of the report, *id.* at 31, cited the annual report of the Bureau of Forestry dated July 30, 1901 as the source of the estimate. NA-BIA 2074-2. These figures were reiterated by Taft on March 4, 1902 during his testimony before Congress in regard to the Organic Act. See COMMITEE REPORTS, HEARINGS AND ACTS OF CONGRESS CORRESPONDING THERETO, UNITED STATES CONGRESS, HOUSE COMMITTEE ON INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES, 57TH CONGRESS, FIRST AND SECOND SESSIONS 175 (R. B. HORTON, Compiler; 1903) [hereinafter HOUSE HEARINGS].

[26]The Commission adopted "a conservative estimate" of 8 million for the overall population in the colony. It implied, however, that a figure of 9 million was also credible. 1 RPC 15 (1900). The official estimate was based on the 1898 church registry which showed that the total number of Catholic souls was 6,559,998. RPC 23 (1901).

[27]Statement delivered on January 18, 1902. HOUSE HEARINGS, *supra* note 25, at 46. Undocumented ancestral-domain rights may have been held by as many as three million people, or more than one-third of the colonial population. The estimate is admittedly speculative. It is also reasonable, a label which cannot credibly be applied to the Commission's estimate. It implies that about one out of every three inhabitants of the archipelago lived on the more than 90% of the total land mass which was deemed to be public.

[28]Response given on March 4, 1902. HOUSE HEARINGS, *supra* note 25, at 145. *See also, id.* at 173 where Taft conceded that "[o]f course, the claims of these squatters in any proper system of land sale would have to be recognized, I suppose." General MacArthur noted on April 11, 1902, in response to a query concerning the small amount of land recognized as private, that although he had not studied the official

omission from public domain population estimates, as well as the omission of an untold number of other rural peoples, was a revealing indicator of how completely the Philippine majority had been marginalized.

The most benign interpretation of the anomaly is that the Commission was confused. A more credible explanation is that it was deliberately--and surreptitiously-- engaged in deceit.[29] It decided to ignore Tipton's insights and misuse the estimate of Basa. It labeled all occupants of the so-called public lands as squatters. Even worse, it treated the overwhelming majority of "public" land occupants as if they were invisible or non-existent.[30]

Natural Resource Bureaucracies

While the population estimate was being formulated, the Taft Commission moved quickly to recreate an insular bureacracy for assessing, allocating, and documenting legal rights to natural resources. On September 19, 1900, less than three weeks after acquiring legislative power over pacified areas, the Commission passed "An Act for the Establishment and Maintenance of an Efficient and Honest Civil Service in the Philippine Islands."[31] In order to systematize its information gathering, the Commission then created its first bureau, the Bureau of Statistics.[32]

Six months earlier, on April 14, 1900, the *Inspeccion General de Montes* of the Spanish regime had been retained by the U.S. military government and renamed as the Forestry Bureau. U.S. Army captain George P. Ahern was appointed as officer-in-charge (OIC).[33] On September 14, the Commission "respectfully" requested the military governor to order Ahern and his counterpart in the mining bureau "to furnish the Commission lists of the employees who, in their judgment, will be necessary for the successful prosecution of the work of their

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statistics, "in traveling from one end of the archipelago to the other, there seems to be a great activity in agriculture and the people are employed everywhere." 1902 *Hearings Before The Committee On The Philippines Of The United States Senate*, S. DOC. NO. 331, 57th Cong., 1st Sess. 1381 (1902).

[29]The Commission had officially translated *"expedientes"* as meaning "petitions." RPC 54 (1900).

[30]An analysis of the deceit's likely rationale is provided *infra* in "III. The Hidden Agenda."

[31]Act No. 5 (1900).

[32]Act No. 7 (1900).

[33]Gen. Order No. 50 (1900). The order did not specify the OIC's duties, but authorized him to hire four foresters, two rangers, a translator, and a stenographer. Ahern served as forestry chief until 1914.

respective bureaus for the coming year."[34] A week later, the Commission asked the military governor to direct Ahern to appear before it and speak on the needs of the forestry bureau.[35]

Shortly thereafter, on October 10, the forestry bureau was reorganized under the auspices of the Commission. The reorganized bureau was comprised of only seven people: Ahern as OIC (a position which initially drew no salary), one inspector, a botanist, a translator, a chief clerk and stenographer, and two subordinate clerks.[36] Pending the enactment by the Commission of a Forest Act in 1904, the bureau's primary responsibility was to implement and enforce regulations governing the use of forest products.[37]

The small staff ensured that the bureau could not fully comply with its mandate. The shortage of personnel, however, could not be easily remedied. Many forestry officials under the Spanish regime had been corrupt, and the conditions which bred such behavior would be hard to change. According to the Schurman Commission, forestry officials were

> exposed to severe temptation, for it is a simple matter to transfer a wood from the class in which it belongs to a lower class, thereby saving a considerable sum to the owner who is often only too willing to give a part of what he can make in this way to the forester or ranger.[38]

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[34] 2 U.S. PHILIPPINE COMMISSION EXECUTIVE MINUTES 17 [hereinafter EM].

[35] *Id.* at 25.

[36] Act No. 16 (1900). Annual reports of the forestry bureau were published in Manila by the Bureau of Printing beginning in 1902 but the title varied. The first report covered the period July 1, 1901 to June 30, 1902 and was titled REPORT OF THE BUREAU OF FORESTRY FOR THE PHILIPPINE ISLANDS. The next year the title was REPORT OF THE FORESTRY BUREAU FOR THE PHILIPPINE ISLANDS. The 1904 and 1905 editions were labeled REPORT OF THE CHIEF OF THE BUREAU OF FORESTRY FOR THE PHILIPPINE ISLANDS. Subsequent reports up to the establishment of the Philippine Commonwealth in 1935 were titled ANNUAL REPORTS OF THE DIRECTOR OF FORESTRY FOR THE PHILIPPINE ISLANDS. The latter nomenclature is used in the dissertation for citation purposes. See also the RPC for reports issued from 1902 until 1908.

[37] The regulations had been promulgated by the military governor on June 27, 1900 as Gen. Order No. 92 (1900).

[38] 4 RPC 92 (1900). Other staffing impediments arose out of jurisdictional ambiguities between the Commission and the military governor. For example, on October 4, 1900, Worcester moved during an executive meeting of the Commission to have a U.S. Army first lieutenant appointed as an inspector in the forestry bureau and the Commission resolved to ask the military governor to do it. EM, *supra* note 34, at 50. The governor replied less than five days later "that the form of the resolution was not acceptable to him in that it named a particular officer for the performance of the duties specified." *Id.* at 63.

It is doubtful whether these concerns were allayed by June 1901. Nevertheless, thirty-four more employees, including four foresters and twenty forest rangers were added to the forestry bureau that month, and in July provision was made for a paid chief and assistant chief.[39] By 1910 there were ten U.S. foresters, one Spanish topographer, three Filipino assistant foresters, and thirty-two Filipino forest rangers.[40]

Mining claims had been processed during the last decades of Spanish rule by the *Inspeccion General de Minas*. Once the colony fell under U.S. sovereignty, mining claims were initially handled pursuant to Article 23 of General Order No. 92.[41] The mining bureaucracy was reorganized by the Commission on the same day as its forestry counterpart and was also staffed with only seven people: an OIC, a chief clerk, a mining engineer/assayer, a record clerk, and three subordinate officials.[42] The OIC of the Bureau of Mines was 1st Lieutenant Charles H. Burritt, who had originally been detailed by the military governor to head the reestablished mining bureau.[43] On September 20, 1901, four additional positions were created and the annual salaries of the bureau's employees were specified.[44]

A large number of people, particularly U.S. army veterans, had begun prospecting for gold and other minerals in Benguet Province and other regions of the country even before the Taft Commission had been established. The Commission, however, was slow to promulgate procedures for establishing and recording mining claims. Its inertia may have been tied to the Spooner Amendment of 1900 which prohibited "the sale or lease or other disposition of the public lands...or the mining rights therein."[45] These restrictions were removed when the U.S.

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[39]Act No. 144 (1901) and Act No. 171 (1901). For the interior secretary's comments on the Philippine forests in 1913, *e.g.*, "Certainly no country (*sic*) has a greater variety of beautiful and serviceable woods," see 2 D. WORCESTER, THE PHILIPPINES PAST AND PRESENT 846-860 (1914).

[40]ANNUAL REPORT OF THE DIRECTOR OF FORESTRY FOR THE PERIOD JULY 1, 1909 to JUNE 30, 1910 at 6 [hereinafter DIRECTOR OF FORESTRY'S REPORT].

[41]In 1903, Burritt authored, and the Bureau of Printing in Manila published, a 22 page COMPLETE LIST OF SPANISH MINING CLAIMS RECORDED IN THE MINING BUREAU.

[42]Act No. 17 (1900). Additional positions and employment criteria were established by Act No. 233 (1901), Act No. 916 (1903) and Act No. 1067 (1904).

[43]Gen. Order No. 31 (1900). By 1905, Burritt had been replaced by H.D. McCaskey.

[44]Act No. 233 (1901). *See also* Act No. 1067 (1904) which established criteria for professional employees of the bureau.

[45]*See* the "The Spooner Amendment" in the first part of this series in 62 PHIL. L. J. 279, 307 (1987).

Congress passed the Organic Act on July 1, 1902. Remarkably, nearly two-thirds of the Organic Act was devoted to mineral allocation.[46]

The Commission's first mining law, however, was not promulgated until February 7, 1903.[47] For reasons which are not readily apparent, the Commission removed the mining bureau's legal jurisdiction over mining claims and transferred it to provincial mining recorders and provincial secretaries.[48] On October 1, 1905, the Commission reorganized the mining bureau and converted it into a center for scientific research and data collection.[49] Jurisdiction over grants and claims made or instituted during the Spanish regime was then transferred to the Bureau of Public Lands, as were the records and archives of all existing mining claims.[50]

Despite the regime's high hopes for generating large scale mineral extraction, the mining chief lamented in 1905 that mining revenues were minimal because of "the consequent difficulty of securing capital."[51] He laid much of the blame on Section 33 of the Organic Act which provided that no one "shall be entitled to hold in his, its or their own name or in the name of any other person, corporation or association more than one mineral claim on the same vein or lode." The mining chief hastened to add that "no undue or improper efforts have been made, that might have been prevented by section 33, by Americans or others to exploit mineral lands at the expense of the Filipinos."[52] After 1907, however, and especially when free trade between the colony and United

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[46]An Act Temporarily To Provide For The Administration Of The Affairs Of Civil Government In The Philippine Islands And For Other Purposes (Organic Act), 32 Stat. 697-706 (1902) (sections 20-62 of the bill). On February 6, 1905, Congress provided another indicator of the importance it attached to mineral production in the colony when it amended many of the original mining provisions. *See* An Act To Amend An Act Approved July First Nineteen Hundred And Two, 33 Stat. 692-697 (1905).

[47]Act No. 624 (1903). For subsequent mining legislation *see* Act No. 777 (1903); Act No. 1128 (1904) and Act No. 1134 (1904); Act No. 1399 (1905); Act No. 1947 (1909) (confirming certain Spanish mining concessions). For discussion of a mining code proposed by Burritt which was largely based on U.S. federal mining laws, and which was never acted upon by the Commission, see 4 U.S. PHILIPPINE COMMISSION MINUTES OF PUBLIC SESSION 23-49 [hereinafter MPS].

[48]Act No. 624 (1903), sec. 2.

[49]Act No. 916 (1903). It appears that no centralized bureaucracy during the Taft era possessed jurisdiction over prospective mining claims or claims established after April 11, 1899. In addition, the mining bureau was reorganized into a division under the Bureau of Science by 1912.

[50]Act No. 915 (1903). For an official record of claims recorded up to 1898, see C. BURRIT, COMPLETE LIST OF MINING CLAIMS RECORDED IN THE MINING BUREAU COMPILED FROM THE RECORDS AND ARCHIVES (1903).

[51]SIXTH ANNUAL REPORT OF THE CHIEF OF THE MINING BUREAU TO THE HONORABLE SECRETARY OF THE INTERIOR 28 (1905). *See generally, id.* at 27-32.

[52]*Id.* at 27.

States was established in 1909, the value of minerals extracted each year rose steadily.[53]

Unlike the forest and mining bureaus, the Bureau of Public Lands had no institutional predecessor during the Spanish or U.S. military regimes. It was established by the Commission on September 21, 1901 and was initially composed of only two people, the bureau chief, William Tipton, and the chief clerk, Gregorio Basa. Their primary responsibility was to gather information.[54]

Worcester had a ready explanation for the bureau's limited mandate. He claimed that

> [i]n view of the restrictions with reference to the sale or lease of public lands imposed upon the Commission by Congressional action [i.e., the Spooner Amendment], it was deemed impracticable to do more than attempt to get together the incomplete records with reference to public and private lands which remained in the Government archives, and systematically examine and classify them.[55]

Tipton and Basa were hampered in their work by the destruction of many important land records shortly before the end of the Spanish regime, as well as the humid climate and poor storage facilities.[56] Nevertheless, by August 31, 1902, they had examined 8,478 documents. An additional 20,000 documents, "most of which [were] believed to be of slight importance," had yet to be reviewed.[57]

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[53]W. SMITH, THE MINING RESOURCES OF THE PHILIPPINE ISLANDS FOR THE YEAR 1912, at 7 (1913). The author was identified as the Chief, Division of Mines, Bureau of Science. The annual production breakdown during the waning years of the Taft era was: 1907/234,092 pesos; 1908/1,383,315 pesos; 1909/2,323,367 pesos; 1910/2,099,577 pesos; 1911/2,826,410 pesos; 1912/3,513,745 pesos.

[54]Act No. 218 (1901). Annual reports of the Director of Lands were issued beginning in 1902 up to 1908 and were published in the annual reports of the U.S. Department of War. Separate publication in Manila by the Bureau of Printing commenced in 1908. Between July 1, 1913 and year-end 1916, however, no report was published. Coincidently, the period of non-publication immediately followed the end of the Taft era and Secretary Worcester's departure from office.

[55]THE SECRETARY OF INTERIOR'S REPORT, *supra* note 23, at 56. *See also* 1 RPC 294 (1902).

[56]THE SECRETARY OF INTERIOR'S REPORT, *supra* note 23, at 57. *See also* 4 RPC 91 (1900) which noted that records pertaining to the "public domain" had "recently gone through a fire and...were in a charred and hopeless confusion." C. MAJUL, MABINI AND THE PHILIPPINE REVOLUTION 46 (1960), citing John Taylor, added that "there was a systematic destruction of land titles by some revolutionary leaders in order that their occupation of land would not be later contested."

[57]THE SECRETARY OF INTERIOR'S REPORT, *supra* note 23, at 56 (1902). The acting chief of the Bureau of Archives testified on June 7, 1904 that "all the *expedientes* we had...in regard to the composition and sale of lands by the Government have been transferred to the Bureau of Lands. There were about twelve thousand *expedientes* from

The bureau's enabling act also mandated Tipton and Basa to submit to the Commission, after due consideration,

> a plan for the organization of the Bureau framed as nearly as may be after the organization of the Public Land Office in the United States, with such variations as may be required by the differing conditions, having regard to the former land system under the Spanish sovereignty, and also a plan for the general survey of the public lands.[58]

Many of Tipton's and Basa's insights and recommendations would be distorted, or completely ignored, by the Commission, but their plan would lay the foundation for the enactment of the first Public Land Act in October 1903.

Meanwhile, on September 6, 1901, the Commission promulgated an omnibus act which established the Departments of Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction.[59] The distribution of bureaucratic authority among the various departments "was not very logical, having been made apparently more with reference to the desires and qualifications of the men who were to be secretaries than according to any natural method of grouping correlated subjects."[60] Insofar as natural resources were concerned, legal jurisdiction was concentrated in Commissioner Worcester. He was appointed as secretary of interior and placed in charge of the forestry, mining, and public lands bureaus, as well as the yet-to-be created Bureaus of Pagan and Mohammedan Tribes, of Agriculture, and of Fisheries.[61]

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all the provinces." Mateo Cariño, Plaintiff in Error vs. The Insular Government of the Philippine Islands, Supreme Court of the United States, October Term 1908, No. 298 (Official Record of the Proceedings) [hereinafter CARIÑO Proceedings), Government's Exhibit H, 140. The acting chief appeared to have relied on information which is also contained in an unsigned, typed, carbon copy 272 page compilation in the PNA which is titled "A List of Land Titles Turned Over to Bureau of Lands, 30 November 1901."

[58]Act No. 218 (1901), sec. 3.2.

[59]Act No. 222 (1901). Additional reorganizations took place pursuant to Act No. 1407 (1905) and Act No. 1879 (1907).

[60]C. ELLIOT, THE PHILIPPINES TO THE END OF THE COMMISSION GOVERNMENT 101 (1917). Elliot was an insular official who served as a Philipine commissioner for nearly three years between 1910 and 1912.

[61]Act No. 253 (1901) established the Bureau of Non-Christian Tribes for the Philippines. Act No. 261 (1901) established the Bureau of Agriculture which was then organized pursuant to Act No. 393 (1902). Other entities under Worcester's control included the Bureaus of Weather, of Health, of Patents and Copyrights, and of Government Laboratories, and the Quarantine Service of the Marine Hospital Corps.

The Public Land Act: Overview and Effects

Section 13 of the Organic Act required the Commission to immediately promulgate rules for the lease, sale and other disposition of "public" land resources. The Commission complied on October 7, 1903 when it enacted the first Public Land Act (PLA). The following week, a detailed letter was sent to the secretary of war explaining the rationale for various provisions in the law and urging that it be approved in its entirety by President Roosevelt and the Congress. Approval was secured without any amendment on July 26, 1904.[62]

The PLA consisted of seven chapters and, as with much of the Organic Act, it was patterned after U.S. public land laws.[63] The first six chapters provided different modes for acquiring documented property rights over land which, at the time of the 1898 cession, had ostensibly belonged to the Spanish Crown. Authority to administer the PLA and, except for Chapter VI, to grant the property rights provided for therein was delegated to the Department of Interior's Bureau of Public Lands.

Chapter VI was an oddity. It concerned the lands of *expedientes* who had been estimated by Basa to number 400,000. The regime, however, only possessed records of "about twelve thousand expedientes from all the provinces."[64] The PLA implicitly acknowledged that these lands were private and beyond its scope. It directed holders and claimants of title who voluntarily applied under Chapter VI to the Court of Land Registration "for confirmation of their claims and the issuance of a certificate of [Torrens] title therefor." The inclusion of Chapter VI in the PLA was justified by Section 14 of the Organic Act. It ordered the Commission to

> prescribe terms and conditions to enable persons to perfect their title to public land in said Islands who, prior to the transfer of sovereignty from Spain...had fullfilled all or some of the conditions required...for the acquisition of legal title thereto, yet failed to secure conveyance of title.

By referring to these lands as public, Congress had, perhaps inadvertently, empowered the insular regime to challenge the

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[62]No public land legislation enacted in the colony was ever disapproved by the Congress or the President.

[63]*See generally* R. ROBBINS, OUR LANDED HERITAGE: THE PUBLIC DOMAIN 1776-1936 (1950); B. HIBBARD, A HISTORY OF PUBLIC LAND POLICIES (reprint of 1924 ed., 1939).

[64]Deposition of the Acting Chief of the Bureau of Archives dated June 7, 1904. CARIÑO Proceedings, *supra* note 57, at 140. This revelation may have been made without Secretary Worcester's foreknowledge. It conformed, however, with a 272-page "List of Land Titles Turned Over to Bureau of Lands, 30 November 1901" which is on file with the PNA. See *infra*, footnote 118.

authenticity of any private rights which may have attached but had not yet been officially documented in final form by the notoriously slow and corrupt Spanish regime. Chapter VI's significance, therefore, was in the provision which authorized the regime to file "a petition against the holder, claimant, possessor, or occupant of any land of the Philippine Islands who shall not have voluntarily come in under the provisions of this chapter or of the Land Registration Act."[65]

Chapter VI also made an important, yet unnoticed, departure from U.S. public land laws concerning the right of preemption.[66] It provided that no title, right, or equity in any public land "may hereafter be acquired by prescription or adverse possession."[67] The Commission's action was yet another indicator that it was aware of the existence of undocumented land rights. The significance of the provision, however, was prospective: it purported to ensure that long-term occupancy of ostensibly public lands would no longer vest any right in the occupants.[68]

At the same time, Chapter I officially encouraged migration to the "public" domain. Pursuant to its provisions, which were founded on Sections 13 and 15 of the Organic Act, Filipino and U.S. citizens over the age of twenty-one, or the heads of families, were eligible to homestead up to forty acres (sixteen hectares) of previously unoccupied, unreserved and unappropriated agricultural public land.[69]

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[65]Com. Act No. 141 (1936), sec. 61.

[66]B. HIBBARD, *supra* note 63, at 144 described the right of preemptions as "the right to settle on and improve unappropriated public lands and later buy them at the minimum price without compensation." The right "was first gained in a general way in 1841."

[67]Com. Act No. 141 (1936), sec. 67.

[68]A curious provision in Com. Act No. 141 (1936), Chap. 6, sec. 54, par. 6 provided that all persons who, by themselves or their predecessors in interest, had been in adverse possession of "agricultural public lands...under a bona fide claim of ownership *except as against the Government* for a period of ten years...shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same (emphasis supplied)." The solicitor general, Gregorio Araneta, "under whose guidance the provisions of Section 54 of Chapter VI were drawn," opined in an undated (*circa* 1903) memorandum, which was included in the PLA letter, *supra* note 24, at 12, that this provision applied to those "who hold no title deeds from the Spanish government because of the difficulties which formerly existed in the way of obtaining the same, and that the said persons are unable to prove full or partial compliance with the requirements of the Spanish laws for the obtention of titles." If the land was public, however, and the occupation did not apply against the government, it was logically impossible for anyone to avail of the provision successfully.

[69]Official statistics pertaining to the allocation of homestead and other patents did not initially distinguish between Filipino and U.S. applicants.

Prospective homesteaders were obliged first to file a detailed application form in the Bureau of Public Lands, or before the local land officer,[70] and to pay an application fee of ten pesos. If the application was approved, the homesteader could legally occupy the land. Subsequent proof of five years' occupancy and continuous residence, and the payment of ten more pesos, entitled the claiment to a homestead patent.[71] A patent, however, could only be issued upon completion of a survey under the direction of the chief of the Bureau of Public Lands. Survey costs were to be borne by the insular regime.

The homestead program was the centerpiece of the PLA, yet few people took advantage of it. By 1913 only 21,963 applications had been filed and only 10,155 applications had been approved. Another indicator of the program's shortcomings was the number of applications cancelled by the regime for non-payment of application fees. Between July 1, 1911 and June 30, 1912, for example, more than 400 applications were "cancelled for non-payment of the required entry fees."[72] A more telling statistic showed that only 135 homestead patents had been issued by June 30, 1913, and of these, 106 patents were issued between July 1, 1912 and June 30, 1913.[73]

Explanations for the dismal showing varied. A leading U.S. newspaper in the colony editorialized that the Commission "ignored the very patent fact that the Philippine farmer does not live on the land he tills and cannot be persuaded to do so."[74] As for the low number

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[70]As of October 13, 1905, provincial treasurers were designated to perform the duties of local land officers in their respective provinces. Act No. 1404 (1905).

[71]The mode for paying the twenty-peso-homestead fee was amended on June 18, 1908 by Act No. 1864 (1908) to allow for five annual installments of four pesos each.

[72]In the ANNUAL REPORT OF THE DIRECTOR OF LANDS FOR THE FISCAL YEAR ENDED JUNE 30, 1912, at 34 (1912) [hereinafter THE DIRECTOR OF LANDS' REPORT], the director hastened to add that the cancellations were made only "after the applicants have had three notices extending over periods of from one to three years."

[73]CENSUS OF THE PHILIPPINES 881 (1918) [hereinafter CP]. The dramatic increase between July 1, 1912 and June 30, 1913 in the number of patent and lease applications was attributed to a larger number of "public-land inspectors" and a good harvest in most of the provinces. THE DIRECTOR OF LANDS' REPORT 36 (1913). It is unclear what role, if any, was played by the U.S. presidential election of 1912. Had the Democrats been paying any attention to Philippine issues, the dismal performance of Taft's insular colleagues insofar as land issues were concerned would have made an inviting target. Another possible factor after Taft's defeat in his November 1912 reelection bid was the desire of Worcester and other officials to acquire legally recognized property rights prior to their upcoming departure from office. *See also* footnotes 78 and 79 *infra*.

[74]1 W. FORBES, THE PHILIPPINE ISLANDS 323 (1928) quoting a May 9, 1912 editorial in the CABLE-NEWS AMERICAN. For additional perspectives on why the homestead law fared so poorly during its initial decade, *see* D. STURTEVANT, POPULAR UPRISING IN THE PHILIPPINES, 1840-1940, at 52-54 (1976); D. WURFEL, GOVERNMENT

of patents and accepted applications, the lands bureau claimed that "many applicants apply for registration of title to large areas of land which they have never seen and never owned or occupied."[75] The secretary of the interior added that many applications were cancelled because the required entry fee had not been paid.[76] (For a discussion of other possible reasons see *infra* "III. A Hidden Agenda.")

Chapter II of the PLA concerned sales by auction of unoccupied, non-mineral agricultural land of up to 40 acres (16 hectares) for an individual and up to 2,500 acres (1,024 hectares) for a corporation. Prospective purchasers were obliged to file an application in the Bureau of Public Lands which would then appraise the area covered. In no case was the appraisal to be less than ten pesos per hectare. Notice of the prospective sale was then to be published in two newspapers of general circulation, including, if possible, one published in a place near the land applied for. Incredibly, no records of protests filed in response to homestead applications were kept until 1918.[77]

Sealed bids which contained a certified check or money order for at least twenty-five percent of the amount offered were submitted. The down payment of the highest bidder was either accepted as partial payment or the bids would all be rejected as insufficient. In the event of a successful bid-award, the sales patent was only issued after an official survey was completed and, in the case of a corporation, paid for. Six percent interest accrued on all unpaid amounts and full payment was due within five years of the award.

Leases of up to 2,500 acres by individuals and corporations were covered by Chapter III. The leases conferred no right to remove or dispose of any timber or minerals from the concession area and the lessee was liable for waste and any violation of forest regulations. Unlike the first two chapters which were silent, Chapter III expressly provided that "no lease shall be permitted to interfere with any prior claim by settlement or occupation until the consent of the occupant or settler is first had and obtained, or until such claim be legally extinguished." Leases could be for up to twenty-five years, and were renewable for a second period of similar length. Applications were made to the Bureau of Public Lands. Lease payments were not to be less than fifty centavos per hectare.

AGRARIAN POLICY IN THE PHILIPPINES 93-94 (M.A. Thesis, University of California; 1950).

[75]THE DIRECTOR OF LANDS' REPORT 41 (1909).

[76]THE SECRETARY OF INTERIOR'S REPORT 77 (1910). *See also* footnote 65 *supra*.

[77]CP, *supra* note 73, at 880 *citing* THE DIRECTOR OF LANDS' REPORT (1918).

The chapters on sale and lease were founded on Section 15 of the Organic Act. Like their homestead counterpart, they had little initial impact. By June 30, 1912, only 180 applications for sale had been filed. Of these, only five covering 64.46 hectares had been approved.[78](See Table One.)

As for leases, by June 30, 1912, only 340 applications, which covered 99,295 hectares had been filed, and only eighteen had been approved. The total area leased covered only 6,990 hectares, of which well over half was located in non-Christian provinces. The reasons proffered for such low figures echoed those given to explain the failure of the homestead program. [79] (See Table Two.)

In 1909, the Commission recommended to Congress that the limitations on homestead acquisitions be raised from sixteen to fifty hectares. It also proposed that the sales restrictions on individual purchases be raised from sixteen to 500 hectares.[80] In a letter to Senator Lodge, the secretary of war explained that the proposed increases reflected a belief "that more persons may be induced to take up land." He noted that "very little land has been taken up" under the existing laws and opined that "this is probably due to the small amount which may be acquired."[81]

The key section for indigenes and other long term occupants, although few of them ever heard of it, was Chapter IV. It was mandated by Section 14 of the Organic Act, which was the closest Congress came to providing for a right of preemption in the colony, and it provided for the gratuitous issuance of free patents of up to sixteen hectares to incongruously labeled "native settlers." The chapter's coverage was limited to peoples who had occupied and cultivated unreserved, unappropriated public agricultural land since August 1, 1898, or since July 4, 1902 in the case of those who occupied their land for at

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[78]In stark contrast with the interior secretary's report, CP, *supra* note 73, at 903 reported that, by the following year, 891 individuals had filed sales applications, a whopping increase of nearly 500 percent over 1912. The census figures also showed that 279 applications, covering 4,054 hectares, were approved. Corporate sales applications up to 1913 reportedly totaled 132, of which only 20, covering an area slightly over 20,000 hectares, were approved. *Id.* at 904. By 1918 only 38 sales had been perfected into patents. *Id.* at 883.

[79]As with sales, Philippine census statistics showed that a sharp, but more modest, increase in lease applications and leases executed occurred the following year. The census indicated that by mid-1913, 431 individuals and 159 corporations had applied; 63 individual leases for over 9,000 hectares, and 13 corporate leases for almost 11,000 hectares were executed. In other words, nearly half of all leases made during the Taft era came during its final year. CP, *supra* note 73, at 898.

[80]RPC 53 (1909).

[81]Letter of J. M. Dickinson to Senator Lodge, Mar. 22, 1910 (NA-BIA 4325-43).

Table One

Provincial breakdown of sales applications and sales accomplished up to June 30, 1912.

	Applications	Area	Leases	Area
Agusan	--	--has.	--	--has.
Albay	--	--	--	--
Ambos Camarines	2	16.57	1	.57
Antique	2	1.48	0	--
Bataan	3	28.06	0	--
Batangas	--	--	--	--
Benguet	--	--	--	--
Bulacan	7	72.14	0	--
Cagayan	19	277.2	0	--
Capiz	--	--	--	--
Cavite	--	--	--	--
Cebu	3	11.49	0	--
Ilocos Norte	3	32.9	0	--
Ilocos Sur	2	11.23	0	--
Iloilo	--	--	--	--
Isabela	4	32.43	0	--
Laguna	--	--	--	--
La Union	--	--	--	--
Leyte	1	7	0	--
Manila	1	.04	0	--
Mindoro	1	200	0	--
Misamis	--	--	--	--
Moro	18	5,161.21	1	16
Mountain Province	3	19.66	0	--
Negros Occidental	7	112	0	--
Negros Oriental	--	--	--	--
Nueva Ecija	39	473.20	1	16
Nueva Vizcaya	--	--	--	--
Palawan	3	1,056	0	--
Pampanga	1	28.4	0	--
Pangasinan	15	247.26	0	--
Rizal	6	63.51	2	31.89
Samar	1	16	0	--
Sorsogon	3	32.34	0	--
Surigao	--	--	--	--
Tarlac	8	113.5	0	--
Tayabas	28	284.39	0	--
Zambales	--	--	--	--
TOTAL	180	8,269.98	5	64.46

Source: ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1912, at 78.

Table Two

Provincial breakdown of lease applications and leases executed up to June 30, 1912.

	Applications	Area	Leases	Area
Agusan	6	6,144 has.	0	--has.
Albay	--	--	--	--
Ambos Camarines	4	3,000	0	--
Antique	--	--	--	--
Bataan	11	2,245.83	2	131.71
Batangas	--	--	--	--
Bulacan	--	--	--	--
Benguet	--	--	--	--
Cagayan	--	--	--	--
Capiz	--	--	--	--
Cavite	--	--	--	--
Cebu	4	23.19	0	--
Ilocos Norte	1	16	0	--
Ilocos Sur	--	--	--	--
Iloilo	--	--	--	--
Isabela	1	1,024	0	--
Laguna	1	30	0	--
La Union	1	30	0	--
Leyte	1	20.53	0	--
Mindoro	8	3,864.16	0	--
Misamis	3	1,056	0	--
Moro	162	41,865.05	10	4,944.62
Mountain Province	2	40	0	--
Negros Occidental	3	920	0	--
Negros Oriental	1	6.08	0	--
Nueva Ecija	60	21,699.05	3	1,821.37
Nueva Vizcaya	--	--	--	--
Palawan	18	8,094.84	1	83.84
Pampanga	4	3,072	0	--
Pangasinan	3	104.44	0	--
Rizal	7	369.82	1	5.51
Samar	--	--	--	--
Sorsogon	2	4.34	1	3.47
Surigao	1	2.42	0	--
Tarlac	32	3,789.93	0	--
Tayabas	3	1,426	0	--
Zambales	1	500	0	--
TOTAL	340	99,295.42	18	6,990.55

Source: ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1912, at 80.

least three years prior to August 1, 1898, but temporarily left, presumably because of military activity.

Indigenous occupancy was not a prerequisite to acquiring a free patent. In an opinion which further derogated ancestral domain rights and may also have encouraged usurpations, the Philippine attorney-general, Gregorio Araneta, claimed in 1907 that an applicant for a free patent did "not need to show nor allege that he is an heir of the ancestor whose previous possession he claims."[82]

The chapter required that applications for registration of free patent rights must be made before the deadline on January 1, 1907.[83] Applications were made under oath in the Bureau of Public Lands and were to include a statement as to when the applicant or his or her ancestor entered into occupation and began cultivation. If the first occupation or possession was claimed through an ancestor, the law obliged the applicant to file satisfactory evidence of the date and place of the ancestor's death and burial. Once an application was accepted, an investigation, survey, and publication of notice ensued, preferably in the municipality and *barrio* where the land was located.

By June 30, 1913, a total of 15,885 applications for free patents had been made covering an area of 52,050 hectares. A mere 722 free patents covering 5,564 hectares were issued. Of the remaining applications, 3,292, which blanketed 16,283 hectares, were rejected, canceled, or withdrawn; 8,371 covering 26,174 hectares were pending investigation and survey; and 5,564 hectares claimed in 3,483 applications had been surveyed. (See Table Three.) Of these applications, only seventeen in the province of Tarlac had been contested.[84]

These statistics, along with those cited for other PLA chapters, provided conclusive evidence that almost ten years after the PLA was

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[82]4 OFFICIAL OPINIONS OF THE ATTORNEY-GENERAL OF THE PHILIPPINE ISLANDS ADVISING THE CIVIL GOVERNOR, THE HEADS OF DEPARTMENTS AND OTHER PUBLIC OFFICIALS IN RELATION TO THEIR OFFICIAL DUTIES 265 (1907) [hereinafter OPINIONS]. The opinion added that "[t]he law does not require from the applicant other proof of such relationship than his own statement under oath; and in regard to the Director of Lands who is to investigate the truth of such a statement, the law does not define what proof shall be considered sufficient, leaving it entirely to the discretion of said Director."

[83]This date was subsequently moved to January 1, 1909 by Act No. 1573 (1906), and to January 1, 1923 by Act No. 2222 (1913).

[84]THE SECRETARY OF INTERIOR'S REPORT 99 (1913). Strangely, the 1913 figures were identical with those reported in 1912. The largest number of free patent applications per province were, in descending order, in Nueva Vizcaya, Palawan, Tayabas (Quezon), Sorsogon, Negros Oriental, and Benguet. The largest areas covered were in Sorsogon, Palawan, Tayabas, Negros Occidental, and Benguet.

Table Three

Provincial breakdown of free patent applications and free patents issued up to June 30, 1913.

	Applications	Area	Patents	Area
Agusan	1	12.5 has.	0	--has.
Albay	49	230.78	5	14.23
Ambos Camarines	221	1860.63	61	513.59
Antique	83	1168.64	1	13.3
Bataan	56	226.43	27	115.25
Batangas	5	6.07	0	--
Benguet	1435	4285.15	38	142.59
Cagayan	731	500.04	0	--
Capiz	72	614.65	12	90.31
Cavite	1	1.29	1	1.29
Cebu	24	157.28	10	71.1
Ilocos Norte	19	351.06	0	--
Ilocos Sur	50	186.45	4	19.89
Iloilo	376	2772.53	0	--
Isabela	824	2268.5	0	--
Laguna	60	109.29	15	201.4
La Union	113	453.66	0	--
Lepanto-Bontoc	157	456.1	0	--
Leyte	113	763.08	6	50.85
Mindoro	77	597.06	38	323.74
Misamis	30	96.85	4	38.81
Moro	8	91.27	1	15.97
Negros Occidental	802	4463.01	0	--
Negros Oriental	1489	2290.93	0	--
Nueva Ecija	237	1034.26	0	--
Nueva Vizcaya	2599	3903.02	0	--
Palawan	2100	5690:01	2	17.56
Pangasinan	423	1461.20	0	--
Rizal	326	1017.05	1	10.74
Samar	3	18.37	0	--
Sorsogon	1532	7769.12	366	1565.65
Surigao	32	234.5	0	--
Tarlac	243	1928.18	106	616.59
Tayabas	1560	4856.77	6	15.53
Zambales	34	182.18	18	128.22
TOTAL	15,885	52,050.56	722	3,967.72

Source: ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1913, at 99.

enacted, the overwhelming majority of indigenes and other people within the "public" domain continued to be labeled in exactly the same manner as they were during the waning years of the Spanish regime, i.e., as squatters.

Forest Act Preludes

Another land-rights allocation category existed for peoples on "public" forest lands as well as individuals and corporations interested in logging and the gathering of minor forest products. U.S. officials were impressed by the colony's forest resources. Secretary of War Root exclaimed in 1901 that "[t]he most evident and striking element of wealth in the Philippine Islands consists of its forests."[85] The narrow interpretation of the Treaty of Paris enabled the regime to estimate that there was "between 40 million and 50 million acres of forest land which formerly belonged to the Crown of Spain and...became the property of the U.S."[86]

The original mandate of the forestry bureau was based on forest laws in force at the end of the Spanish regime and was found in General Order No. 92 of the U.S. military governor.[87] Among other things, the order contained regulations for the issuance of forest licenses. Unless a license was first acquired, the order provided that "[a]ll cutting or harvesting of the products of the public forests shall be considered fraudulent, and will be punished."[88]

The export of forest products was prohibited in July 1901 unless the goods were accompanied by a receipt showing that all forestry charges had been paid. The only exception applied to products taken from private forest lands which had been registered in the forestry bureau's Manila office.[89] Registration of private forest lands was no easy feat. Besides being obliged to prove ownership by way of a Spanish

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[85]E. ROOT, THE MILITARY AND COLONIAL POLICY OF THE U.S.: ADDRESSES AND REPORTS 272 (R. Bacon and J. Scott, compilers and eds. 1970) citing remarks in the 1901 REPORT OF THE SECRETARY OF WAR.

[86]Ahern, *Forestry and Timber*, in 1904 OFFICIAL HANDBOOK 86.

[87]RPC 55 (1901).

[88]Gen. Order No. 92 (1900), art. 73. The licensing power was, pursuant to the Spooner Amendent, legally suspended by the U.S. Congress from March 2, 1901 until July 1, 1902. In an initial act of undetected defiance, the Taft Commission continued to authorize the extraction of forest resources during the prescribed period. *See* "The Spooner Amendment" in the first part of this series in 62 PHIL. L. J. 279, 307 (1987).

[89]Act No. 165 (1901). Ahern reported in 1902 that "[i]f these titles were not registered in the forestry bureau, the wood cut is charged as if cut on public land." He added that "[a]t present the total area of private woodland registered in this bureau is about 250,000 acres." REPORT OF THE BUREAU OF FORESTRY FROM JULY 1, 1901 TO SEPTEMBER 1, 1902, 470. *See also* 1 RPC 470 (1902).

grant in the land registration court and/or public lands bureau, applicants needed to overcome the regime's effective presumption that forested lands were public.[90]

The more definitive, yet skeletal, framework for allocating legal rights to forest resources was contained in the Organic Law of July 1, 1902. Section 13 proscribed the sale of timber or mineral lands. Section 17 prohibited the cutting, destruction, removal, or appropriation of "timber, trees, forests, and forest products on lands leased or demised" by the insular regime "except by special permission of said Government and other such regulations as it may prescribe." Section 18 empowered the regime "to issue licenses to cut, harvest, or collect timber or other forest products." It specifically vested in the forestry bureau the power to certify that "lands are more valuable for agriculture than for forest uses." It also provided that, until certified, "no timber lands forming part of the public domain shall be sold, leased, or entered."

The Organic Act had little, if any, effect on the forestry bureaucracy. Jurisdiction over forestry resources continued to be delegated by the Commission through Worcester's Department of Interior to the Bureau of Forestry. In granting licenses, the bureau's "first consideration [was] given to applicants who have held licenses in former years and who reside in the district applied for."[91]

The Forest Act: Overview and Effects

The Commission enacted the first comprehensive Forest Act on May 7, 1904.[92] The act was drafted in large measure by Gifford Pinchot during a six-week visit in 1903.[93] Pinchot was a towering figure in the history of the U.S. Forest Service. He was determined that forests be harvested on a commercial scale and not merely conserved. This philosophy was already evident in most of the forest laws which had

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[90]Section 24 of the 1904 Forest Act provided that "[e]very private owner of forest land shall register his title to the same with the Chief of the Bureau of Forestry. In the absence of such registration, wood cut from alleged private lands...shall be considered as cut under license....When in his opinion the public interests so require, the Chief...may make application to the examiner of the Court of Land Registration or the fiscal of the province in which the land lies."

[91]THE SECRETARY OF INTERIOR'S REPORT, *supra* note 23; 2 RPC 279 (1903).

[92]Act No. 1148 (1904).

[93]REPORTS OF THE FORESTRY BUREAU (1913); 2 RPC 279 (1903). As Pinchot traveled by boat around the colony "all spare time on board the ship was devoted to arranging data for a new forest law and regulations." His "rough draft" was received by the Commission on August 26, 1903 and was "laid upon the table pending the receipt of the recommendation of Captain Ahern." 6 U.S. PHILIPPINE COMMISSION EXECUTIVE MINUTES 871.

been enacted by the U.S. military and civilian regimes. The Forest Act, therefore, contained many reiterations of existing laws. Sections 13 through 19 authorized the bureau chief, with the approval of the secretary of the interior, to issue licenses for up to twenty years "for the cutting, collection, and removal of timber, firewood, gums, resins, and other forest products."

Except for the provision on gratuitous licenses (discussed *infra*), the Forest Act had little impact on preexisting processes for granting legal rights to forest resources. Nor did it result in any significant increase in the number of forest licenses issued. Between July 1, 1901 and June 30, 1913, an average of slightly over 1,000 commercial timber licenses were in existence each year.[94] During the same period, an average of 500 licenses for firewood collection were operative, and slightly under 400 for the gathering of minor forest products such as gums, resins, dyewoods, etc. In addition, an average of 700 licenses were issued each year on behalf of "needy residents" and for "public works."[95]

Forestry Chief Ahern initially devoted most of his time "to the issuing of licenses and the inspection of the operations of lumbermen." Soon after, he was obliged to devote more and more of his time "to matters of revenue."[96] Ahern testified before the House of Representatives Committee on Insular Affairs in 1908 that during the first five years of the bureau's existence, forestry revenues amounted to approximately two million pesos (US $1 million), of which fifty percent went to the bureau's operating expenses and the rest was turned over to

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[94]Logging concessions were limited to specified tracts. Most licenses also contained upper limits on the amount of timber which could be harvested per year. Individual licenses were up to 10,000 cubic feet, while the corporate limit was 100,000 cubic feet. Unfortunately, no breakdown between individual and corporate licenses was published.

[95]These averages are based on statistics provided in the THE SECRETARY OF INTERIOR'S REPORT (1902, 1903); 1 RPC 463 (1902); 2 RPC 295 (1903); and the annual REPORTS OF THE FORESTRY BUREAU 60 (1903-4), 21 (1905-6), 25 (1906-7), 19 (1907-8), 36 (1910-11), 55 (1911-12). The 1908-9 and 1909-10 REPORTS contained no information on the number of timber licenses in force. Beginning with the 1910-11 fiscal year, however, subsequent reports reflected roughly the same numerical rate of licenses as the earlier reports. The 1912-13 figures were: timber licenses, 1,206; firewood, 503; by-products, 1,088; gratuitous, 1,298 (1,248 "personal use"/50 "public works").

[96]Statement on February 19, 1908. Ahern's testimony was published in Washington by the U.S. Government in 1908 under the title, G. AHERN, FORESTRY MATTERS IN THE PHILIPPINES (1908). *See id.* at 3.

the insular regime. In other words, Ahern explained, "[t]he bureau costs less than 50% of the revenue."[97]

In a publication prepared for circulation in the colony that same year, Ahern reported that "[t]he annual revenues from the extensive Philippine public forests amounts to an average of slightly over 210,000 pesos."[98] He claimed that the figure would have been much higher but for "the liberal laws which extend the free use privilege not only to the people at large but to the public works department and also the railway companies."[99] Revenues steadily increased, however, and in the final year of the Taft era they exceeded 350,000 pesos. (See Table Four.) Significantly, revenues generated by exports were considerably less than annual imports of (presumably unprocessed) forest products, which during 1907-8 were over 13 million pesos.[100]

Gratuitous Permits

In an uncharacteristically liberal gesture, which may have actually been an acknowledgement of the regime's limited enforcement powers, Section 19 of the Forest Act authorized the bureau chief, with the approval of Secretary Worcester, to "grant gratuitous licenses for the free use of timber...and other forest products, and of stone and earth, in reasonable quantities and within definite territorial limits, for domestic purposes."

The need to secure written authorizations for gratuitous permits proved to be unduly cumbersome. On October 26, 1905, therefore, the Commission ordered that

> [f]or a period of five years...any resident of the Philippine Islands may cut or take, or hire cut or taken [sic], for himself from the public forests,

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[97]*Id.* at 4. In Worcester, *Memorandum Of Bureau Matters In The Department Of Interior For His Excellency, The Governor General (circa* 1913) in 13 WORCESTER PHILIPPINE COLLECTION, DEPARTMENT OF RARE BOOKS AND SPECIAL COLLECTIONS, UNIVERSITY OF MICHIGAN [hereinafter WPC], Worcester informed Francis B. Harrison that "[t]he supervision exercised by the Bureau of Forestry costs nothing for the reason that, as has been repeatedly and conclusively shown, each increase in the working force of this bureau is promptly followed by a more than corresponding increase in the revenues derived from forest products. In other words, it brings in more than it costs."

[98]G. AHERN, A FEW PERTINENT FACTS CONCERNING THE PHILIPPINE FORESTS AND THE NEEDS OF THE FOREST SERVICE THAT SHOULD INTERST EVERY FILIPINO 17 (1908).

[99]*Id.* Act No. 1148 (1904), sec. 19; Act No. 1407, sec. 9 (b).

[100]G. AHERN, *supra* note 98, at 17. The official export figure for the 1906-7 fiscal year was 252,000 pesos while imports reached 16,316,000 pesos. During the last full year of the Taft era, 472,000 pesos worth of lumber and 289,000 pesos worth of minor forest products were exported. THE DIRECTOR OF FORESTRY'S REPORT 63 (1913).

Table Four

Revenue, in Philippine pesos,* derived from the sale of forest products, and expenses of the Bureau of Forestry from the date of its organization, April 14, 1900, until June 30, 1913.

Fiscal Years	Revenue	Expenses	Surplus	Expenses (%)
1901-06	2,268,591	1,118,887	1,149,704	49
1907	191,080	105,050	86,030	55
1908	211,571	107,242	104,329	51
1909	251,380	115,049	136,331	45
1910	271,582	152,161	119,421	56
1911	334,763	160,476	174,287	48
1912	354,685	200,840	153,845	57
1913	390,664	227,048	163,616	59
TOTAL	4,274,316	2,186,953	2,087,563	52.5**

*Two pesos were equivalent to one U.S. dollar

** Average

Source: ANNUAL REPORT OF THE DIRECTOR OF FORESTRY FOR THE PHILIPPINE ISLANDS FOR THE FISCAL YEAR ENDING JUNE 30, 1913, at 60.

> without license and free of charge, such timber, other than timber of the first group, and such firewood, resins, other forest products, and stone or earth, as he may require for housebuilding, fencing, boatbuilding, or other personal use of himself or his family.[101]

In his 1906 ANNUAL REPORT, Ahern characterized the free use proviso as "a great boon to people of the provinces." His estimation of the Commission's legislative impact in the provinces, however, was surely exaggerated. In Ahern's words, "[w]ood is now used to a large extent in rebuilding the houses of the middle and poorer classes, where nipa, grass and bamboo were formerly used."[102]

The free-use provision, meanwhile, was amended in October 1907 so that the bureau director could set aside, with Worcester's approval, specific tracts of land as communal forests. Once established within a municipality, the right of free use was "then [to] be exercised only within the communal forest."[103] By June 30, 1909, ninety-four municipalities and townships had applied for communal forests; and by the following year fourty-two had been established.[104] Four years later, the number of communal forests had risen over six-fold to 295.[105]

Swidden Prohibitions

General Order No. 92 had proscribed the unauthorized clearing of "public" lands, especially by fire. Offenders were liable for a fine of up to twenty dollars per hectare cleared or, in case of insolvency, a term in prison.[106] On October 21, 1901, the Commission likewise prohibited the "making of so-called *caiñgins* [i.e. swidden clearings]...on public lands, by felling or burning trees." Violators were liable, upon conviction, for a fine of up to US $100 and up to thirty days imprisonment, as well as charges assessed for the timber destroyed or an additional day in prison for each dollar of unpaid charges. Those found ignorant of the law would first be dismissed with a warning, but a

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[101]Act No. 1407 (1905), sec. 9(b). The period was extended to 10 years by Act No. 1976 (1910). Timber of the first group included acle, baticulin, betis, camagon, ebony, ipil, lanete, mancono, molave, narra, tindalo, and yakal. Act No. 1148 (1904), sec. 11.

[102]THE DIRECTOR OF FORESTRY'S REPORT 11-12 (1906).

[103]Act No. 1800 (1907). *See also* Act No. 1872 (1908) and Act No. 2165 (1912).

[104]THE DIRECTOR OF FORESTRY'S REPORT 9 (1909); THE DIRECTOR OF FORESTRY'S REPORT 10 (1910). Ninety-one applications were pending as of June 30, 1910. For additional background on the whereabouts and extent of communal forests, see B. BERNALES, L. SAGMIT and F. BONGALOS, SOCIAL FORESTRY PROSPECTS IN THE PHILIPPINES: AN INVENTORY AND A LISTING OF COMMUNAL PASTURES 52-178 (1982).

[105]THE DIRECTOR OF FORESTRY'S REPORT 61 (1913).

[106]Gen. Order No. 92 (1900), arts. 73-74.

second-time offender could make no such excuse.[107] Section 25 of the Forest Act restated the prohibition and penalties for "making *caiñgins*."

The forestry chief realized that these legal prohibitions were not effective. One problem was that section 27 of the Forest Act authorized municipal presidents and forest officers to issue swidden permits over private forests and woodlands which adjoined public forests. To make matters worse, Forest Regulation No. 25, paragraph A, authorized municipal presidents, in the absence of a forest officer, to issue swidden permits on so-called public lands.

Ahern disliked these exceptions and lamented that

> [t]he practice of making clearings in the public forests continues unabated and forest officers are deeply impressed by the fact that by far the most destructive agency in the Philippine forests is the making of caiñgins. The total destruction is beyond belief.

Ahern added that "[e]very forest officer has done his best to stop these practices. Imprisonment and fines fail to accomplish the desired results."[108] He then advised the Commission that "[i]t seems to be the opinion of many interested in stopping this practice that the power to issue *caiñgin* permits, now granted to municipal presidents, should be annulled and that forestry officials only should be granted such privilege." Ahern's superiors agreed, and on December 6, 1906, Forest Regulation No. 25 was amended.[109]

The following year Ahern went a step further. He concluded that there was "no further necessity for granting *caiñgin* permits" even by forest officials. In his opinion, the homestead provisions in the PLA were "very liberal" and "anyone desiring to make *caiñgins* should be required to make out homestead applications." He added that henceforth forestry officials "will assist any resident in securing a homestead rather than a *caiñgin* permit."[110] Nevertheless, Ahern reported a year later that 343 new *caiñgin* permits had been granted by forest officers. In an ominous development for many rural farmers, Ahern

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[107]Act No. 274 (1901). Worcester's negative attitudes about *caiñgin*-making, "a shiftless (*sic*) form of agriculture," can be found in 2 D. WORCESTER, *supra* note 39, at 848-849, 855.

[108]THE DIRECTOR OF FORESTRY'S REPORT 11-12 (1906).

[109]THE DIRECTOR OF FORESTRY'S REPORT 15 (1907).

[110]THE DIRECTOR OF FORESTRY'S REPORT 7 (1907).

added that an unspecified number of complaints for making unauthorized swidden clearings had been filed for prosecution.[111]

Predictably, these legal prohibitions which emanated in Manila also had little effect on most forest zones. Forestry officials were exasperated and, as the Taft era came to a close, their anti-*caiñgin* rhetoric became even more strident. In 1912, Ahern indiscriminately labeled *caiñgin*-making as "the greatest hazard to which the public forests of the Philippines are exposed." Ahern's greatest contempt, however, was not directed at small farmers within the so-called public forest zones, but rather at provincial fiscals who failed to prosecute *caiñgineros* when their names were turned in by forestry officials. Ahern claimed to possess "strong evidence" from one unnamed province which would "show that *caiñgins* were made with the full knowledge and sanction of provincial authorities."[112]

Worcester echoed these sentiments the following year and added that

> [t]he existing opposition to forest protection springs from a desire on the part of Filipinos to consume their capital as well as their interests....If they were left to their own desire the forests would once more blaze with *caiñgin* fires set by the poor peasants at the command of the influential *caciques*.[113]

The remarks of Ahern and Worcester underscored the autonomy which rural peoples, including provincial and municipal officials, usually enjoyed despite the formal, centralized nature of the Manila-based regime. They also revealed once more the simplistic way in which U.S. officials perceived and described peoples living within the "public" domain. Most were invisible. Of those recognized, the overwhelming majority were indiscriminately--and often incorrectly--labeled as peasants, squatters, and destroyers of forest resources.

II. THE "PRIVATE" DOMAIN

The Land Registration Act: Overview and Effects

The Worcester-dominated Schurman Commission reported that "the landowning class finds great difficulty in securing the capital which it so greatly needs." It concluded that the problem arose from the

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[111] THE DIRECTOR OF FORESTRY'S REPORT 8 (1907). Thirty permits to make *caiñgins* on private woodlands had also been issued during the same period by municipal presidents.

[112] THE DIRECTOR OF FORESTRY'S REPORT 29 (1912).

[113] 2 D. WORCESTER, *supra* note 39, at 885.

fact that Spanish legal processes for conveying property rights were "cumbersome and the methods of recording and certifying titles so imperfect as to render transfers difficult and titles insecure."[114]

In its first official report, the Taft Commission estimated that landed elites individually owned "about 2,000,000 hectares or about 4,940,000 acres."[115] The Commission appeared eager to ensure that these land rights were properly documented. The reasoning was straightforward: documents which officially recognized private property rights could be used as mortgage collateral and would thereby stimulate economic development. In addition, property owners were liable for real estate taxes.[116]

Problems pertaining to documented titles were acute. The Commission reported that "[o]f some 2,300,000 parcels of land claimed to be privately owned, relatively few were represented by title deeds acceptable for transfers of ownership, mortgage purposes, or as collateral for bank credits."[117] Secretary Worcester blamed the documentary dishevelment on "the wanton destruction of many important Government records by Spanish officials shortly before the downfall of Spanish sovereignty," as well as to "the vicissitudes of war; to the mutilation of existing records, caused by evil-intentioned persons or by insect pests, and to the rapid deterioration which documents undergo" in the colony's tropical climate.[118]

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[114] 4 RPC 92 (1900).

[115] RPC 33 (1901). Three years later, this estimate had been subtly refined. It read: "The public domain embraces at least fifty millions of acres and *not more than* five millions are owned and occupied by individuals." (Emphasis supplied.) PLA Letter, *supra* note 24 at 9.

The CENSUS OF THE PHILIPPINE ISLANDS [hereinafter CPI], which was "based on a custom of guessing," estimated in 1903 that there were a total of 815,434 "Christian" farms covering 2,823,704 hectares of agricultural land of which 1,298,845 (or 45.9%) were cultivated. Of these farms, 658,524 were held by "owners," 14,403 by "cash tenants," 132,444 by "share tenants," 1,233 by "labor tenants", and 8,830 by "no rentals." 4 CPI 254, 189, 250-251, 268. The Census also revealed a high degree of ownership concentration, i.e., 2,354 farms, or .3% of the total number of farms, comprised 777,729 hectares, or 27.5% of the total hectarage. Significantly, the percentage of agricultural land in Cotabato, Jolo, Lepanto-Bontoc, and Benguet was estimated to be less than one percent. 4 CPI 188.

For cautionary remarks "On Using the Philippine Census," see Owen, *supra* note 13, at 58-59.

[116] Act No. 48 (1900), secs. 29, 135; Act No. 82 (1900). Failure to pay could result in foreclosure by the regime.

[117] 1 W. FORBES, *supra* note 74, at 314. This figure was still being officially invoked in 1910. *See* RPC 10 (1910).

[118] THE SECRETARY OF INTERIOR'S REPORT, *supra* note 23, at 57 (1902).

Contrary to the impression created by these claims, the Philippine National Archives [hereinater PNA] possesses an unsigned 272-page "List of Land Titles Turned

Table Five

A Provincial Breakdown of Documentary Titles and Pending Applications as of November 30, 1901 and of Torrens Title Applications as of January 1914.

Province	1901 Titles	1901 Applications	1914 Torrens Applications
Abra	1	0	--
Agusan	--	--	63
Albay	236	86	170
Antique	98	40	18
Bataan	66	2	193
Batangas	255	3	134
Benguet	2	0	--
Bohol	6	3	176
Bulacan	230	14	147
Burias	4	0	--
Cavite	51	4	170
Cagayan	192	119	77
Camarines	149	74	139
Capiz	47	12	53
Cebu	157	17	301
Iloilo	106	4	383
Ilocos Sur	172	6	76
Ilocos Norte	262	6	92
Isabela de Basilan	1	1	--
Isabela de Luzon	424	254	48
La Union	31	14	89
Laguna	500	42	307
Lepanto	0	1	--
Leyte	60	2	301
Manila	199	58	2547
Masbate	215	68	--
Mindanao	9	3	665
Mindoro	--	--	103
Misamis	--	--	27

Over to Bureau of Lands, 30 November 1901." The compilation, which was originally titled "*Relacion de los Expedientes sobre Composicion de Terrenos de Varios Provincios y Estos Expedientes Fureon Remitidos a Terrenos Publicos*," lists, by province, the names of people who possessed recognized land rights and indicated that a total of 6,966 titles were acknowledged as having been officially processed and documented while 1,118 were still pending. See Table Five for the provincial breakdown. Other compilations, which appear to be related but are labeled as having only been turned over to the lands bureau in 1916, indicate by province the name of each documented owner and the municipality where each holding was located.

Morong	88	8	--
Mountain	--	--	78
Negros	507	68	
Occidental			425
Oriental			74
Nueva Ecija	587	69	363
Nueva Vizcaya	--	--	25
Pampanga	1834	32	361
Pangasinan	46	17	270
Paragua (Palawan)	1	4	12
Rizal	--	--	510
Romblon	41	3	--
Samar	20	6	132
Sorsogon	8	98	165
Surigao	3	0	41
Tarlac	305	33	392
Tayabas	28	16	260
Zambales	10	0	120
Zamboanga	12	1	--
TOTAL	6,966	1,188	9,507

Sources:

Philippine National Archives (PNA) "List of Land Titles Turned Over to Bureau of Lands, 30 November 1901."

Department of Finance and Justice, 1915. EXHIBIT OF THE GENERAL LAND REGISTRATION OFFICE citing a letter from the Clerk of the Land Registration Court dated January 23, 1914.

The Schurman Commission had laid the groundwork for a predetermined solution. It claimed to have learned that "[s]ome of the most enlighted lawyers of the archipelago favor the adoption of the Torrens system."[119] The Taft Commission likewise concluded early on that the Torrens system was "especially adapted to the situation" in the colony. Accordingly, it announced "the present purpose of the Commission to enact a complete system of registration on the general lines of the Torrens system."[120] Taft justified its introduction on the seemingly incongruous grounds that there was "so much public land and so little individual ownership."[121]

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[119] 4 RPC 92 (1900).

[120] 1 RPC 92 (1901).

[121] HOUSE HEARINGS, *supra* note 25, at 178. Taft's comments give rise to an inference that he was aware of the widespread customary practice of communal ownership.

The Torrens system registers and guarantees the legal rights of private land owners. The system was devised during the 1830s by Sir Robert Torrens who had served as commissioner of customs in South Australia before becoming a land registrar of deeds. Torrens based his scheme on the English Merchant Shipping Acts which had streamlined regulations pertaining to the loading and transhipment of ocean-bound cargo space.[122]

The Torrens system promotes the use of land as a marketable commodity. Unlike customary systems, a Torrens title holder need have no relation to the land other than what is stated in the Torrens document. A Torrens title holder is also generally free to convey his or her rights to anyone, regardless of whether or not they belong to the community where the land is located or whether they intend to use the land or leave it idle.[123]

Pursuant to the Torrens system, the State guarantees the indefeasibility and preeminence of titles to land. This eliminates all problems which arise when competing claims, which may also be supported by official documentary evidence, are presented. Any one interested in purchasing land covered by a Torrens title, or using it as collateral, need only look at the title. The Torrens system, however, does not create or vest title. It merely confirms and records titles already existing and vested.

The task of drafting a law for applying the Torrens system within the colony was delegated to Commissioner Ide, a man of frail health who had served for four years as a land commissioner in Samoa. By February 1902 Ide reported from Yokahama, Japan, where he was enjoying a respite from the tropical heat, that "I have a draft of the law providing for a system of land registration nearly completed."[124] The following month Taft reported on Ide's progress to the House Committee on Insular Affairs and noted that the Torrens system was to be gradually adopted in the colony.[125]

On October 20, 1902, Ide's draft was presented on third reading in a public session of the Commission. Remarkably, despite the bill's

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[122]W. HIBLACK, AN ANALYSIS OF THE TORRENS SYSTEM OF CONVEYING LAND WITH REFERENCE TO THE TORRENS STATUTES OF AUSTRALIA, ENGLAND, CANADA, AND THE UNITED STATES 7-8 (1912).

[123]The most common restrictions on this general right pertain to citizenship and zoning.

[124]Letter from Commissioner Ide to Taft, February 28, 1902 in *William H. Taft Papers* [hereinafter TP], Library of Congress, Series 3, Reel 35.

[125]HOUSE HEARINGS, *supra* note 25, at 178.

immediate, and enduring, importance, the session was poorly attended. Except for the commissioners, only two people spoke, an American businessman with interests in the Negros sugar industry, and a man named Francisco Ortiga who wanted to make some suggestions but "was recovering from an illness and did not feel able to address the Commission at that time."[126]

Ide opened the public session with a lengthy statement. He began by saying that

> [t]he boundaries of all lands, whether registered or not registered, are very uncertain and indefinite, and the fact that a land title has been registered furnishes no conclusive evidence of the validity of the title.[127]

Ide then listed the benefits which he felt would be obtained by the passage of the bill. These included an overall diminution of registration expenses, faster processing of applications, better record keeping, greater security of title, and increased land value.[128]

The following month, the Commission reported that the "bill has been considered in public session and, after such discussion and such amendments as seem warranted by reason of discussion, has been passed." According to the Commission,

> [t]he enactment of such legislation here is of the highest importance. Titles and boundaries at present are so uncertain that capital is deterred from investment by reason thereof, important enterprises that otherwise would be undertaken are not entered upon, and rates of interest for loans upon real estate are exeedingly high, and loans on such security are often impossible to secure at any rate of interest.[129]

The Land Registration Act was passed by the Commission on November 6, 1902. Pursuant to the act, a Court of Land Registration with "jurisdiction throughout the Philippine Archipelago" was established in Manila. The court was comprised of one judge, one associate judge, and one clerk. As originally enacted, register of deeds offices were to be established in Manila and each province. Examiners of titles could also be appointed in each of the fifteen judicial districts within the colony.[130]

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[126] 5 U.S. PHILIPPINE COMMISSION MINUTES OF PUBLIC SESSIONS [hereinafter MPS] 184. *See generally, id.* at 171-184.

[127] *Id.* at 171-172.

[128] *Id.* at 175-176.

[129] First Annual Report of the Secretary of Finance and Justice to the Philippine Commission for the Period from October 15, 1901 to September 30, 1902.

[130] Com. Act No. 141 (1936), secs. 3, 7, 10, 12.

Any person claiming ownership of land in fee simple was eligible to file, on a voluntary basis, an application for a Torrens title.[131] The application was initially reviewed by the examiner, but an adverse opinion did not prevent a determined applicant from electing to proceed with the process. Once the application reached the court, a standard notice was issued to "all persons appearing to have an interest...and to all whom it may concern." The notice called upon those with adverse rights and claims "to show cause, if you have any, why the prayer of such application shall not be granted."[132]

Despite the notification provisions, many, if not most, adverse right-holders and claimants had no forewarning that a Torrens title affecting their land rights was about to be issued. The notice only had "to be published once in two newspapers, one of which shall be printed in the English language and one in Spanish, of general circulation in the province or city where any portion of the land lies." If no foreign language paper was published nearby, it was sufficient to publish the notices in Manila.[133]

During the initial year of operations, only nineteen applications were filed. The numbers thereafter increased yearly, and by January 1914 there was a total of 9,797 applications.[134] The following month, the Court of Land Registration was abolished and its jurisdictional authority transferred to the Courts of First Instance.[135] During its eleven years of existence, the land registration court registered 24,449 parcels of land.[136] These parcels were "comprised almost wholly [of]

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[131]On October 3, 1911, the Commission made registration compulsory in the non-Christian provinces of Moro, Mountain, Nueva Vizcaya, and Agusan. Act No. 2075 (1911). *See also* Act No. 2080. Making registration mandatory among the least westernized sectors of colonial society was incongruous at best. Unable to get a Cadastral Law enacted in "regular" provinces, the Commission may have decided to experiment in its exclusive legislative fiefdom. Perhaps Act No. 2075 (1911) was part of the hidden agenda discussed *infra* in part III. In any event, it was a complete contradiction of Act No. 1224 (1904) which stripped the court of land registration of all jurisdiction in most unhispanicized regions. This law was evidently a response to the *Cariño* decision, discussed *infra*, which recognized aboriginal title.

[132]Com. Act No. 141 (1936), sec. 31.

[133]*Id.*

[134]DEPARTMENT OF FINANCE AND JUSTICE, EXHIBIT OF THE GENERAL LAND REGISTRATION OFFICE AT THE PANAMA-PACIFIC EXPOSITION, SAN FRANCISCO, *citing* a letter from the Clerk of the Land Registration Court dated January 23, 1914, NA-BIA 7374-20A (1915).

[135]Act No. 2347 (1914).

[136]DEPARTMENT OF FINANCE AND JUSTICE, *supra* note 134, at 8. More than one parcel could be included in one title. The breakdown per year was: 1904, 186; 1905, 357; 1906, 520; 1907, 728; 1908, 1,057; 1909, 1,225; 1910, 1,178; 1911, 3,080; 1912, 2,575; 1913, 5,260.

large properties and lands purchased by the government." The beneficiaries, therefore, were generally well educated and financially prosperous. This fact caused little concern among the Taft commissioners. Instead, they were pleased that some of their native allies appreciated the Commission's handiwork.

> Inasmuch as the law was an innovation and did not make the registration of titles compulsory, landowners were slow to take advantage of its provisions, except the comparatively few who understood the use of first-class security in financing agricultural and other commercial enterprises.[137]

So-called voluntary cases brought on behalf of claimants whose lands had been surveyed by private surveyors generated a less complacent response. Private surveyors were oftentimes either dishonest or improperly trained. The Bureau of Lands estimated that, as a result, at least eighty percent of the early private surveys were defective.[138] The Legislature responded in 1908 by increasing the number of public surveyors, by establishing verification measures, and by requiring that all suveyors pass an examination which demonstrated professional competence.[139]

No comparable effort was made to broaden the effective reach of the Torrens titling system until W. Cameron Forbes was appointed Governor-General in 1909. Forbes promoted the enactment of a cadastral law which would enable more densely occupied areas within a specified locale to be automatically surveyed and titled by the government. Growing acrimony between the Commission and the Assembly, however, delayed the enactment of the Cadastral Act until 1913.[140]

The *Valenton* Decision

Applicants for a Torrens title were obliged to prove at the outset that their land rights had been documented and deemed private by the Spanish regime. The great stress placed on Spanish land laws and

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[137] 1 W. FORBES, *supra* note 74, at 315-316.

[138] RPC 10 (1910). Governor-General Smith, in a message to the Philippine Legislature on February 1, 1909, claimed that recent experiences "with the Land Registration Act demonstrated to a conclusion that many of the surveys presented to the Court of Land Registration are grossly incorrect and that the court in not a few cases has granted certificates of title on the faith of such surveys." 3 JOURNAL OF THE PHILIPPINE COMMISSION 72 [hereinafter JPC].

[139] Act No. 1875 (1908). *See also* Act No. 1491 (1906), which established an educational curriculum for prospective surveyors.

[140] Act No. 2259 (1913). According to 1 W. FORBES, *supra* note 74, at 319, the delay was also "due in great part...to opposition by lawyers and surveyors in private practice and by large landed proprietors."

Spanish documentation was peculiar. The commissioners were well aware that the Spanish regime had failed to implement an equitable or efficient system for recognizing, allocating, and registering property rights. The Taft commissioners went so far as to claim that the "insufficient character of the public land system under the Spanish government in these islands makes it unnecessary to refer in detail to what the system was."[141]

Despite their public contempt for Spanish land laws, the Commission never wavered in upholding them. It was a classic, yet effective, display of convoluted reasoning. The regime could dismiss documented rights on grounds of procedural or substantive inefficiencies, or recognize them when it was politically expedient to do so. At the same time, by upholding Spanish land laws, especially the Maura Law of 1894, it could legally disenfranchise untold millions. The magnitude of the disenfranchisement, meanwhile, was hidden by the regime's estimate of the numbers of peoples residing within the "public" domain.

The Philippine Supreme Court was presented with an early opportunity to decide whether or not the regime could legally ignore customary land rights. The case, *Valenton v. Murciano,* involved a dispute between a group of actual long-term occupants and an individual who had allegedly secured a Spanish grant. Both parties claimed ownership of the same parcel of land. In 1860, Andres Valenton and his group began to peacefully possess a portion of the unoccupied land in the fertile Central Luzon province of Tarlac. They acknowledged that the land originally belonged to the Crown. But they also claimed that in 1890, after thirty years of possession, ownership had vested in them by way of prescription.

Meanwhile, in 1892, Manuel Murciano secured, over the protest of Valenton and the latter's neighbors, a documented contract of purchase over the land from the secretary of the provincial treasury. Prior to the purchase, Murciano had never occupied the land. After the purchase, he occupied "only certain indistinct and indefinite portions" while Valenton and his group continued to occupy the rest.

The issue was clear cut: who possessed the superior property right. The Manila Court of First Instance ruled in favor of Murciano. Its decision was based on the ground that the actual occupants had failed to pursue their objections after the sale to Murciano was consummated in 1892. An appeal was filed in the colonial Supreme Court. Speaking through Charles A. Willard, an American appointee who would retire the following month, the Supreme Court claimed that its decision was

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[141]RPC 34 (1901).

based on "those special laws which from the earliest times have regarded the disposition of the public lands in the colonies."[142] The Supreme Court then proceeded to ignore the bulk of Spanish legislation pertaining to land, as well as the due process clause of the Organic Act. Instead, it selectively cited and relied on poorly translated provisions from the Laws of the Indies.[143]

Although the justices may not have realized it, the *Valenton* decision ultimately rested on the confiscatory 1894 Maura Law. As such, the decision held that before any private interest in land could be established, a claimant had to first secure documentary recognition of the right from the colonial regime. In the words of Justice Willard:

> While the State has always recognized the right of an occupant to a deed if he proves possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.[144]

The *Valenton* decision was an important landmark in Philippine jurisprudence. It laid the judicial foundation for the twentieth-century Philippine Regalian Doctrine. Pursuant to the court's reasoning, Valenton and his neighbors had no rights other than those

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[142]Valenton v. Murciano, 3 Phil. 537, 540 (1904). Two Filipino and four American justices participated in the decision. John T. McDonough resigned along with Willard on April 30. John F. Cooper resigned on Octber 17. 2 W. FORBES, *supra* note 1, at 454.

[143]The key provision relied on, and one often cited in later opinions and books which uncritically accepted the decision, was LAWS OF THE INDIES, BOOK 4, TITLE 12, LAW 14 [hereinafter LI]. It was translated by the Court as follows:

> 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* of grant be restored to us according as they belong to us...and after distributing to the natives what may be necessary for tillage and pasturage, confirming in them 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 wish.

The phrase in *italics* is a peculiar and misleading translation of "*conviene que toda la tierra que se posee sin justos y verdaderos titulos.*" A more literal and accurate translation would be "it is convenient that all lands possessed without justice and true title." As demonstrated in the second part of this series in 63 PHIL. L. J. 82 (1988), until 1894 the Crown repeatedly recognized ancestral domains as justly possessed and titled on behalf of indigenes. Law 14, therefore, could conceivably (although not necessarily) be used against migrants like Valenton and his companions. Its application to indigenes involved a blatant distortion, or at best a historically ignorant interpretation, of the monarchy's expressed intent.

[144]Valenton v. Murciano, 3 Phil. 537, 543 (1904).

which accrued to mere possession. Murciano, on the other hand, was deemed to be the owner of the land by virtue of a colonial grant by a provincial secretary. In case any doubts lingered as to the usurpation of customary property rights, the Court added that "[t]he policy pursued by the Spanish Government from the earliest times, requiring settlers on the public lands to obtain title deeds therefor from the State, has been continued by the American Government in Act No. 926," i.e., the PLA.

The *Cariño* Decision: Preliminaries

The *Valenton* decision meshed well with the views of the Philippine Commission. The Commission was determined not to recognize undocumented ancestral-domain rights as being private. One can only imagine its surprise, therefore, when the U.S. Supreme Court ruled otherwise in its landmark 1909 decision, *Cariño v. Insular Government*.

Don Mateo Cariño was an indigenous occupant from the upland province of Benguet. On June 22, 1903, Cariño had applied in the Court of Land Registration for documentary recognition of his ancestral ownership over 370 acres (146 hectares) of land in Baguio Municipality. The claim of Cariño was based on testimony that, at least since 1848, he and his forebears had fenced off portions of the land and utilized it for grazing cattle and cultivating a small amount of camote and rice.[145] Upon the death of Cariño's grandfather, ownership over the land was transmitted to Cariño's father, who likewise bequeathed it to his son after his death in the early 1880s.[146]

Cariño claimed to have applied to the *corregidore* of Benguet two times between 1893 and 1897 for documentary recognition of ownership. Since it was the practice of the Spanish regime not to issue titles to Igorots,[147] no documentary recognition was secured until 1901 when Cariño recorded his claim in a possessory information proceeding. The U.S. regime, however, ignored the claim and, sometime before 1903, over Cariño's objections, a public road was constructed on the property. In

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[145]The *Brief for Plaintiff in Error* filed by Cariño's attorneys in the U.S. Supreme Court noted at page 2 that testimony proffered by a civil engineer on behalf of the insular regime indicated that the fences, and by implication the occupation, went back at least 100 years. The brief averred on page 3 that "there is no evidence to contradict the fair inference that the tenure of the Cariño family went back to remote antiquity, perhaps antedating the arrival of Magellan."

[146]Records at 6-7, *Cariño*. All testimony cited was taken during the trial before the Land Registration Court.

[147]Testimony of the Benguet provincial governor, William F. Pack. Records at 47, *Cariño*. *See also* Pack's statement in Government's Exhibit D, Records at 133, *Cariño*. No official record of Cariño's application was found. Government's Exhibit H, Records at 140, *Cariño*.

response, Cariño petitioned the Court of Land Registration on June 22, 1903 for a Torrens title. Four months later, while the petition was pending, a U.S. military reservation was proclaimed over the area and, shortly thereafter, a military detachment was detailed on the property with orders to keep cattle and trespassers, including Cariño, off the land.

Meanwhile, a hearing on Cariño's petition was held in the Court of Land Registration. During the hearing it was officially established that "the land was claimed and used by the Cariño family as individual owners and not in trust for the people as chieftains." It was also determined that "no formal concession of the property to the applicant or his predecessors in interest was ever made by the Spanish Government." Despite the latter finding and objections to the petition from the insular regime and the U.S. Government, a judgment was entered in Cariño's favor on March 4, 1904. Cariño's petition was approved on the ground that he had secured a prescriptive right against the Spanish sovereign. The court, therefore, ordered that Cariño be allowed to register his title.[148]

Within two weeks of the decision, Acting Attorney General Gregorio Araneta filed an appeal in the Benguet Court of First Instance (CFI). (Within six months the Commission, which by then included Forbes, stripped the land registration court of its jurisdiction over applications for recognition of ownership in Benguet and several other resource-rich provinces.[149]) Another trial was held and additional testimony and evidence were introduced. On April 4, 1905, the CFI dismissed Cariño's petition on the ground that the courts had no jurisdiction to entertain the registration request. Without explaining why, the court opined that if Spain intended to extend the doctrine of prescription to the colony it "would have clearly and unequivocally expressed this doctrine, not leaving it in a position of doubt."[150] To support its conclusion, the court then invoked the 1904 Philippine Supreme Court decision in *Valenton v. Murciano*. In *Valenton*, the Court had declared, among other things, that between 1860 and 1892 there was no law in force in the colony by which ownership over Crown lands could

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[148]Decision of the Court of Land Registration, Records at 6, 8, *Cariño*. The judge was Daniel R. Williams, the former personal secretary of Commissioner Moses and a former assistant secretary to the Commission. Williams was an attorney of record for Cariño when the *Brief for Plaintiff in Error* was filed in the Philippine and U.S. Supreme Courts.

[149]Act No. 1224 (1904).

[150]Decision of the Benguet Court of First Instance, Records at 162, *Cariño*.

be obtained by prescription without any supporting action by the regime.[151]

Cariño appealed to the Philippine Supreme Court. He was a determined man with a powerful economic incentive to persevere. Land prices in Baguio had begun to soar after the U.S. colonial imposition. Besides reports of gold and other valuable minerals in the surrounding mountains, the cool upland climate provided a much-sought-after respite from the tropical heat of the lowlands. On October 3, 1901, Cariño had entered into a duly notarized promissory agreement with a U.S. merchant residing in Manila. The note obliged Cariño to sell the land at issue "as soon as he obtains from the Government of the United States, or its representatives in the Philippines, real and definitive title." The purchaser paid to Cariño 100 Mexican dollars as earnest money and promised to pay 5,900 Mexican dollars within sixty days from the time Cariño secured official recognition of his ancestral land rights.[152]

The colonial Supreme Court, however, was also not receptive to Cariño's claim. In a 1906 decision, it claimed to be bound by the *Valenton* precedent. It also dismissed Cariño's claim that an ownership grant was to be conclusively presumed from immemorial use and occupation. According to the court, the presumption might be sustainable in certain situations. But when those involved were those who successfully resisted the Spanish colonial imposition, the surrounding circumstances would be deemed incompatible with the existence of a grant. In the court's words:

> It is known that for nearly three hundred years all attempts to convert the Igorots of Benguet to the Christian religion completely failed, and that during that time they remained practically in the same condition as they were when the Islands were first occupied by the Spaniards. To presume as a matter of fact that during that time, and down to at least 1880, the provisions of the laws relating to the grant, adjustment, and the sale of public lands were taken advantage of by these uncivilized people ...would be to presume something which did not exist.[153]

Undaunted, Cariño appealed to the U.S. Supreme Court. In the brief filed on his behalf, Cariño's attorneys asserted that the case raised only one important question: "Has Mateo Cariño, the appellant, a

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[151]Records at 163, *Cariño, citing* Valenton v. Murciano, 3 Phil. 537, 557 (1904).

[152]Government's Exhibit G, Records at 137-138, *Cariño*. The Brief for Plaintiff in Error at 6-7 speculated, however, that the option contract "seems to have been adduced simply for the purpose of influencing the Court to believe the claim to be merely speculative."

[153]Cariño v. Insular Government, 7 Phil. 132, 132-139 (1906).

valid and legal title?" They noted that the Philippine Supreme Court had, in effect, held that time immemorial possession conferred no rights which were protected by the Treaty of Paris unless the holder had secured a paper title from the Spaniards. The lawyers cautioned that

> [i]f this decision be affirmed the whole Igorrote nation [and all other aboriginal title holders] may be driven as 'lawless squatters' from land held before Spanish explorers even set out in quest of the Indies. So unjust and startling a result cannot be reached without a reversion to legal notions of property and social order incompatible with any stage of civilization above barbarism.[154]

The U.S. solicitor-general responded in the *Brief for the United States and the Insular Government* by asserting that Cariño's rights were at best inchoate and that they had been "wiped out" by the Maura Law of 1894. He averred that the property at issue

> was absolutely a part of the crown lands of Spain at the date of the ratification of the treaty of Paris, and passed as absolutely into the ownership of the United States, unclouded by any shadow of title in Cariño who, on April 11, 1899, was a bare trespasser.[155]

Significantly, the U.S. solicitor-general made no effort to respond to the issues of equity and justice which had been highlighted in the brief for Cariño. No semblance of Taft's former policy of attraction was to be found. Instead, in what would prove to be a theoretically strategic error, although not a practical one, the government's posture was strictly hard line.

The government's myopia was reinforced by the response of the insular regime and its allies in the War Department. On February 5, 1908, the U.S. attorney-general wrote to the secretary of war and requested "any information in the possession of the War Department that will be of aid in the preparation of the case for hearing in the Supreme Court." The acting secretary of war responded on February 10 and advised that "the matter has been referred to the law officer of the Bureau of Insular Affairs who will give it his attention and procure the information requested in your letter for transmission to you."

On June 30, the acting attorney-general wrote again: "As the case is No. 72 and will be reached for hearing early during the next October Term, the Department desires that the preparation of the Government brief should be undertaken during the summer." In a tone of exasperation,

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[154]The Brief for Plaintiff in Error at 9. Cariño was represented by Coudert Brothers, a prominent New York law firm which maintained an office in Manila.

[155]The Brief for the United States and the Insular Government at 21.

another letter was sent to the secretary of war on September 15. The letter commented that "[i]t seems that your acknowledgement of February 10 last is the only communication received from your Department concerning the case." The chief legal officer in the United States then pleaded for assistance. "In order that the Government brief may be prepared and in print when the case is reached, it is important," the attorney-general wrote, "that the matter receive immediate attention. A prompt reply, therefore, will be appreciated." This letter also went unanswered. As a result, the Department of Justice apparently prepared the brief and argued the case without any official input from the insular regime which postdated the Philippine Supreme Court's decision of December 6, 1906.[156]

The *Cariño* Decision: Outcome and Effects

The U.S. Supreme Court rendered its opinion on February 23, 1909. In a unanimous decision written by Oliver Wendell Holmes, the High Court systematically demolished the government's arguments against Cariño's claim.[157] Holmes went along with those who argued that Spain in its early decrees "embodied the universal feudal theory that all lands were held from the Crown."[158] But he dismissed these laws as "theory and discourse." The simple fact was "that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books." As for the 1894 Maura Law, Holmes admonished that the decree "should not be construed as confiscation, but as the withdrawal of a privilege" to obtain recognition of ownership rights and register title.[159]

Furthermore, Holmes emphasized, even if Spain refused to recognize the undocumented property rights of an indigene, it did "not follow that, in the view of the United States, he had lost all rights and was a mere trespasser." Holmes considered such a perspective to be repugnant. In his words, "[t]he argument to that effect seems to amount to a denial of native titles...for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce."[160]

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[156]Copies of these letters are located in NA-BIA file no. 17321-1, 2, 3, and 4.

[157]Cariño v. Insular Government, 41 Phil. 935, 212 U.S. 449 (1909).

[158]Although technically correct, Holmes was presumably unaware that, unlike in Spanish America, King Philip II had decided to invoke a novel theory of consent to justify his sovereign claims over the Philippines. *See* "The Spanish Foundation" in the first part of this series in 62 PHIL. L. J. 279 (1987).

[159]Cariño v. Insular Government, 41 Phil. 935, 944 (1909).

[160]Cariño v. Insular Government, 41 Phil. 935, 939 (1909).

Holmes stressed that being a new sovereign, the United States was not bound by Spanish laws and was free to discard them whenever they clashed with U.S. objectives. "No one, we suppose, would deny," Holmes wrote, that "the first object in the internal administration of the islands, so far as is consistent with paramount necessities, is to do justice to the natives, not to exploit their country [*sic*] for private gain." Justice was to be meted out in compliance with the Organic Act of 1902. Holmes quoted, in particular, the first provision in the Philippine Bill of Rights which mimicked the Fifth Amendment to the U.S. Constitution. It provided that "no law shall be enacted which shall deprive any person of life, liberty, or property without due process law, or to deny any person the equal protection of the laws." Holmes seemed aghast that the U.S. Government

> [w]as ready to declare that 'any person' did not embrace the inhabitants of Benguet, or that it meant by 'property' only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association--one of the profoundest factors in human thought--regarded as their own.[161]

Holmes then formulated the decision's holding so as to provide a theoretical framework for determining the scope of property rights which the United States acquired by way of the Treaty of Paris. In language which threatened the hidden agenda of the colonial cabal, the Court held that "when as far back as testimony or memory goes, the land has been held...under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land." In addition, any ambiguities or doubts as to the applicability of Spanish laws were, henceforth, to be resolved in favor of the applicants.[162]

Soon after the BIA chief remitted a copy of the decision to the Governor General,[163] and Cariño's efforts to secure documentary recognition of his ancestral ownership were crowned with success. It would have been an act of brazen defiance for the insular regime to

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[161]Cariño v. Insular Government, 41 Phil. 935, 940 (1909).

[162]Cariño v. Insular Government, 41 Phil. 935, 941 (1909). A decision which recognized customary rights to extract from mineral veins was penned by Holmes the following year. Reavis v. Fianza, 40 Phil. 1029, 215 U.S. 16 (1909). It was likewise suppressed and remains largely unknown even to lawyers and law students.

[163]The Letter of the Bureau of Internal Affairs Chief to the Governor General, March 12, 1909 (NA-BIA 17321-7) was terse: "Sir: I have the honor to enclose herewith three copies of the decision of the Supreme Court of the United States, adverse to the Philippine Government, in the case of Mateo Cariño vs. The Government of the Philippine Islands." This was the only entry in the BIA's *Cariño* file except for an incomplete set of the briefs filed with the U.S. Supreme Court.

refuse to issue his paper title. Except for recognizing Cariño's rights, however, the decision had no effect on the colonial government. Millions of indigenes within the so-called public domain continued to be grossly underestimated. Even more objectionable, in view of the *Cariño* decision, they continued to be labeled as squatters.

By officially ignoring the appeals process which followed the Philippine Supreme Court's 1906 *Cariño* decision, the insular regime feigned disengagement. If it ever became necessary, the regime was officially positioned to argue that the U.S. Supreme Court's holding regarding time immemorial possession was not binding in a general sense. After all, despite Holmes's references to U.S. colonial objectives and procedural due process, these legal precepts did not emanate directly from the U.S. Constitution. Rather, they were mere imitations enacted by the U.S. Congress. Hence, it would have been a logical step for the insular regime to assume that Philippine standards of due process and judicial review, among other things, were less stringent than those adhered to in the United States.[164] The regime, however, was never compelled to advance these, or any similar claims, in defence of its position vis-a-vis the *Cariño* decision.

The Friar Lands

The last component of the U.S. regime's private land policy concerned the friar estates. The tangled relationship between church and state which characterized the Spanish regime made it inevitable, at least initially, that U.S colonial officials would likewise become involved with Roman Catholic Church affairs. Success at disentangling the two represented "[p]erhaps the most important reforms carried out by the Americans."[165]

Article Seven of the Articles of Capitulation of the City of Manila, which had been signed by U.S. and Spanish officials on August 14, 1898, "placed under the special safeguard of the faith and honor of the American army" private property of all descriptions in the city. This guarantee was expressly extended to churches.[166]

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[164]The regime would have also been able to try and justify its shunning of the *Cariño* precedent by way of an important qualification in Section 10 of the Organic Act. It provided for judicial review by the U.S. Supreme Court "in the same manner, under the same regulations, and by the same procedure, *as far as applicable*, as the final judgments and decrees of the Circuit Courts of the United States." (Emphasis supplied.)

[165]P. STANLEY, A NATION IN THE MAKING: THE PHILIPPINES AND THE UNITED STATES, 1899-1921, at 82 (1974). *See also* F. REUTER, CATHOLIC INFLUENCE ON AMERICAN COLONIAL POLICIES, 1898-1904, at 88-105 (1967).

[166]For a copy of the Articles of Capitulation, *see* 2 W. FORBES, *supra* note 1, at 427-428.

> Considering that the surrender of Manila took place while thousands of Filipino troops besieged the city, this provision was very important. In effect it made the United States army the protector of the Catholic church in Manila against possible attack or seizure by the Filipino revolutionaries.[167]

Article VIII of the Treaty of Paris provided the church with more concrete guarantees. It required the United States to protect property rights which had been documented by the Spanish regime, including those held by "ecclesiastical bodies."[168] The treaty, however, also included an express limitation on the extent to which the colonial regime could become involved in religious affairs. Article X mandated that all inhabitants of the Philippines "shall be secured in the free exercise of their religion." These guarantees were reiterated in McKinley's instructions and section 6 of the Organic Act.

Legal provisions protecting church property reflected an early awareness among U.S. miltary and civilian officials of the extraordinary political clout which had been wielded by Spanish priests in the colonial government, particularly on the municipal level.[169] In order not to anger the friars, or the Catholic constituency in the U.S., the Schurman Commission conducted a superficial inquiry into church affairs. It also chose not to investigate charges levied against the friars. "Considering the strong feelings of the natives concerning the lands held by the friars," however, the Schurman Commission recommended that the colonial government purchase the friar estates.[170]

President McKinley's instructions to the Taft Commission made it a "duty...to make a thorough investigation into the titles of the large tracts of land held or claimed by individuals or by religious orders." He also ordered the commissioners "to seek by wise and peaceable measures a just settlement of the controversies which have caused strife and bloodshed in the past." The controversies alluded to were, in the minds of the North Americans, a reference to landlord-tenant problems in the

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[167]Gowing, *supra* note 3, at 205.

[168]It was generally assumed that this provision was inserted at the behest of the friar orders with large landholdings. J, LEROY, *supra* note 2, at 376.

[169]*See, e.g.*, 1 RPC 57-58 (1900).

[170]The Secular Clergy and the Religious Orders in 1 RPC 130-136 (1900). For reports of alleged friar "immorality" and the reluctance of U.S. officials to investigate, see L. GLEECK, THE AMERICAN HALF-CENTURY 58-60. *See also* 1 H. PRINGLE, THE LIFE AND TIMES OF WILLIAM HOWARD TAFT: A BIOGRAPHY 220-236 (1939).

friar estates. The author of the instructions, Secretary of War Root, "could not have known of any strife except on the friar *haciendas*."[171]

Taft's inclination was to make concessions, within a legal framework which called for separation of church and state, whenever they could be justified. The Treaty of Paris, and subsequently the Philippine Bill, however, also implied that the U.S. regime had an obligation to protect Spanish friars who wished to return to their provincial homes and regain control of their property. By upholding these rights, the regime was sure to inflame the passions of peoples who had joined the revolution so as to oust the Spanish clergy from the friar estates. Taft explained his dilemma to the editor of a U.S. periodical in April 1902.

> [S]ince 1898 the friars have been able to collect no rent or practically none from their lands. The old tenants have been in possession so far as they could be in a state of war. The title to the lands in the friars is in my judgment indisputable at law....The friars realizing the hostility of the people to their ownership of land have transferred their holdings to promoting companies in which they hold a majority of the stock. The people, however, are not deceived by this and they absolutely refuse to recognize the right and title of the friars.[172]

Anti-friar sentiments provided Taft with leverage in his efforts to address problems arising from the friar estates, as well as to secularize the educational system.[173] Most province-based friars had made a hasty evacuation to Manila after the outbreak of the Philippine revolution.[174] Their absence from the field, and the early appointments of U.S. bishops to replace their Spanish counterparts, further enhanced Taft's leverage.[175]

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[171]B. SALAMANCA, THE FILIPINO REACTION TO AMERICAN RULE, 1901-1913, at 40 (1984).

[172]Letter from Commissioner Taft to David E. Thompson, editor, North Western Advocate: Chicago, Illinois, April 12, 1902 in TP, Series 3, Box 35. Gowing, *supra* note 3, at 216 describes how the orders conveyed their titles.

[173]For discussions of early U.S. educational reforms, see G. MAY, SOCIAL ENGINEERING IN THE PHILIPPINES: THE AIMS, EXECUTION AND IMPACT OF AMERICAN COLONIAL POLICY, 1900-1913, at 77-126 (1984); B. SALAMANCA, *supra* note 170, at 65-81; P. STANLEY, *supra* note 164, at 82-86; Clifford, *Religion and Public Schools in the Philippines: 1899-1906*, in 1969 STUDIES IN PHLIPPINE CHURCH HISTORY; E. BAZACO, HISTORY OF EDUCATION IN THE PHILIPPINES (1953); E. ALONZA, A HISTORY OF EDUCATION IN THE PHILIPPINES, 1565-1930 (1932).

[174]The Schurman Commission reported that when the revolution began there were 1,124 friars in the colony, the majority of whom fled to Manila. More than 300, however, were captured by the revolutionaries and approximately fifty were killed. 1 RPC 130 (1900); 2 RPC 110, 396.

[175]The last Spanish bishop left the colony in 1904, and U.S. citizens then occupied four of the five episcopal sees. In 1905 the first native to achieve episcopal

From the outset, however, Taft wanted to avoid any open conflict with church authorities. He was also eager to ingratiate himself with the leading *ilustrados* in Manila. The challenge was how to do it.[176] Soon after his arrival in the colony, Taft assigned himself responsibility for the friar estates, a task he considered to be "the most delicate matter of the whole lot" facing the commissioners.[177] With Taft presiding, the Commission heard testimony for and against the friars.[178] It concluded that the Philippine Revolution began as an anti-friar movement and added that "[a]ll evidence derived from every source but the friars themselves shows clearly that the hatred for the friars is well-nigh universal and permeates all classes."[179]

The Commission recommended that the insular regime buy the estates of the Dominicans, Recollects and Augustinians and sell them in small parcels to the actual tenants.[180] Secretary Root agreed. Together with Taft, he successfully lobbied in the U.S. Congress for inclusion of provisions in the 1902 Philippine Bill authorizing the colonial regime to purchase the friar estates and issue bonds to pay for the costs.[181]

Protracted negotiations ensued. After testifying in Washington, D.C. in regard to the Organic Act, Taft traveled back to the Philippines by way of the Vatican and spent the greater part of June and July of 1902 negotiating with the Pope and his representatives.[182] No agreement was reached on the land issue. But the Vatican did agree to prohibit Catholic clergy in the Islands from engaging in political activity.[183] It

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rank, Jorge Barlin, was appointed bishop of Nueva Caceres. Gowing, *supra* note 3, at 218.

[176]B. SALAMANCA, *supra* note 3, at 182 concluded that "Taft probably wanted to establish right away his popularity among the Filipino elite, knowing that this was one question in which they had an absorbing interest, for he seems to have made up his mind even before the hearings began that the friars would have to go."

[177]Letter to Horace Taft, Sept. 8, 1900 in 1 H. PRINGLE, *supra* note 169, at 221.

[178]A transcript of the hearings was published in 1901 by order of the U.S. Senate. *See* LANDS HELD FOR ECCLESIASTICAL OR RELIGIOUS USES IN THE PHILIPPINE ISLANDS, Document No. 190, 56th Congress, 2d Session. *See also* Exhibit I: Report on Religious Controversies in 1 RPC 213-350 (1903).

[179]1 RPC 30 (1901).

[180]1 RPC 32 (1901).

[181]Secs. 63-65.

[182]*See* Farrell, *Background of the 1902 Taft Mission to Rome* in 1950 THE CATHOLIC HISTORICAL REVIEW 1-32; F. ZWIEWLIEN, THEODORE ROOSEVELT AND THE CATHOLICS 46-64 (1956); J. REYES, LEGISLATIVE HISTORY OF AMERICA'S ECONOMIC POLICY TOWARD THE PHILIPPINES 151-156 (1967).

[183]In December 1902, Pope Leo XIII promulgated the apostolic constitution, *Quae Mari Sinco*, which, among other things, enjoined the clergy not to engage in political activity. An English translation of the document was printed in 28 THE AMERICAN CATHOLIC QUARTERLY REVIEW 372-379 (1903).

also acquiesced to an informal agreement by which the friars would be voluntarily withdrawn from the colony.

Once Taft returned to Manila, negotiations for the purchase of the friar estates resumed, with the apostolic delegate to the Philippine Islands mediating between the Philipine Commission and the orders. Agreement was finally reached on December 3, 1903 whereby the insular regime would pay $7,239,784.66 for twenty-three estates which covered an estimated 167,000 hectares.[184]

Purchase of the friar estates eroded the influence of the church insofar as the recognition and allocation of natural resource rights were concerned. But not all lands owned by the friars or the episcopate were bought. The bishops, in particular, continued to own property as corporation soles. Nevertheless, by early 1904 the last Spanish bishop had left the Islands. The transformed episcopate was dominated by North American bishops who had long since accepted the legal separation between church and state.

Meanwhile, the number of Spanish friars in the colony dropped dramatically from 1,124 in 1896 to fewer than 250 in December 1903. Most of those who remained were either too old or infirm to work in the provincial parishes, or preferred to live in Manila, Cebu City, or Vigan and engage in educational pursuits. Along with the purchase of the friar estates, this facilitated the effective disentanglement between the church and the new colonial regime. "By the end of Governor Taft's administration (early 1904), the grip which the friars had on the economic life of the country and on 60,000 of its citizens by virtue of their vast landholdings was released."[185]

As for the estates, the Philippine Commission passed on April 26, 1904 the Friar Lands Act. It prescribed the means by which the former friar lands could be sold or leased, with preference given to the actual occupants. The cultivated portions, or approximately 149,940 acres (62,216 hectares), were sold or leased "not to the cultivators but to wealthy speculators, in violation of both the original aim of the endeavor and the spirit of the Public Land Law."[186] But most of the

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[184] 1 RPC 38-46 (1903). *See also Exhibit G: Detailed and Summarized Statements of the Valuations of the Friar Estates by Señor Villegas* 199-203; *Exhibit H: Agreements to Convey the Friar Lands to the Government of the Philippine Islands* 204-12. The agreements provided for a proportionate reduction in the sum to be paid if surveys established that the lands purchased were actually smaller than the sizes mentioned in the agreement. As a result, when the final payment was made on October 20, 1905, the total amount paid was $6,934,433.36. J. REYES, *supra* note 182, at 158, *citing* THE REPORT OF THE CHIEF, BUREAU OF INSULAR AFFAIRS 26 (1905).

[185] Gowing, *supra* note 3, at 221.

[186] Owen, *supra* note 13, at 50.

uncultivated portions, which comprised over 250,000 acres (105,000 hectares.), remained unallocated. On June 3, 1908, therefore, the Philippine Legislature enacted Act No. 1847. It exempted the friar lands from the area limitations originally imposed in the 1902 Organic Act.

This law enabled one individual the following year to purchase a 55,000-acre (22,267 hectares) estate in San Jose, Mindoro. (See *infra* "The Interior Department Investigated.") Most other areas were purchased by members of the traditional landowning classes.[187] As far as the colonial regime was concerned, it didn't really matter. The estates had not been purchased out of any commitment to social justice or agrarian reform. Taft himself admitted as much. In his words, the colonial regime had paid "for a political object." That object was "to prevent insurrection by the 60,000 tenants of the friars which would have followed if we restored the friars to possession, as they were the lawful owners of the land."[188]

III. A HIDDEN AGENDA

Allocation Shortcomings and Responses

Throughout the Taft era, official statistics concerning natural resource allocation confirmed that the overwhelming majority of the Philippine peoples were not being benefited by colonial land laws. Accommodations might had been made with political influentials, but the interests of the Philippine majority were largely overlooked. The root of the problem was the ethnocentrism and arrogance of the colonizers. As a result, colonial land laws failed to recognize, let alone appreciate, the aspirations, rights, and customs, and even the presence, of millions of rural peoples.

Despite the obvious fact that something was seriously wrong, the regime steadfastly refrained from making any substantive changes. Its obstinacy endured even after the U.S. Supreme Court rendered in February 1909 its landmark decision in *Cariño v. Insular Government*. Rather than taking advantage of the opportunities presented, the regime ignored the *Cariño* decision and successfully preempted any policy review of ancestral-domain rights issues.

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[187] D. STURTEVANT, *supra* note 74, at 55 characterized the redistribution as "an exercise in futility."

[188] *Excerpts from Ex-President Taft's Address Before the Brooklyn Institute of Arts and Sciences, November 19, 1913*, as quoted in FORBES, *supra* note 1, at 404-505, 503.

The regime's aversion to *Cariño* was obvious. The REPORTS OF THE PHILIPPINE COMMISSION, the JOURNAL OF THE PHILIPPINE COMMISSION, and the annual reports of the interior department and the forestry and lands bureaus made no mention of the decision. Along with other U.S. Supreme Court decisions concerning the Philippines, *Cariño* was not officially published in the colony until 1921. In addition, official records of the Bureau of Insular Affairs pertaining to U.S. Supreme Court decisions made only passing mention of Cariño.[189]

Its absence is even more striking in Worcester's personal collection at the University of Michigan which contains no reference to the *Cariño* decision except for an incomplete set of the briefs prepared by the U.S. Justice Department and Cariño's attorneys.[190] As the official responsible for the so-called public domain and non-Christian tribe policies, Worcester must have been an active participant in the formulation of the regime's response to Cariño's petition as it worked its way up to the U.S. Supreme Court over a span of six years. Yet nowhere in Worcester's official collection is there an indication of any discussion of Cariño's claim or the policy changes mandated by the Supreme Court's decision.

Instead, U.S. officials waged a remarkably successful propaganda campaign in favor of the status quo and its purportedly benign nature. Their success was so great that, eight decades later, belief in the nobility of the regime's intentions, especially those concerning natural resource allocation policies, remains enduring and widespread. The prevailing historiographical perception is reflected by David R. Sturtevant in his important study, POPULAR UPRISINGS IN THE PHILIPPINES, 1840-1940. Sturtevant concluded without qualification that

> [A]merican land policy began as a twofold effort to right ancient wrongs: in oversimplified terms, it sought to protect and expand the prerogatives of small farmers while reducing the role of estate owners. The original purpose was to create an agricultural system based on family farms.[191]

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[189]Other than the a terse letter from the BIA chief to the governor general, which was accompanied by three copies of the *Cariño* decision, the BIA *Cariño* file contained no post-decision documents or any other indication of a policy review or a policy change. NA-BIA 17321-7. *See also* footnote 163 *supra*. The BIA Supreme Court record file, which pertained to communications with the insular regime about the Supreme Court, skips from 8550-14, dated September 7, 1907, to 8550-15, dated July 29, 1913.

[190]*See* WPC HD1167.P6P55.

[191]D. STURTEVANT, *supra* note 74, at 52. Two contemporary historians of U.S.-Philippine policies during the Taft era reflect a similar impression. B. SALAMANCA, *supra* note 171, at 133 concluded that "the standard and relatively cost-free method of

To be credible, and to endure, this perception needed to be coupled with an explanation for what went wrong. The scapegoat was all too predictable. U.S. officials steadfastly blamed the Philippine masses for the official allocation shortcomings and apparently never even considered that the problems might be with the processes which had been unilaterally created and imposed.

Secretary Worcester epitomized the tendency. He suggested in 1910, only a year after *Cariño* was decided, that the "smallness of the transactions in public lands" was "found in the indifference of the Filipino as to whether he has title to his holding so long as he is allowed to squat [*sic*] on them undisturbed."[192] Four years later, Worcester claimed that "[a]bsolute ignorance of the law was the commonest of all causes for the failure of the poor to take advantage of the [PLA's] very liberal [*sic*] provisions. Every known resource was exhausted in endeavoring to enlighten them."[193] Seemingly exasperated, Worcester lamented that

> only in those provinces where survey teams from the Bureau of Lands were sent out, by order of the Secretary of the Interior, practically to solicit people to take advantage of this extraordinarily liberal [free patent] provision to obtain land and assist them in perfecting their

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acquiring farms from the public domain...constituted attempts by the American regime during the Taft Era to broaden the base of independent land ownership." G. MAY, *supra* note 173, at 141-142 averred that the "commissioners were not solely interested in assisting American businessmen. They did not intend to exploit the Philippines. At bottom their program's deficiencies were not the result of evil intentions but of a failure to question their assumptions. They reckoned that American investment was a shortcut to economic development."

192NINTH ANNUAL REPORT OF THE SECRETARY OF INTERIOR TO THE PHILIPPINE COMMISSION 67 (1910). After the U.S. Supreme Court's 1909 decision in *Cariño*, Worcester had no valid basis for continuing to refer to indigenes as squatters. But he steadfastly persisted. In his 1909 report, Worcester added that "[w]e are only too glad to get the land cultivated under any conditions." That same year the Secretary of War, Jacob M. Dickinson attributed problems in implementing the PLA to native "ignorance and improvidence." Letter of Jacob M. Dickinson to Senator Henry C. Lodge, March 22, 1910 in NA-BIA 4325-43.

1932 D. WORCESTER, THE PHILIPPINE ISLANDS AND THEIR PEOPLE: A RECORD OF PERSONAL OBSERVATIONS AND EXPERIENCE WITH A SHORT SUMMARY OF THE MORE IMPORTANT FACTS IN THE HISTORY OF THE ARCHIPELAGO 833 (1898). Worcester also blamed "the opposition to the acquisition of land by poor Filipinos which developed on the part of richer and more intelligent fellow-countrymen [*sic*]....Serious obstacles are frequently thrown in the way of poor people who desire to become owners of land, and if this does not suffice, active opposition is often made by municipal officers or other influential Filipinos." *Id.* at 830-831.

WEBSTER'S NEW COLLEGIATE DICTIONARY (1980 edition) defines liberal as meaning, among other things, "broad-minded, tolerant; especially: not bound by authoritarianism, orthodoxy, or traditional forms." As demonstrated *supra* in the first part of this article, these are descriptions of what the PLA was not.

> applications did any considerable number of people avail themselves of it.[194]

It was not possible, of course, to send survey teams into every community within the so-called public domain. Instead, after 1905, the regime relied on primers which were published in major Philippine languages. The primers were periodically circulated and provided information about the various legal processes for acquiring recognized property rights. They also provided another venue for indiscriminately blaming the failure of these processes on "the poor."

A Bureau of Public Lands primer issued on February 26, 1906 was typical. Question 5 posed the query "Why is there so little private land?" The answer was straightforward. "Because the Filipinos have not tried to get land of their own. They have worked on the lands of other people. They have not often enough sought and planted new lands for themselves." Question 6: "Why did not the Filipinos try to get land for themselves?" The answer was a curious blend of ignorance, ethnocentrism, and a Sunday sermon from some archetypical American pulpit.

> They did not know where it was. They did not know how to get it. Also they did not like to move away from their homes to distant places. If a man wishes to have land and a home of his own, he must be willing to leave for a while his town and his amusements and his friends. This is the way the early settlers of America and many other countries did.[195]

These comments, of course, may have had some relevance for prospective homesteaders. But they completely ignored the status of indigenous occupants and people qualified for free patents.

Despite the many shortcomings, U.S. colonial officials primarily responsible for implementing the PLA, i.e., the chief public-lands-officer,[196] and his superior, Commissioner/ Secretary Worcester, successfully avoided any official, or apparently even internal, criticism. Midway through his official colonial career, Worcester, in a letter to Taft, who was then secretary of war, showered praise on his subordinate. "Since his appointment as Chief of the Bureau of Lands,

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[194]6 JPC 483.

[195]*Bureau of Lands Primer Containing Questions and Answers on the public land laws in force in the P.I. issued February 26, 1906* in COMPILATION OF LAWS AND REGULATIONS RELATING TO THE PUBLIC LANDS IN THE PHILIPPINE ISLANDS. Washington: Government Printing Office, 89-97, 89.

[196]The first person to hold the office, William M. Tipton, honorably resigned on November 1, 1905. He was was replaced by Charles H. Sleeper. 1 ADMINISTRATION OF PUBLIC LANDS REPORT BY THE COMMITTEE OF INSULAR AFFAIRS OF THE HOUSE OF REPRESENTATIVES 74 (hereinafter PL REPORT), REPORT NO. 2289, 61st Cong., 3rd Sess.

Sleeper has shown himself to be active, capable, and efficient and in view of the difficulties which have been encountered, I think his performance is quite satisfactory."[197] As the Taft era came to a close in 1913, Worcester added that Sleeper "was unquestionably the ablest and most efficient of the bureau chiefs."[198]

In October 1907, meanwhile, Taft returned to the Philippines for the inauguration of the Philippine Assembly. In his address, Taft acknowledged that the homestead program was not working well (no reference was made to the similarly troubled free patent program or to aboriginal titles). He implied that the problem was simply one of expense. In a confused comparison with the equally inert Torrens titling system, Taft challenged the assemblymen to decide whether "it may not be wise to reduce the cost of registration to the landowner and charge the expense to the government."[199]

Taft's comments were echoed the same day by Governor General James F. Smith. Smith claimed that the "public domain has been thrown open to the people for settlement and no one may now complain of lack of opportunity to acquire, without cost, land." He then resurrected the distorted 1894 population estimate of the Spanish overseas minister and credited the natives' good fortune to the United States. In Smith's words, the United States acted after finding that "a majority of property holders had no titles to lands occupied and claimed by them as their own and that more than 200,000 claimants to lands and landed estates had no higher title than that of bare possession."[200]

A Hidden Agenda

There is a more plausible explanation than the alleged indolence of the masses for the many failings which characterized Philippine land laws during the Taft era. Simply stated, the laws were

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[197]Letter from D. Worcester to Secretary of War William H. Taft, January 29, 1907 in TP, Series 3, Reel 63.

[198]1 D. WORCESTER, THE PHILIPPINE ISLANDS AND THEIR PEOPLE: A RECORD OF PERSONAL OBSERVATIONS AND EXPERIENCE WITH A SHORT SUMMARY OF THE MORE IMPORTANT FACTS IN THE HISTORY OF THE ARCHIPELAGO 375 (1898).

[199]Address of William H. Taft, Inauguration of the Philippine Assembly, October 16, 1907, in NA-BIA 3862-109, 15. *See also* 1 JPC 26.

[200]Message of Governor General James F. Smith to the Philippine Commission and the Philippine Assembly, October 16, 1907 in NA-BIA 17073-2, 5. *See also* 1 JPC 46. As another example of the regime's magnanimity, Smith cited Act No. 1407 (1905), sec. 9(b) whereby for a period of five years forest products other than high grade timber could "be cut or extracted free from taxes or other Government exactions" for the "construction of dwellings and buildings for personal use." *See also, supra*, "Forest Act and Effects."

actually working according to plan, albeit an unofficial and secret one. Taft and his colleagues in the Commission, of whom Worcester was foremost, could not openly admit that the allocation-machinery was not meant to function as publicly stated. Nevertheless, they believed there were compelling reasons to implement their hidden agenda.

It was widely known that Taft and Worcester were, first and foremost, eager to lure capital into the colony. They believed that this required them to have total control over the allocation of legal rights to natural resources. As originally proposed to the U.S. Congress in 1900, the Spooner Bill would have given the insular regime a free hand to alienate and otherwise dispose of the "public" domain. Taft, the Commission president, had lobbied hard for passage of the bill, claiming it was what "we need now to assist us in the development of the country and make these people understand what it is to have American civilization about them."[201] In December 1902, five months after the Organic Act became law, the Commission officially recommended that its authority to allocate legal rights over "public" land resources be increased to 25,000 acres, or, in the alternative, that the Commission be given the power to lease up to 30,000 acres. The Commission's rationale was explicit, and it included sugar.

> [N]o extensive investments in sugar land can be expected and no improvement in the sugar industry may be looked for unless corporations are entitled to hold tracts of land as large as 25,000 acres so that they may be justified in investing the enormous capital required to conduct sugar planting and manufacture on a paying basis.[202]

Taft and Worcester repeatedly and publicly expressed the opinion that once Congress was persuaded to lift the size limitations in the Organic Act, extensive investments could be drawn into the colony.[203] If their plan was ever to bear fruit, it was important to keep

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[201]Letter by William H. Taft to John C. Spooner, November 30, 1900 in TP, Series 3, Box 64.

[202]PLA letter at 9. This recommendation was repeated, with no success, once every year until October 1912. Recommendations of the Philippine Commission Regarding Public Land References in the Organic Act. NATIONAL ARCHIVES, BUREAU OF INSULAR AFFAIRS 4325-162 (Circa 1914); K. PELZER, PIONEER SETTLEMENT IN THE ASIATIC TROPICS: STUDIES IN LAND UTILIZATION AND AGRICULTURAL COLONIZATION IN SOUTHEAST ASIA 106 (1945). A month after the last reiteration, Woodrow Wilson defeated Taft for the U.S. presidency, and, 10 months later, Dean Worcester resigned from the Philippine Commission.

The commissioners insisted that "such an increase in the maximum limit would not interfere in the slightest with the acquisition of homesteads for Filipinos." Significantly, no similar assurance was provided for indigenous and other occupants already within the "public" domain.

[203]This perspective is reinforced by another official policy of denying non-Christian tribes recognition of their political rights. In keeping with such a policy,

the so-called public domain from becoming officially cluttered with property rights, especially undocumented rights held by poorly regarded tribal and peasant cultivators. Recognizing existing undocumented ancestral-domain rights -- and acknowledging that perhaps as many as three million people resided on so-called public lands -- would create another obstacle in the regime's efforts to provide wealthy North American investors with legal access to the colony's agricultural and forest resources. The creation of new rights would have a similar effect.[204]

Taft and Worcester (and perhaps other ranking U.S. officials in Washington and Manila), therefore, surreptitiously conceptualized and implemented a scheme which, contrary to official rhetoric and the mandate of Congress, ignored and undermined the rights of small-scale owner-cultivators. The key elements of their hidden agenda were to keep the estimates of "public" land occupants low and ensure that the processes for recognizing and allocating legal rights to land resources were inefficient and bureaucratically cumbersome. Section VI of the PLA went even further. It provided the regime with a mechanism for rolling back recognition of private rights granted during the Spanish era for failure to secure "proper official records or documents" or to comply with necessary conditions.[205]

The regime's response to the *Cariño* decision reinforces the theory that a hidden agenda concerning natural resource allocation was operative throughout the Taft era. It highlights the fact that from 1900 to 1913 Commissioner/Secretary Worcester and his subordinates systematically and successfully inhibited, and usually blocked, the recognition and attachment of private property rights.

Defenders of the regime might contend that it was not in the interest of the colonial government to deny recognition of private ownership. Holders of recognized private rights, after all, can be legally obliged to pay real estate taxes. This contention overlooks the fact that in many, and perhaps most, instances tax payments were not, and still are not, contingent on the payor's being in possession of documented titles. Taft acknowledged as much in 1902 when he reported that the payment of real estate taxes often had more to do with possession and ability to pay than with any documentation. In Taft's

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section 78 of the PLA excluded from coverage the Moro Province and the provinces of Lepanto-Bontoc, Benguet, Paragua and Nueva Vizcaya.

[204]This estimate is admittedly speculative. But it is not unreasonable. Nor does it likely err on the high side. It merely assumes that about one-third of the population lived on the more than 90 percent of the land mass considered to be public.

[205]Com. Act No. 141 (1936), sec. 54, par. 8.

words, "[w]e tax the land against the owner, and if no owner turns up we tax the person in possession of the land." He then added the naive observation that "by putting a tax on the land it induces the owner to come forward and define what his ownership is."[206]

Taft's naivete was also evident in his belief, which was shared by his colleagues in the Commission, that colonial land laws had a significant impact in most rural communities. Laws promulgated in Manila mattered little to most people in the provinces unless someone had the power, resources, and inclination to enforce them. Real estate tax laws were no different. Provincial and municipal elites enjoyed effective autonomy when it came to natural resource allocation. As such, potential real estate tax liabilities were a disincentive for securing official recognition of ownership, particularly after land taxation was introduced by the North Americans in January 1901.[207] It should have been no surprise, therefore, that landed elites "continually battled" for delays in the payment of, and against any significant increase in, land taxes. Their success, especially during the early years of the Taft era, confirmed the existence of a political accommodation between the regime and its quislings.[208]

The repeated deferment of real estate tax payments was in stark contrast to the insular government's indifferent response over the anomalies and stagnation which permeated official processes for recognizing and allocating legal rights to land. The reason probably was

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[206]Remarks made in the *Hearings Before the Committee on the Philippines of the United States Senate*, S. Doc. No. 331, 57th Cong., 1st Sess. (1902). Rather than defining ownership, allowing any one to pay real estate taxes more often induced people with spare cash to establish ownership claims over prime lands. The director of lands reported as much in 1912: "It is known that a very large percentage of the persons who declare land for taxes have no title...[and] it would be impossible for them to secure registration under the Torrens Act. It is also a known fact that many persons declare public land for taxes, pay the taxes for one year or more, and make no further payment." Presumably it was also known that many of the taxes were paid in an effort to usurp the prior rights of actual occupants, including indigenes and other occupants who may have already developed the land. THE DIRECTOR OF LANDS REPORT 205 (1912).

[207]*See* Act No. 82 (1800), secs. 49-64, 69-90. *See also* Act No. 83 (1800), secs. 17-18.

[208]Owen, *supra* note 13, at 56. *See also* Lutton, *American Internal Revenue Policy* in COMPADRE COLONIALISM: PHILIPPINE-AMERICAN RELATIONS, 1898-1946 (N. Owen, Ed., 1971), 71, 74-75. Lutton concluded that "[t]he Americans showed a surprising lack of real commitment to equity in taxation, even in their own terms, especially in view of their professed aim of uplifting the 'whole Filipino people.'" A compilation of Commission acts up to 1907 which deferred and revised real estate taxes is available upon request from the author. A revision of real estate tax assessments in Manila in 1902 provoked lively, and contradictory, debate. *See* 5 MPS 228-267, 327-329.

the fact that landed Filipino elites rarely, if ever, complained over the seemingly intractable delays. They had good reason not to. Once the United States relinquished legislative and executive control over natural-resource-allocation processes, vast tracts of agricultural, forestal, and mineral lands would be legally unencumbered and available for disposition among the powerful and favored few.

Meanwhile, in pursuit of the hidden agenda, the Commission passed Act No. 718 on April 4, 1903. The act had been proposed by the secretary of war the previous month. According to the Executive Minutes of the Philippine Commission, the secretary "was suggesting the advisabilty of the passage of a law by the Commission which should explicitly declare all grants of land by the Moros to be invalid."[209] The Commission was quick to comply and to expand the law's coverage.[210] Act No. 718 was passed after three readings in one day and without any public discussion. It provided that all conveyances by "Moro sultans or dattos, or [by] Chiefs of the non-Christian tribes," were to be considered "illegal, void and of no effect."[211]

Predictably, the Commission claimed that the law was enacted for the benefit of the so-called non-Christian tribes. It precluded them from alienating property rights to Christians, or, for that matter, among themselves. But the Commission's claims were based on faulty logic. Since undocumented customary property rights were not recognized by the colonial regime, it was an oxymoron to then prohibit the conveyance of something which did not legally exist.[212]

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[209]6 EM 525.

[210]At least one commissioner entertained the idea early on that the regime might purchase customary rights from duplicitous native leaders. Luke Wright wrote Taft on January 13, 1902 that "[a]ny supposed claim they [Muslim indigenes] have to the public lands of Mindanao could doubtless be had for a song at this time; especially could this be done if they were given a small pension and used as puppets in governing their people....The Moro datto, as you know, has a strong appetite for money." Letter of Luke Wright to William H. Taft, January 13, 1902 in TP, Series 3, Reel 34.

[211]In complete disregard of the *Cariño* precedent, the law was upheld by the Philippine Supreme Court in 1914. Cacho v. United States, 28 Phil. 616 (1914).

[212]The Philippine Supreme Court implicitly recognized ancestral-domain rights when it sanctioned their conveyance in 1914. The court opined that "[u]ndoubtably the law [Act No. 718] prohibits the cession of rights in land the common property of the tribe, but does not prohibit the cession of his own land by an individual Moro, or other non-Christian." Cacho v. United States, 28 Phil 616, 628 (1914). The decision relied on an opinion of the U.S. Supreme Court which was based on a similarly worded law and held that individual land rights, owned pursuant to custom law *and reserved* on behalf of a tribal chief *by a treaty* between the United States and the concerned tribal communities, are alienable. Jones v. Meehan, 175 U.S. 1 (1899).

The hidden agenda provided the most plausible rationale for the contradiction: the regime wanted to remove any legal pretext which might complicate future grants or leases of so-called public land to corporate investors. The Commission could not deny that U.S. jurisprudence recognized aboriginal titles.[213] It opted instead to overlook indigenous occupants by grossly underestimating their numbers. Next, it denied the legal efficacy of conveyances by unhispanicized peoples. For good measure, the Commission then excluded the Moro Province and the Provinces of Lepanto-Bontoc, Benguet, Paragua, and Nueva Vizcaya from the Public Land Act of 1903.[214] As a result, untold millions of people in the colony could not have secured documentary recognition of their property rights, even if they believed, as the commissioners obviously did, that it was important to do so.

Commissioner Forbes shared the eagerness of Taft and Worcester to draw U.S. capital into the colony. His most notable achievements were in the field of land transportation. Forbes became the "great figure in the history of Philippine road building"[215] and this provided an

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[213]The Commission apparently preferred to keep in reserve the argument that since the U.S. Constitution did not apply to the colony, U.S. constitutional jurisprudence likewise did not apply. *See* "The Insular Decisions" in the first part of this series in 62 PHIL. L. J. 279 (1987). Public airing of the argument might have undermined *ilustrado* confidence in the regime.

[214]Act No. 926 (1903), sec. 78. Special proceedings for the adjudication of titles in Nueva Vizcaya, Agusan, Mountain, and Moro Provinces were established on October 3, 1911 and repealed on April 18, 1913. Act No 2075 (1911); Act No. 2276 (1913), sec. 6. *See also* 5 JPC 930.

On January 9, 1908, a resolution was reportedly introduced by Governor General Smith for the absent Commissioner Worcester. The resolution recommended that the Public Land Act "in its entirety be made applicable to the 1) Moro Province and 2) the subprovince of Lepanto and the municipalities of Tagudin in the subprovince of Amburayan but not the subprovince of Bontoc, Kalinga, or the entire province of Amburayan." The motion was referred to the Commission president for further investigation. 1 JPC 169-170. The following year, Worcester introduced similar resolutions (Nos. 64 and 65) which called for Benguet and Moro Provinces, the subprovinces of Lepanto and Amburayan, and the township of Bontoc in Mountain Province to be covered. 3 JPC 72. The rationale for the limited geographic application of the resolutions is unknown. None of them, however, was ever passed as an Act of the Philippine Legislature.

[215]P. STANLEY, *supra* note 165, at 99. *See generally, id.* at 99-104. In August 1911, Forbes claimed to be still giving his "personal attention" to the matter of titles. "I shall spare no effort," he added, "to hasten the registration of lands and make it easy for people to do it. I regret to say, however, that the present condition is so backward that...whatever progress has been thus far made has not been more than to show that there is a feasible way of bringing about a general registration when funds are available." *Commercial Needs of the Philippines* in 1 MERCHANTS' ASSOCIATION REVIEW 4, NA-BIA 9892-125. Fifteen months later, Forbes claimed that "[t]he matter of registration of public lands...is one which has occupied my mind more than anything." Speech of Cameron Forbes at the Boston City Club, November 14, 1912, in NA-BIA 9892-188.

important lure to outside investors. Apparently, Forbes was not privy to the hidden agenda. He received his appointment to the Commission in 1904. Taft was gone and Worcester, his ever loyal ally, was keeper of the flame. As secretary of the interior and guardian of the regime's grip on natural resources, Worcester apparently surmised that there was no need for Forbes to be apprised of the covert land policy.

Forbes, however, was a perceptive man. After a period of time in the colony, he perceived, and became concerned about, the huge difference between official rhetoric and actual land allocation practices. In a confidential letter to Secretary of War Dickinson in September 1909, two months before he became governor general, Forbes wrote:

> [T]here has been a general belief throughout the Court of Land Registration, the Attorney-General's office, and the courts generally that they were protecting the Government's interests by putting obstacles in the way of people getting titles to their land. The Attorney-General has directed raising objections to the granting of titles whenever there was a chance that the application could be defeated in the courts.[216]

Forbes informed the secretary of war that he disapproved of the practice. He stressed that he did "not think the public interests were served by the Government holding the land or defeating" applications to own it. He then added that as chief executive in the colony, it would be his "purpose to initiate throughout the Department of Justice, the courts and the Bureau of Lands a new policy of liberality towards the land seeker."

During his inaugural address as Governor General, Forbes announced that "[t]he Government will adopt the policy of not entering objections to the issue of titles to land to its occupants where it is clear that the interest of the public will not suffer." He also expressed the belief "that these measures will end the present stagnant condition in the matter of land registration."[217]

Forbes was mistaken. In matters pertaining to natural resources, Worcester was preeminent and well-entrenched. The regime's official

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[216]Letter from Forbes to Secretary of War Dickinson, September 28, 1909 in NA-BIA 9892-101. Forbes added that the obstructionism "went so far as to involve an objection on the part of the Attorney-General to municipalities getting lands upon which schools were to be constructed."

[217]Address of Cameron Forbes, Inauguration as Governor General, November 24, 1909 in NA-BIA 9892-111. Forbes' decision to order an end to government opposition to applications by actual occupants for recognition or grants of ownership undoubtedly reaffirmed in Worcester's mind the wisdom of not letting Forbes in on the unofficial operational code.

statistics pertaining to land allocation, therefore, registered no significant improvement between 1909 and 1913.[218]

The Interior Department Investigated

After Taft assumed the presidency of the United States in 1909, Worcester became bolder as he probed the limits of the Organic Act restrictions on large, corporate land holdings. The former friar estates provided the fodder. The regime had been financially burdened by the estates and was eager to sell them. But there was a legal problem. In Worcester's opinion, the advocates of Congressional restrictions on "public" land allocation wanted "to build a fence around Philippine lands which they deemed to be pig-tight, horse-high, and bull-strong." Worcester believed, however, that he and his colleagues had "unwittingly cut a small hole" in the fence.[219]

The opening was made possible by the fact that while all property acquired by way of the 1898 Treaty of Paris, i.e., the so-called U.S.-Philippine public domain, was indisputably subject to the allocation restrictions in the Organic Act, the former friar estates had originaly been recognized as private. They were only purchased by the regime in December 1903. Rather than belonging to the United States, the former friar estates purportedly belonged to the Government of the Philippine Islands which had used its own credit to purchase them. Hence, the restrictions in the Organic Act on the size of corporate holdings did not apply. This perspective was bolstered in 1908 when the Philippine Assembly was persuaded, or perhaps hoodwinked, to pass two acts which expressly exempted friar land sales from the corporate restrictions.[220]

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[218]On February 11, 1913, Forbes finally secured passage of the Cadastral Act which established a process whereby the government, on its own initiative, could survey and document all property rights within a specified area. Act No. 2259 (1913). This law, as amended, remained in effect as of mid-year 1989.

[219]D. WORCESTER, *supra* note 193, at 839. The hole was closed when the secretary of war ruled the sale of friar lands should once more be in accordance with the corporate restrictions in the Organic Act. Hayden, *Biographical Sketch*, in D. WORCESTER, THE PHILIPPINES: PAST AND PRESENT (J. Hayden, Ed. 1930). Worcester, however, went on public record questioning the legal effect of the secretary of war's order. D. WORCESTER, *supra* note 193, at 841.

[220]Act No. 1847 (1908) (Director of Lands authorized to sell "vacant" lots) and Act No. 1933 (1909) (Director of Lands authorized to enjoin actual occupants to express their desire to lease or purchase lands within eight days of notification or lose their rights thereto). The possibility of a hoodwink was raised by G. MAY, *supra* note 173, at 172. The exemption was repealed in 1914 by Act No. 2379 (1914) so as to comply with the Organic Act's restrictions on individual and corporate holdings.

In October 1909 (less than eight months after Taft officially became president), Worcester began negotiations with a representative of the Sugar Trust for the sale of the large, 58,000-acre (22,484 hectares), former friar estate in San Jose, Mindoro. The San Jose estate provided the much-desired opportunity to open the colony to large scale, capital-intensive development. For its part, the Sugar Trust was emboldened once more to try and establish a direct foothold in the colony after the "free trade" provision in the Payne-Aldrich Act had been passed by Congress in 1909.

The sale was finalized on January 4, 1910 at a handsome profit for the insular government.[221] It was soon followed by a storm of protests in the United States and the Philippines. The leading agitators were a revived Anti-Imperialist League and a Colorado congressman, John A. Martin, who represented an influential sugar beet constituency.[222] On June 13, 1910, Martin made a sensational speech on the floor of the House accusing Worcester, Taft, and some of their relatives and other government officials of "criminally corrupt and immoral" conduct.[223] A flurry of resolutions were introduced in Congress calling for an investigation into the sale, as well as the insular regime's overall handling of public land transactions.[224]

The Democrats regained control of the U.S. House of Representatives after the 1910 elections, and, soon after, a wide ranging congressional investigation of the insular interior department commenced. Secretary Worcester was called to Washington where he testified before the Committee on Insular Affairs. In response to questions regarding the paucity of "public" land transactions, Worcester reverted to his usual arguments. He asserted that

> [t]he Filipino is strongly attached to his own home. At the same time he is indisposed to mix in affairs which he does not understand. So long as he is allowed to continue to occupy without molesting the land upon which he has settled.

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221 An official account of the sale and related issues by Worcester, Forbes, and the executive secretary, Frank Carpenter, was published in THE FRIAR LANDS INQUIRY (1910). *See also,* D. WORCESTER, *supra* note 193, at 594, 838-41; P. STANLEY, *supra* note 165, at 157-159; G. MAY, *supra* note 173, at 172-174; D. WURFEL, *supra* note 74, at 63-71; W. POMEROY, AMERICAN NEO-COLONIALISM: ITS EMERGENCE IN THE PHILIPPINES AND ASIA 205-210 (1970).

222 P. STANLEY, *supra* note 165, at 159.

223 45 CONG. REC. 7975-8007. *See also, id.* at 8471-8477.

224 *See* H.R. DOC. NO. 137, 61st Cong., 2nd Sess. (1911).

Worcester added that he could not "see that at present there is much prospect" of a Filipino "becoming greatly interested in acquiring title to it."[225]

According to Worcester, "[w]hen people come to me and ask me if there is any objection to their settling on public land and cultivating it, I have always told them, no. It does not hurt the land."[226] In reply to charges that the government was charging exhorbitant prices for the sale of "public" lands, Worcester emphasized that for most Filipinos there was no need to purchase land "for the reason that the public land act made provision for their obtaining free patents to it." He reiterated that "[e]very effort was made to get the common people to take advantage of the opportunity thus to acquire their holdings without money and without price."[227]

Despite the desire of some committee members to uncover evidence of wrongdoing and thereby embarrass the administration of President Taft, not once during the inquiry was any mention made of the legal disenfranchisement of indigenous occupants. Nor did anyone take note of the insular regime's failure to honor the *Cariño* precedent. Hence, Worcester was able to imply without challenge that all "public" land occupants were migrant-settlers. More importantly, Worcester also declared without challenge that all occupants within the so-called public domain were "squatting on their lands." Worcester added: "They do not wish to sell. This being the case, they ask, with some reason, why should they bother to obtain title."[228]

Attempting to go on the offensive, Worcester complained about the restrictions on corporate holdings in the Organic Act. He claimed that he and his colleagues in the Commission felt "very keenly that the hostility of the beet-sugar interests of the United States to the sugar interests of the Philippine Islands is to a considerable extent responsible for the restrictions" which, in Worcester's opinion, "very unjustly hamper other branches of agriculture" in the colony.[229]

At the end of the hearings, a majority of the House committee absolved Worcester and the insular government of any wrongdoing. A large minority on the committee, however, was unimpressed by the testimony presented by Worcester and others. The minority report,

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[225] 1 PL REPORT 548.

[226] 1 PL REPORT 553.

[227] 2 PL REPORT 1176.

[228] 2 PL REPORT 1177.

[229] 1 PL REPORT 532. *See* Hayden, *supra* note 218, at 44-47 for additional insight into Worcester's dexterous public testimony.

which was signed by all but two Democrats in the committee, inadvertently highlighted one reason for the Commission's defiance of the *Cariño* precedent. It noted that "[p]racticaly all the executive officers and many other Government employees own tracts of land in Baguio, the summer capital."[230]

This fact belied an assertion made in 1906 by Governor General Luke Wright. On January 17 of that year, the Senate passed a resolution which inquired whether members of the Commission owned any land in the colony. The following day Wright informed the secretary of war that the matter had been discussed "at an early date" and the commissioners unanimously agreed "that under all circumstances it was a manifest impropriety for any of us to have any such interest."[231] The same day, Commissioners Ide, Smith and Worcester sent a cablegram to the secretary of war which declared in an "absolute and entirely sweeping" manner that they, and each member of their families, "do not now own, and never have owned, any lands in the Philippine Islands, or any right to such lands of any character, directly or indirectly, or any options to buy land."[232] The three Filipino commissioners also sent individual cablegrams describing their holdings, all of which were reportedly acquired in 1901 or earlier.[233]

Four months after their public assertions, the Baguio purchases were made by Worcester, Forbes and Tavera. The sizes of the purchases were not large. The fact that they were made, however, demonstrated an unseemly willingness to abrogate standards of propriety which had only recently been proclaimed by the people who breached them.

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[230]H.R. REP. No. 2289, part 2, 12, 61st Cong., 3rd Sess. in NA-BIA 212-119. Those owning Baguio townsite lots in their own name as of September 1910 and the sizes of the lots are as follows: Worcester, 3.97 has.; Legarda, .75 has.; Forbes, 6.66 has; Pardo, 1.18 has. A certain Josefina Luzuriaga owned one hectare. Except for Legarda's purchase on April 15, 1908, all the lots were bought on May 28, 1906. On that same day, the Baguio Country Club, "a corporation, many members of which are Government employees or relatives," purchased 34.5 hectares. 1 PL REPORT 463-465.

[231]Letter of Governor General Luke Wright to Secretary of War William H. Taft, January 18, 1906, in S. DOC. No. 153, 59th Cong., 1st Sess. *Ownership of Lands in the Philippines by the Philippine Commission.* Wright acknowledged that "[t]here are three Filipino members of the Commission, each of whom is a man of considerable property....The lands owned by them, however, as I am informed, have not been recently acquired."

[232]S. DOC. No. 153 at 4. A similar statement was contained in a letter of the same date from Forbes and printed at *id.* at 5-6.

[233]S. DOC. No. 153 at 4-5.

Worcester and Philippine Land Laws: A Reappraisal

It seems probable that Worcester eventually came to believe his own rhetoric about the wonderful things he accomplished as interior secretary, particularly insofar as it involved unhispanicized peoples. When rumors surfaced in Manila in 1908 that President-elect Taft was about to replace his former colleague in the Commission, Worcester wrote Taft in his own defense. The reason Worcester gave to justify his retention was the non-Christian tribes. Unless he really believed it, it seems doubtful Worcester could write his long-time ally and claim that "not one single measure for their betterment has ever been proposed by anyone but myself."[234]

What is incredible is that Worcester's oft-repeated and self-serving rhetoric continues to persuade scholars and students of Philippine history.[235] It also has largely precluded any balanced analysis of the regressive and undemocratic character of Philippine land laws enacted during the first years of the Taft era.

The most lavish appraisal of Worcester's work was made in 1930 by H. Ralston Hayden, a noted scholar and the last U.S.-Philippine Vice Governor General. Predictably, it completely ignored the failings of the regime's land laws and focused instead on Worcester's involvement with the doubly disenfranchised non-Christian tribes. As such, Hayden declared "with assurance" that

> [t]he world recognizes as an unparalleled, and wholly beneficent, achievement his work in setting the wild pagan tribes...especially those of northern Luzon and northern Mindanao, firmly upon the road which leads from savagery to civilization. It is inconceivable that this judgment will ever be reversed.[236]

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[234]Letter from D. Worcester to William H. Taft, January 27, 1908 in *Worcester Papers,* Michigan Historical Collection, Bentley Historical Library, University of Michigan, Box 1, Correspondence 1907-1911.

[235]SULLIVAN & WORCESTER, EXEMPLAR OF AMERICANISM: THE PHILIPPINE CAREER OF DEAN C. WORCESTER (Ph.D. Diss., University of North Queensland, 1986) at 488 expressed amazement at "the continuing use, to this day [1986], of Worcester's book [PHILIPPINES: PAST AND PRESENT] as an authoritative account of events in the Philippines between 1898 and 1913."

[236]Hayden, *supra* note 219 at 78. A contrary perspective was proffered in J. BLOUNT, THE AMERICAN OCCUPATION OF THE PHILIPPINES, 1898-1912, at 571-586. The chapter is titled "Non-Christian Worcester." For Worcester's reaction to Blount *see* D. WORCESTER, *supra* note 193, at 557-8.

Contemporary scholars who have investigated Worcester's work tend to uphold Hayden's remarkbale assessment.[237] In 1978, Karl L. Hutterer stated, without any critical balance, that Worcester's "concern for the well-being of the non-Christian runs as a continuous thread through all his actions."[238] Six years later, Ronald K. Edgerton claimed that "Worcester's urge to protect upland tribespeople was manifested in so many of his actions and writings that it almost certainly constituted his primary motive in obstinately opposing homesteading in Bukidnon."[239]

Edgerton also called attention, however, to Worcester's personal interest in, and, after he left office in 1913, his financially profiting from, the economic development of the Bukidnon plateau. Yet Edgerton shied away from making any explicit critique and instead made the absurdly simplistic assertion that "Bukidnon was literally carved out of the province of Misamis in order to protect the upland peoples there."[240] The most recent adulation came in 1987 when Frank

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[237]For a recent, negative perspective on Worcester see R. DRINNON, *Insular Expert: Professor Worcester*, in FACING WEST: THE METAPHYSICS OF INDIAN HATING AND EMPIRE BUILDING (1980). SULLIVAN & WORCESTER, *supra* note 235, provides a more balanced and exhaustive study.

[238]Hutterer, *Worcester* in PHILIPPINE QUARTERLY OF CULTURE AND SOCIETY 151.

[239]Edgerton, *Americans, Cowboys and Cattlemen on the Mindanao Frontier* in REAPPRAISING AN EMPIRE: NEW PERSPECTIVES ON PHILIPPINE-AMERICAN HISTORY (P. Stanley, Ed., 1984) 181. "It should be noted," Edgerton added, in what almost appeared to be an afterthought, that Worcester's "opposition to homesteading also accorded well with investment schemes entertained by himself and other Americans." SULLIVAN & WORCESTER, *supra* note 235, at 486 was less equivocal. He observed that it is "hard to defend Worcester's determination to exclude Filipino small settlers from Bukidnon when, even before leaving public office, he had been engaged by an American corporation to acquire and develop land in the province."

Stanley in *The Voice of Worcester is the Voice of God: How One American Found Fulfillment in the Philippines* in REAPPRAISING AN EMPIRE: NEW PERSPECTIVES ON PHILIPPINE-AMERICAN HISTORY (P. Stanley, Ed., 1984) also seemed to have studiously avoided rendering a positive or negative judgment on Worcester's work among unhispanicized peoples, perhaps in deference to comments at 133-7 concerning Worcester's remarkable skill at using the vendetta, a skill which caused many to learn "to their sorrow...there were no cheap gains to be won by attacking him." Stanley, *id.* at 131, opined that "[t]he authenticity of Worcester's attraction to the back country and the tribal peoples was continually evident throughout his Philippine career in the freshness and even of vigor his private comments upon them." He cited Worcester, Hutterer, and Jenista to bolster a comment at 132 about Worcester's well-known positive contributions on behalf of non-Christian peoples and claimed, without any supporting citations (although his sources must have included Edgerton), that "the story of the successful business career [Worcester] and some of his former lieutenants enjoyed in these [non-Christian] regions after leaving the government" was also well known.

[240]Edgerton, *supra* note 239, at 180.

L. Jenista insisted that Worcester "was unquestionably committed to the welfare of the non-Christian people of the Philippines."[241]

These characterizations can, of course, be justified in varying degrees. Schools, roads, and other manifestations of material progress were constructed and maintained in some unhispanicized communities which fell under the jurisdiction of Worcester's interior department. The simple fact, however, remains that peoples legally labeled as non-Christian were uniquely disenfranchised. In the minds of Worcester and his colleagues, the non-Christian tribes were conveniently considered to be as yet incapable of grasping the significance of land ownership. Hence, most non-Christian people were not even given the theoretical opportunity to secure recognition of their ancestral-domain rights, the *Cariño* decision notwithstanding.

Meanwhile, the legally and bureaucratically cumbersome procedures established by Worcester and his colleagues to secure documentary recognition or grants of private property rights among Hispanicized peoples were dramatically skewed in favor of a few privileged elites. Once this became apparent even in the regime's official statistics, no one, including Worcester, made any serious and sustained effort to change the status quo, let alone provide an official critique by which the regime might assume some responsibility for the failed programs. As a result, many indigenes and other long-term occupants of so-called public land were arbitrarily displaced, often as a result of State action. Millions more were left vulnerable.

It might be argued on behalf of Worcester and the regime that population density was comparatively low at the beginning of the twentieth century. Worcester, according to this line of reasoning, entertained visions of limitless land and forest resources and never foresaw the problems of ancestral-domain usurpation and local-level resource monopolization which would become even more serious in the ensuing decades. This defense, however, ignores the patterns of land usurpation which had become increasingly apparent and pronounced during the last century of the Spanish regime. It overlooks the significance to Worcester of his repeated warnings regarding the vulnerablity of the non-Christian tribes to their wily Christian counterparts.[242] And it reveals a total lack of understanding of the

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241F. JENISTA, THE WHITE APOS: AMERICAN GOVERNORS OF THE CORDILLERA CENTRAL 240 (1987).

242*See, e.g.*, ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1913. Worcester cited the "frequency and the ingenuity of the efforts unlawfully to deprive members of non-Christian tribes of their liberty or of their property." *Id.* at 28.

double disenfranchisement which was experienced by peoples labeled as "non-Christian."

This defense also tends to disregard the powerful financial motivations which Worcester was well-positioned to promote to his personal advantage. Besides being the main architect, conserver, and implementor of laws and policies pertaining to Philippine natural resources between 1899 and 1913, Worcester, in Hayden's words, "had an indirect interest in many lines of business and was a recognized authority on practically every form of commercial enterprise in the Philippines."[243] This knowledge and expertise proved predictably profitable.[244]

After resigning his positions as commissioner and secretary of the interior on September 15, 1913, Worcester became vice president and general manager of the American-Philippine Co. (APC). The APC had been organized on October 16, 1912 by prominent business and banking men on the East Coast of the United States "for the purpose of investigating and developing the natural resources of the Philippine Islands."[245] The "resources of this powerful corporation" enabled Worcester to carry "through many of the projects in which he had sought for years to interest others."[246]

As an APC executive, Worcester formally launched profitable business careers in Philippine cattle ranching, coconut oil production, and the transportation of commodities to the United States. He exercised executive responsibility over three corporate APC

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[243]Hayden, *supra* note 219, at 73. Hayden wrote that Worcester, "as the executive officer responsible for the development of Philippine land and mineral resources...believed that this natural wealth should be brought into use in order that there might be laid in the Philippines that economic foundation upon which the social and political development of any backward peoples must rest. He was convinced that, unaided by outside capital, initiative and technical skill, the Filipinos would not lay such a foundation within any calculable time." *Id.* at 48. He added that Worcester's "views on the subject were shared by all of the Governors General and all the members of the Philippine Commission, including Filipinos and American Democrats, who held office between 1901 and 1913." *Id.* at 49.

[244]On July 19, 1903, a Wisconsin man, John R. McDill, M.D., who reportedly had a prosperous private practice in Manila, wrote Senator Spooner to complain about Worcester's "narrowness, rudeness, and vindictiveness." McDill claimed that "[e]veryone here is positive that should [Worcester] lose his present position, he would immediately become the most prominent exploiter, on account of his ground floor advantages, in all the Philippines." NA-BIA 5543-39.

[245]Letter from Edward Fallows to William H. Taft, December 12, 1913, TP Series 3, Reel 134. *See also* the American-Philippine Company 1912 prospectus and reports on file with Michael Cullinane at the University of Michigan's Center for South and Southeast Asian Studies.

[246]Hayden, *supra* note 219, at 71. *See generallly*; *id.* at 71-74.

subsidiaries: the Insular Transportation Co., the Bukidnon Plantation Co., and the Visayan Refining Co.[247] "For all practical purposes," however, "Worcester was working for the Company while still holding public office."[248] This made it easier for him to take advantage "of cheap land policies which he himself had championed."[249]

Worcester devoted most of his energies to the Visayan Refining Co., which by 1918 "was the largest and most profitable coconut-oil producer in the Philippine Islands.[250] But the Bukidnon Plantation Co., later renamed the Bukidnon Corporation, was Worcester's favorite enterprise and it "came under his direct management and control."[251] Under its auspices, a 10,000-hectare ranch of prime pasture land with 2,500 cattle was established near Mailag, Bukidnon.[252] Visayan Refining, meanwhile, likewise acquired legal rights to "a large piece of land" near Butuan in northern Mindanao, to the 1,800-hectare San Miguel estate in the Bicol province of Albay, and to the holdings of the defunct Zamboanga Plantation Co.[253]

Worcester's entrepreneurship undoubtedly contributed to the economic development of the colony and also helped determine the nature of that development. Furthermore, contemporary standards of civic morality and impropriety should not be loosely applied when

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247SULLIVAN & WORCESTER, *supra* note 235, at 404. Worcester also held senior positions after he left public office in various other corporations, including the Philippine Refining Co., Visayan Oil Co., the Bukidnon Coconut Co., and the Agusan Coconut Co., the latter two also being subsidiaries of the American-Philippine Co. L. GLEEK, *supra* note 170, at 150 added, perhaps confusing corporate names, that Worcester joined the Philippine Development Company, "a new company with New York financial backing, organized to exploit the agricultural wealth of the country [*sic*]." The Insular Transporation Co. went out of business after the outbreak of World War I because of difficulty in obtaining boats. SULLIVAN & WORCESTER, *supra* note 235, at 405.

248SULLIVAN & WORCESTER, *id.* at 351. Worcester was first approached about joining the company in mid-March 1913 and on March 15 he signed a lucrative five-year contract with the APC effective upon his leaving public office. *Id.* at 348-349.

249*Id.* at 455.

250*Id.* at 405. *See generally, id.* at 399-453; Mojares, *Worcester in Cebu: Filipino Response to American Business*, 1915-1924, in 13 PHILIPPINE QUARTERLY OF CULTURE AND SOCIETY (1985).

251SULLIVAN & WORCESTER, *supra* note 235, at 405, 422. The company was consolidated with the Rizal Refining Co. and the Philippine Refining Co. in August 1920 to form the Philippine Refining Corporation. *Id.* at 438.

252Edgerton, *supra* note 239 at 182. *See generally*, SULLIVAN & WORCESTER, *supra* note 235, at 454-482; Edgerton, *Dean Worcester's Mission Among Philippine Upland Tribes* (paper presented to Philippine Studies Conferences, August 2-4, 1983).

253SULLIVAN & WORCESTER, *supra* note 235, at 416. The San Miguel estate "was described in the 1930s as the largest, and one of the most efficient, plantations in the Philippines" with 250,000 coconut trees. *Id.* at 444.

assessing the careers and motivations of people who held near-absolute political power eight decades ago. The fact that Worcester was never indicted, let alone convicted, for any crime likewise weighs in his favor when any historical assessment is made of his life and impact on Philippine land laws.

The absence of direct evidence of conscious intent to violate the aboriginal title rights of "public domain" indigenes (such as a candid description, in a confidential letter between Taft and Worcester, as to how the hidden agenda was to be implemented) makes it difficult to expose the underside of Worcester and, more importantly, the legal machinery for recognizing and granting rights to Philippine natural resources. Allegations of wrongdoing and improper conduct are also weakened by the fact that, since the U.S. Constitution did not apply to the Philippines, constitutional jurisprudence pertaining to aboriginal title, due process, and just compensation likewise did not apply, at least until 1909 when the *Cariño* decision was promulgated.

Nevertheless, the circumstantial evidence of a hidden agenda is substantial and it casts grave aspersions on the nature of Philippine land laws which originated during the Taft era and remain largely intact today. The motives behind the agenda are well known. Until 1909 when Congress authorized duty-free importation of up to 300,000 tons of Philippine sugar per year, the Sugar Trust retained its hope of establishing large plantations in the colony. Worcester was uniquely positioned to keep that hope alive and the official record is replete with examples of his efforts to intervene on the Trust's behalf. During his final years in office, Worcester's motivations acquired a more personal nature as he began to ponder more seriously his future as a private citizen. Keeping the so-called public domain unencumbered by undocumented private rights enhanced his access to natural resources in Baguio, Bukidnon, and elsewhere.

The scarcity of direct evidence to prove the existence of a hidden agenda was as predictable as Worcester's decision to cash in on his legal handiwork after leaving public office. Worcester and others who promoted the hidden agenda were anything but stupid. There was no good reason to provide evidence of their defiance of Congressional intent or the U.S. Supreme Court's *Cariño* precedent. There were innumerable reasons to shroud their conspiracy in humane and progressive rhetoric.

Official statistics belie the rhetoric and the (non)reaction to the *Cariño* decision provides a backdrop which reveals the hidden agenda in operation. It should be obvious, however, that the hidden nature of the agenda was not only of the regime's doing. It remained hidden in large measure because no influential Filipino or North American

lawyer, or any other policy maker, ever empathized with the legal vulnerabilities of the rural poor or called attention to the inequities built into the colonial processes for allocating legal rights to land and other natural resources.

Long before the Taft era ended, most Americans had lost interest in the colony. After 1913, Philippine elites would exert more control over, and increasingly profit from, Taft era land laws. Beginning with the enactment of the second Public Land Law by the all-Filipino legislature in 1919, natural resource allocation processes would become even more regressive, a trend which continued even after the establishment of the Philippine Republic in 1946.[254] The end result was the entrenchment of a political and economic oligarchy which adeptly shrouded itself in a democratic guise while using colonial land laws to enrich itself and disenfranchise, often in the name of Philippine nationalism, the poor rural majority.

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[254]For background and analysis of post-1913 developments in Philippine land law *see* O. Lynch, Agrarian Reform and the Philippine "Public Domain" (n.d.) (unpublished) (available at the University of the Philippines, College of Law Library); *Legal Responses to Philippine Deforestation*, Bernardo *Public Land Laws (1900-1945)*.