

The Ifugao Living Law

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The legacy of colonial rule is an intolerance for indigenization. Having lived the "western" way of life, Filipinos, particularly, the Filipino elite, subscribes to a system of laws that is culturally misplaced. The effects of religious and consumer values have been devastating and often irreversible even for indigenous peoples (IPs) who live in near isolation. The author suggests that a path to nationhood can be led by the IPs of the Philippines. Relatively untouched by Spanish or American influences, IPs govern themselves with indigenous laws dating back to centuries before the arrival of the first Spaniard. With preserved cultures, the peoples of the Cordilleras have settled disputes without the aid of codified western legal references and have not gone extinct. It is a body of knowledge that needs to be shared by the IPs and studied by scholars. Much can be learned from IPs and their laws and an open mind could free Filipinos from the mindset that only western ideas are good.

Introduction

Profiling, imagining, defining or shaping the Philippine nation state are rhetorics used by intellectuals to articulate the longings of an oppressed and dehumanized people. This is being done under the rubric of globalization. The Filipino ruling elite's preoccupation to become a globally competitive industrialized country in the new millennium is one serious indication of how deeply the colonial hold had taken. However, the same elite admits that the Filipino nation as conventionally defined does not yet really exist.¹

This paper argues for a more determined nation-building not so much in the manner advocated by western political philosophers of the preceding centuries whether of the liberal or the Marxist traditions. Both schools of thought have looked down upon and therefore disregarded the experiences of humankind at the prehistoric period when the moral order was based on egalitarianism and deep respect for nature.² It also looks into the new modes of postmodern anthropological thinking which may provide the basis for an authentic imagining, defining, and building of the nation in the area of Philippine Indigenous Law.

The Philippine National Legal System

The *Katarungang Pambarangay* (barangay justice system) is composed of quasi-formal community "courts" given jurisdiction over certain kinds of disputes. It follows a simple multi-stage process in settling disputes by mediation, conciliation, or arbitration. The presidential commission that established the system in 1978 had to look to other countries for models³ which showed how ignorant intellectuals both in government and the academe are of the cultures of their fellow Filipinos. In the Philippines, over 150 ethno-linguistic nationalities or Indigenous Peoples (IPs) have Indigenous Laws up to the present. This is true even for the eight predominantly Christian groups (Ilocanos, Pangasinenses, Pampangeños, Tagalogs, Bicolanos, Cebuanos, Hiligaynons, Warays) particularly those in the rural areas despite being well assimilated into the mainstream and governed by westernized national legal system of the Philippines.⁴

It is well to consider some theoretical and historical facts concerning law and the legal system to put Philippine Indigenous Law in perspective.

Colonizers supplanted with their colonial laws what used to be every society's prerogative: that of indigenously and ingeniously creating order and harmony among its peoples through tacit and oral agreements. In the course of time, the latter were gradually institutionalized as customs and traditions complete with rituals, sanctions and rewards which UP law professor Perfecto Fernandez refers to as the "living law."⁵ Modern literature calls it custom law and the postmodern, indigenous law.

Subtly but ruthlessly, colonizers imposed their own version of the instrumentality for controlling behavior with the usurpation and plunder of the vast wealth and resources of the colonies⁶ as their intent. While the language has changed, the intent and the content of law remain the same.

Western jurisprudence, the colonial ancestor of the Philippine legal system, did not originate from the Roman and Canon Laws of Imperial Rome. Custom law governed Germany, Scotland and France, to cite a few. It was only much later in the 17th century that the French law was romanized and codified.⁷ The countries that took the French code for its model were Belgium, Italy, Portugal and Spain. The latter transplanted

romanized law into the Philippines and with it governed the islands for 300 years.

The other ancestral legal system from which the mongrel Philippine legal system emerged is English law that indirectly came to us through the United States. Edward Jenks, a foremost English barrister, maintained that "it is the glory of the English law that its roots are dug deep into the soil of national history; that it is the product of the age-long growth of national life."⁸

By this Jenks meant that English law sprung from the union of custom law of the various Teutonic peoples who lived in England from the earliest known period, 449 AD. The rules that emerged were worked out by the subtle, acute, and eminently disputatious intellect of those gallicized Norsemen.⁹

Given this bit of scrutiny of the history of western jurisprudence and legal system, its offspring the Philippine legal system suffers from a number of setbacks. In his essay, "The 1935 Philippine Constitution Revisited," Fernandez exposed the rotten core of the very foundation of our nationhood.¹⁰

The fundamental law of the land has been superseded by the 1972 Constitution of the Marcos regime and by the 1987 Constitution of Corazon Aquino. It is a hopeless disarray of conflicting laws and decrees.¹¹

Philippine Indigenous Peoples and Their Custom Laws

It is neither romanticism nor atavism that prompted the campaign for the indigenization of the Philippine legal system. In the 1960s, prominent Filipino legal scholars and anthropologists broached the idea of indigenizing the legal system and pioneered research undertakings in this direction. Notable among these scholars in the field of Anthropology is Dr. Arsenio E. Manuel who wrote a book *Manuvu Social Organization*¹² and later the *Law of the Manuvus*¹³ with research done in the late 1950s. Fernandez published his *Prehispanic Custom Law of the Philippines in 1965/76*. The minds of these scholars run parallel to those of Montesquie, Savigny and Maine, agreeing that law or the legal system ought to spring forth from the cultures and traditions of the people.¹⁴ The indifference towards the works of these scholars was expected, given the deep-seated colonial

mentality of the academe and the Filipinos in general. Corollary to this is the disdain of Christianized groups toward tribal Filipinos, which was historically motivated by the Spaniards, and a prejudice institutionalized by the Americans.

One fact not given emphasis, if not overlooked by Filipino historians, is that a considerable number of inhabitants in the archipelago did not accept foreign domination. They were not christianized and therefore were not absorbed into the tribute-paying society that was the lot of most lowlanders.¹⁵ These were the Moros of Mindanao and the population groups living in the highlands who were driven into and took refuge in the vastness of the mountainous terrain. They are referred to by a number of names: cultural minorities, tribes, the *katutubo* and *lumads*. They however, insist on being called IPs or First Nations.¹⁶

These peoples together with 500 million others the world over, prevailed over the UN that they be called IPs, because of their origin and continuing connection with their ancestral domains which is the basis for their culture and indigenous laws. As "peoples" or "nations" they have the right to self-determination, a basic doctrine and moral foundation for nations and states adopted by the United Nations.¹⁷ Forms of self-determination vary according to the manner and intensity of exploitation by the states and other forces. They vary according to the felt frustrations, desperation, and deprivations of the disadvantaged groups relative to others.

Thus the struggle may take legal, meta/extralegal or violent (civil wars, rebellion, transnational conflicts) forms. The latter is commonly resorted to for which reason Nietschmann calls the militarization of the IPs as the Third World War.¹⁸ This war is fought in many continents, on different fronts, on different levels with different goals. It is hidden from view because the fighting is against peoples and countries that are often not on the map. It is known by names coined by the State: "terrorism" for resistance against perceived discrimination; "isolationism" for enforced national integration, and "development" for occupation and grabbing of ancestral domains and resources.¹⁹

Most of these wars are three-sided, a geopolitical triangle, which includes a right or left wing insurgency that seeks to overthrow and replace a state government and a nation/people defending itself from a

state invasion and aggression. The nation may be in an uneasy marriage of convenience with the insurgent force only because they share a common enemy but often not a common goal.

Although the claim to self-determination often gives way to the cult of force, nonetheless it retains its viability in legitimizing the revolutionary process within the context of the legal system of the State as well as the International Law.

The compelling reasons for the indigenization of the Philippine legal system include appropriateness, fairness and equity for the Filipino citizenry who though westernized generally, remained ethnicized within the multinational Philippine republic. The other equally important reason is the effectiveness of Indigenous Law among the IPs despite the influence of laws imposed by the Spaniards and later by the Americans. These have formed a cohesive whole that blankets and permeates the Philippine legal order and consequently, the whole societal life of the Filipino people.²⁰

The form and structure of the political institution has all the trimmings of western constitutional democracy. The Filipinos were made to feel proud having finally learned the art of self-governance the American way. Whether parliamentary or bicameral equipped with mechanisms for the separation of powers to guarantee checks and balances, the aberration and derangement of those same structures are built in. Hence the constitutional democracy of the Philippine Republic was not suited for Filipinos right from the very start. This is further explained by various nationalist historians²¹ and legal scholars notably by Fernandez in his study of the 1935 Constitution referred to in the preceding section of this paper.

Philippine laws did not undergo the natural process by which laws, like that of the English and other European laws, started as custom law rooted in the traditions and customs before becoming a written form of expression after years of experiential usage, and finally part of the national law. Instead, fully-developed western laws were forced on the Filipinos. These laws were very alien and incompatible to the national life of the Filipinos.

Benedito, convinced of the dire need for indigenization,²² articulated even more bluntly and urgently than did his mentor Fernandez who opted for mere recognition of the Indigenous Law.²³ Indigenization, according to Benedito, is *sino qua non* if the Philippines is to be nationally and culturally integrated even as it respects the diversity of its peoples. Only then can it evolve into a truly democratic society.

The challenge facing the Filipinos, especially those in the academe, is not so much the rationalization of indigenization as in carrying out the tedious research work, using appropriate methods of research. If this is done in the participatory manner in the rubric of postmodernism, a huge burden will be off the shoulders of concerned scholars in the social sciences particularly the disciplines of Anthropology and Law.

The Ifugao Indigenous Law was chosen as the case in point. This was studied by the researcher in the Cordilleras for a period of two years. The result is an extensive study with about 300 cases documented and authenticated in a two-day validation conference attended by most of the indigenous consultants (*mun-alons*). The Institute of Philippine Indigenous Law, UP College of Law, under the directorship of Prof. Fernandez, sponsored the research

The research was to get not only as many cases as possible but also the variations in procedures so it was deemed necessary to get samples from all the five ethno-dialect groups distributed in the ten municipalities of the province of Ifugao. The research groups and areas selected geographically were: 1) Tawali Ifugaos in the municipalities of Kiangan, Hingyon, Hungduan and Banawe; 2) Ayangan Ifugaos in Mayaoyao and Aginaldo; 3) Keli-e Ifugaos in Kiangan; 4) Yatuca Ifugaos in Kiangan; and, 5) Kalanguya speaking in Kiangan and Tinoc.

The Ifugaos in Contemporary Philippines

Of the Cordillera peoples, the Ifugaos are probably the most famous to the outside world thanks to American ethnographers notably Roy Barton and Otley Beyer. Their vivid though not necessarily accurate portrayal of the people and the people's picturesque rice terraces presented the Ifugaos to world.

Much as the writer dislikes to borrow the phrase "damaged culture" from Fellows for his allusion that culture is inherent in the personality of peoples (read genetic in origin) and not historically created,²⁴ the term is appropriate for the modern day Filipinos, the Ifugaos included.

The phrase is apt for erosion of tradition brought about by tourism. Confronted with the material poverty of majority of the Ifugaos, one would wish they had remained as they were before the advent of modernization and 20th century tourism. During pre-colonial times, Ifugao trade with the lowlanders flourished.²⁵

Certainly, making a fetish out of the traditional culture and treating the people as museum pieces are out of the question. There is a difference between preservation of artifacts (the terraces is one of them) and the "pickling" of peoples for tourist purposes. Preservation of artifacts has its own merits though, in the light of outright carting away of mummies, antique jars and other heirlooms by tourists and antiquarians without regard for the values these bear on the cultural fabric of a people.

Liberation from poverty among others is what self-determination of peoples seek to bring about. What nationalist lowlanders hope will somehow pave the way for national liberation by the Ifugaos' much vaunted assertion of their identity had led to exploitation.

Needless to say, all societies, the traditional more than the rest, are well aware of the ways by which the lives of their growing population need to be changed for the better. They too want to avail of humankind's achievement in science and technology to which they also have contributed. Their engineering feat concretized and immortalized by the magnificent rice terraces is one such contribution.

It is against the backdrop of a people caught in the onslaught of modernization and industrialization that the entire economic, political, social and ideational dimensions of Ifugao culture will be examined to delineate the discontinuities. It is in this context that their indigenous law is seen to be thriving.

The Ifugao Territory

What remains of the Ifugao land straddles five of the eight tallest mountains in the archipelago and makes up the highest elevated province, which is about 9,000 feet above sea level. Only ten municipalities comprise the remaining land areas under the current political administration of the province. Pre-colonial Ifugao land extended beyond Nueva Vizcaya to the south and Isabela to the north²⁶ which until recently, the Ifugaos occupied not as migrants but as IPs. Administratively, Ifugao is one of the smallest provinces in the country. It measures approximately 251,778 hectares in land area,²⁷ representing 8% of the total entire land area of the Philippines.²⁸

The Ifugao province shares the rugged mountain terrain of the Cordillera region. It has deep gullies and meandering rivers. There are innumerable streams and creeks that are either perennial or intermittent. There are also massive but fast-disappearing forests, rolling hills and plateaus in the eastern and southern parts of the province.

In 1986, the Ifugao province had a population of 120,128. These are predominantly Ifugaos but now with Ilocanos constituting a sizable percentage especially in the towns of Potia, Lamut and Banawe.

A short dry season of three months from January to April and a wet season from May to December characterize the climate. The hottest months (comparatively moderate at 23 degree centigrade or thereabouts) are March and April and the coolest (10 to 14 degree centigrade) are from November to February.

The Ifugao Economy

The province of Ifugao was created by Republic Act No. 4695 in April 1967. Before this it was a district of the province of Nueva Vizcaya,²⁹ and a sub-province together with other Igorot lands of the Mountain Provinces with Bontoc as the capital town since 1905.

Historian William Henry Scott³⁰ described the Ifugaos as economically well off in pre-colonial days. Colonization "discovered" the Ifugaos lumped together with other Cordillera peoples as Igorots or Ygolote or Igot who were already known for their gold trading with the lowland Pangasinan and Ilocos region.

In the *Cordillera Chronology*, the Ifugaos were first mentioned in 1752, two centuries after the Spaniards first set foot in the archipelago,³¹ in reference to the establishment of a fort at Bagabag to control the Ifugaos of Kiangan. The burning of villages, including their crops and livestock as part of the punitive actions against the recalcitrant Ifugaos alludes to the self-sufficiency of the population groups.

The Tobacco Monopoly in 1782 indicated the prominence of the Igorots in the trade. Four military commands were set up, including one in Ifugao to prevent the smuggling of tobacco. The fact that the Ifugaos required a *commandancia* showed that tobacco was among the crops they raised not only for consumption but also for trade. Tinoc traders regularly dealt in copper, cattle and human beings across the Cordillera trade routes which ran from Bayombong in Nueva Vizcaya to Bang-ar in Ilocos Sur.³²

All these trading enterprises recorded by the Spaniards in 1795 speak of the highlander's business acumen. Trading between the highlands and the lowlands involved gold, tobacco and livestock from the latter; manufactured goods (salt, wine, mats, blankets, steel weapons, porcelain plates and jars, beads for necklace iron pots, and vats, etc) from the former.

Domestic trade within the Cordillera region itself flourished equally with each region specializing in a particular foodstuff. Ifugao is mentioned as a producer of mungo beans and rice.

The centerpiece of the Ifugao economy is the irrigated rice production at their world-renowned terraces. These stone walled fields irrigated both for rice and taro had been known since the 1750s. The first detailed description came only in the 19th century when Fr. Juan Molano, O.P. arrived in Kiangan. Other sites of rice terraces included Hungduan, Banawe and Mayaoyao. They were often subject to violent raids carried out by Spanish soldiers.

The astuteness of the Ifugaos in trading was notable enough to draw the ire of lowlanders and merit record. They were also compared to the Chinese traders. With a thriving economy, Ifugaos secured independence from both Spanish and lowland control. It therefore comes as a surprise that this self-sufficiency would leave Ifugaos living in poverty. Desnick and

Lambrecht spoke of the abject poverty of the people. They attributed this to their excessive daily ritual practices that calls for butchering a large number of livestock.³³ But given their preference for extravagant religious practices, the Ifugaos would have long exhausted themselves before the Spanish era. The tradition of animal slaughter is as old as the Ifugaos themselves and is a practice religiously observed by the Ifugaos.

In Mayaoyao during the research period of one year, the researcher observed 20 funerals where an average of ten pigs were ritually slaughtered for each funeral. A rough cost estimate for these including the sacks of rice that go with the sacrificial meal would amount to approximately P100,000 in 1998. These are consumed by the whole Mayaoyao community, strangers and visitors included. However, this extravagance does not fully explain the poverty the Ifugaos continue to suffer.

Structural and functional explanations within the Ifugao society and culture may prove insufficient to lay bare the roots of the poverty of a people. There is always the tendency to treat traditional and isolated communities as self-contained and integrated systems. The Ifugao topography contributes to the people's lack of progress by Western standards.

The flourishing trade and commerce within the Cordillera region and with the lowlanders cannot be dismissed as inconsequential. As traders, the Ifugaos were at par with the other inhabitants of the archipelago, geographic barriers notwithstanding. They freely and independently coursed their lives unhampered by physical and sociopolitical barriers imposed by the Spaniards.

It is an anthropological truism that in the 20th century, no population group can remain isolated indefinitely. Communities have to be taken not only within their own terms, but more importantly in the context of a larger matrix, global in fact from which these communities acquired new characteristics because of their functional dependence on them.³⁴

Unlike the Spaniards, the Americans succeeded in exploiting the Cordilleras and have continued to do so in a systematic and intensified manner up to this day. American legal, military and educational strategies played crucial roles in the economic exploitation of Cordillera resources

particularly gold. Although there is no mention of mineral deposits in Ifugao the whole American scheme nonetheless affected the people.

Among others, there is a reference by Fry about the compulsory use of English as the medium of instruction to bring about rapid economic development.³⁵ The Secretary of Public Instruction, did not explain how this would come about, saying that the material backwardness of the Filipinos was in part due to their one-sided pursuit of religion. He went on to say that to raise this country economically there should be a common language here which is English and thus soon the advancement in America will be assimilated.³⁶

After more than 50 years of independence from US, there is a conscious effort at annihilating the "peoplehood" of the Filipinos at its very core – the mind and thought processes of humans through the control of language.³⁷ The chauvinistic slant of progress equated with Americanization confirms Wolf's perceptive remark that isolated communities are not self-contained but are appendages of national and global communities. And those economic interests, the resource base of the Cordillera, are best conquered not necessarily through military might but through the gentle way of language.

In any case, the Ifugaos have their own natural resources including gold and copper though not as abundant as those found in Benguet and Bontoc. The rice terraces were the main natural attractions even as these were glorified by Otley Beyer and Roy Barton. It must have been thought more economically advantageous if these terraces were used for purposes other than rice production. Already at this period, Governor Jones in one of his inspection tours showed active interests in mining but no concern for the terraces being destroyed by mining activities.³⁸

These remarks were well placed because the Americans had observed the tedious way of rice production, which relied mainly on human labor. Animals or machines were impractical if not impossible to work with high up in the terraces. Different accounts caution us to take the American colonizers' words with a grain of salt. Fry spoke of a large market constructed by the people of Mayaoyao and Bunhian in 1923 between Echague and Mayaoyao.³⁹ This was the scene of much trading and commerce between Isabela and other lowland areas and the Ifugaos.

Some 9,000 cavans of rice along with considerable amount of coffee, peas, and tobacco were exchanged for livestock.

The mining claims backed by legal statutes and military force when needed were first priority in the economic agenda of the American period. There were other strategies employed, supposedly to uplift the Ifugaos, but pushed the latter deeper into the mire of poverty.

There was the scheme to keep Christians out of the Cordillera Central while enhancing the intra-Cordillera trade and commerce. The twin projects of road building and the "Igorot Exchange" were introduced. This exchange equivalent to the contemporary cooperative store was set up in Bontoc, then in Banawe in 1909 and later in Kiangnan and Mayaoyao. Although the exchange registered relative success at the start, it eventually went bankrupt due to lack of capital, ineffective management, and most of all lack of cash from the local community.

Even at the inception of American rule, the problem of economic development was foremost in the minds of the Philippine commission. It never occurred to them, however, that development would come so easier if the Cordilleras were not mere suppliers of labor.

Furthermore, the Americans equated progress or economic development with the creation and multiplication of wants via education which they thought would pave the way to the satisfaction of these wants.⁴⁰ There was the introduction of cash crops mainly coffee, cacao, silk, and tobacco, the cultivation of which were the main contents of the school curriculum. Schools both in the elementary and secondary levels placed great emphasis on agricultural production and handicraft-making. To the Ifugaos, agriculture was a way of life yet there were reports of children who avoided school altogether. Parents of those who attended school complained of being deprived of considerable man-hours in the field, and that the only want created by the school was to play basketball and baseball.⁴¹

The economy of the Ifugaos reflects the sorry state of the Philippine economy. The old structures remained despite a changing of the guards. The indigenous elite who took over became the true "brown Americans."

The tourism industry which capitalized on the scenic rice terraces in Banawe and the adjacent baronages augments the provincial income which is used for infrastructures such as road maintenance, school buildings, water systems, electrification, and other projects. By and large these may appear to be improvements. The bulk of the benefits however, goes to the non-Ifugao business people and a few Ifugaos who already have more than enough to start with.

The rise of cottage industries notably wood carving, loom weaving, and needle craft are offshoots of the tourism industry. Even with these developments, only very few are employed.⁴² Others are drawn to single proprietorship type of merchandizing dominated by the "variety store." Consumer goods are brought not from Lagawe, the capital town but farther down in Solano, Nueva Vizcaya. These are taken to Ifugao in buses even to the farthest municipality of Mayaoyao.

This is where the creation of needs and wants envisioned by the American officials in Cordilleras is realized. The two buses that ply the Mayaoyao-Solano route are filled to capacity with cases of cola drinks, beer, gin, canned goods, sugar, noodles, chips and other junk food that are far from nutritious. Ifugaos sell their farm products (fruits, vegetables, livestock, poultry, eggs, etc.) to procure these manufactured goods.

The rice terraces suffered due to lack of interest but not necessarily on the part of the Americans. The Ifugaos helped facilitate the process of neglect. This is particularly true in Banawe where the younger folk would rather do menial tasks than till the soil, maintain the dikes and irrigation canals, plant and harvest rice. The writer had the opportunity to join in the first harvest of the year during the research period. The terraces owned by an old couple still had un-harvested rice because nobody was available for what used to be a communal affair of harvesting.

Another sign of modernity taking over the economic dimension of Ifugao culture is the preference for western type of dwelling both in style and material. This is for reasons of practicability and prestige. Galvanized iron and concrete building materials are more durable albeit more expensive than the cogon grasses and scarce wood. A number of Ifugaos tried using GI sheets with the indigenous architecture which is pyramidal in shape, windowless, with the roof extending down the floor. But this kind of dwelling is extremely hot inside during the summer and intolerably cold

during the cool months. The pyramid type of architecture goes well with thatched roofs and not with GI sheets.

The Ifugao society's link with the international market economy resulted in losses. First, there is the loss of land base through over-utilization in the production of cash crops on the terraces instead of the traditional rice. This is especially true in Kiangnan where bean planting was deemed more lucrative although the prices of farm inputs like fertilizers and pesticides were beyond the farmers' control. Loss of land also occurs through simple abandonment of the terraces, which are left at the mercy of the elements.

Secondly, Ifugao society, like other local and peripheral communities, is being used only as an appendage by the national and international market, i.e. as tourist spots and/or outlets of consumer goods. It cannot command the price of its own products (wood carvings, woven cloths, antiques or even cash crops) as these are determined by the bigger markets and the inflationary character of the pan-Philippine economy.

The Ifugao Political System

One telling mark of the Ifugaos' incorporation into the pan-Philippine polity is its creation as a separate province in 1966. However, the residues of the American regime's discrimination against the Cordillera people as a whole remains today bringing to fore the inconsistencies of the state policy. One of these is the creation of the Bureau of Non-Christian Tribes, later changed to the Commission on National Integration, which was replaced by the Presidential Assistant for Minorities (PANAMIN) followed by the Office of Muslim Affairs and Cultural communities. With the assumption of Corazon Aquino as president, the latter was split into three: Office of Northern Cultural Communities, Office of Southern Cultural communities and Office of Muslim Affairs. All these offices in chronological order from the American period to the Estrada administration bear witness to the long nurtured prejudice against the IPs. Unable to take care of themselves, a bureau has to be created to look after their welfare.

The Ifugao province since its creation as a separate province was manned by appointees and later by elected officials. Except for a period shortly after Martial Law where military officers ruled the province for the

purpose of checking the insurgency problem in the region, the province operated like the rest of the Philippine provinces.

The ten municipalities, Lagawe, the capital town, Lamut, Kiangar, Hingyon, Hungduan, Banawe, Mayaoyao, Potia, Tinoc and Aguinaldo have their own elected municipal officials down to the barangay level. Like the rest of the provincial and municipal governments of the country, ifugao falls under the jurisdiction of the Department of Interior and Local Government (DILG), one of the administrative departments directly under the Office of the President.

The Ifugaos, as witnessed in the conduct of two elections which took place during the research period., the first for the national, provincial and municipal officials in January 1988, and then in the March 1989 barangay elections, are politically astute. However, Philippine political rights under the tutelage of the US government was far from ideal. The colonial rule in the first place is the direct antithesis of the democracy preached by the Americans.

Having experienced the longest reign of the "White Apos," the Ifugaos maintained cordial relationships with them. The old men in Mayaoyao fondly recall the Americans who conscripted them into the military service and road construction; flirted with their women and took them as mistresses; established the public schools and rounded up their children to attend classes; taught them basketball and baseball, and English; and ended their "headtaking" exploits.

Where the Spaniards were haphazard in their dealings with the Ifugaos, the Americans were systematic, tenacious and ready to use brutal force to match the ferocity of the Ifugaos. Later, the tactic of "carrot and stick" was set aside when the Ifugaos began dreaming of becoming like the Americans. They had finally become good colonial subjects. Ifugao elite were made to take over the administration in preparation for independence until the arrival of the Japanese.

The net effect of the successive waves of foreign invasions is the widened gap between the highlanders and the lowlanders. There is also the internal division within the once homogenous, slightly stratified and self-determining tribal or nation people. The highland elite who had gone

to school and spoke English joined the lowland elite to take the helm of the state political machinery.

Except for the promise of new infrastructure, nothing in the direction of a comprehensive improvement for the municipality or province is envisioned. The unfinished school buildings and municipal halls, the miserable conditions of the district hospitals, the forever widening of the national road that links the municipality to the outside world, has left the constituents bereft of any will to assert themselves. This malignant hopelessness has come to be regarded as part of the "nature of things" or in other words, nothing can change it.

The self-fulfilling prophecy is understood even by first-time elected officials. The lack of vigilance on the part of the people and the Machiavellian tendencies of the old guards eroded the political apparatus.

Lambrecht makes mention of the *manungaw* who is the locus of power in Ifugao society.⁴³ The *manungaw* designates the days for obligatory rest period called *tungaw* for everyone in the village to observe, before harvest time. This is the only authoritative act done in an egalitarian society vested on a person that exacts obedience from all including outsiders.

The *manungaw* must have been a prestigious office laden with religious overtones as to merit compliance from all. A case is told by an old time catechist who was once a pillar of the Mayaoyao Catholic church in the late 1940s. She and her husband in their zeal to eradicate the "pagan" practices of the newly converted villagers violated the then declared *tungaw*. That week a strong typhoon struck, laying to waste the ready-to-harvest rice. She prodded her neighbors to join her in harvesting, claiming they were no longer bound by their traditions as they have been baptized in the Church. After the first day of harvest, they were summoned by one of the elders who happened to be the municipal Mayor. He imposed on them a three-day imprisonment and a fine of P200.

During our stay, people did not observe *tungaw*. This is indicative of the fact that the *tungaw* was once a tradition but long since relegated to private family practice.

Another political/economic structure in Ifugao society is the *kadangyan*. Literally translated as "the wealthy" family or clan, the *kadangyan* own a number of terraced fields yielding much harvest relative to others in the area. Their prestige lay in the number of feasts or *hagabi* and *uyo-uy* given to the community even as their privileged status enable them to rally the help of the neighborhood or the entire village to repair the dikes, maintain the irrigation system, or even to open or construct new pond fields. The moral authority of the person/family/clan in this indigenous structure is given to him/them as one of tried virtues, possessing brain and brawn evidenced by the yield (returns to land) and productivity (returns to labor) and the willingness to share these to the community in hosting welfare feasts called *lugnong*. The prestige and influence the *kadangyans* possessed is considerable enough to keep the community whole by ensuring a continuous and well-maintained material base -- the rice terraces.

With the government taking over the mobilization of labor through its institutionalized services manned by the bureaus, in this instance the National Irrigation Authority (NIA) and the Department of Environment and Natural Resources (DENR) for the reforestation and maintenance of watershed, the *nawotwot* or *ochichi-an* (the poor) do not depend on the patronage of the *kadangyan* anymore. Like everyone else, the ordinary Ifugao enlist themselves for paid labor in the maintenance of the irrigation canals under the NIA and the pork barrel funds. The *kadangyans* in the meantime have become *ochichi-an*; and indeed have fallen on hard times like the rest of the villagers.

While the demise of the *manungaw* is the direct result of abandonment of *tungaw* (which was supplanted by Christian tenets), the *kadangyans* falling out of grace is brought about by complex interfacing circumstances that are historically and structurally conditioned. They are unable to mobilize organized labor because they are no longer wealthy and therefore un-influential. Their fields are not as vast as they used to, even if the indigenous inheritance system (primogeniture) worked for non-fragmentation of the terraced fields. The eldest in the family inherits the fields and takes care of the rest of the siblings. The pressure to sell the fields for the created wants which started with the coming of the Americans intensified with tourism. Among these wants are higher education, gadgets and amenities (TV sets, refrigerators, cooking ranges,

fashionable clothes, etc). These are the new symbols of prestige but not necessarily of influence.

What is observed regarding the fate of rice terraces in Banawe is replicated too in the case of road and trail maintenance. In earlier times, an elderly man informed us, all able bodied adults would band together and fix the road as soon as a landslide occurs. Nowadays, they wait for government appropriations that usually never come.

Yet on occasion, the municipal officials succeed in mobilizing the people. Such was the case of the introduction of second cropping of rice in Mayaoyao. Although this had undermined the position of ritual leaders because the second cropping has no ritual basis, the *kadangyans* were not in favor of this for this would entail another round of mobilizing the work force and the compulsory festivities. The poor, however, welcomed this opportunity to augment their income, hence preventing them from loaning rice at usurious interests. The mayor, with his coercive power, introduced the practice which continues to this day except in the village of Chaya whose elevation and cloud cover make rice planting difficult.

Ifugao Religion

Visitors of Ifugao today will notice the church buildings and chapels either amid the cluster of houses or alone by the terraces against the backdrop of the green woodlots. These buildings are mostly owned by religious orders.

Where the Spaniards failed repeatedly to christianize the Ifugaos except towards the end of their regime, the Americans along with their pacification strategies made converts out of "the last and fiercest of the unconquered pagans in the Cordillera area."⁴⁵ The ferocity was attributed to their propensity to take heads of enemies or strangers, a feat worthy of praise and extravagant celebrations.

Old men in the village readily point to the abandonment of this practice as a trademark of their being civilized. This to them is a legacy of the Americans to whom they are grateful. Whether this open appreciation of the colonizers flow from comparison with their experience from the Spaniards which was generally unfavorable, or part of the contemporary adulation of anything western, is an issue worth taking

note of. To the pauperized and unpoliticized ifugaos, all whites are Americans or "*melikano*." They are like God.⁴⁵

The exploits of the American military governors projected the benevolent assimilation policy as far as their tolerance could allow. Otherwise, impious and atheistic as they were, they were even worse in their savagery or proved equal to the Ifugaos and other warrior tribes who were consistent in their violent ethos at that stage of their cultural formation.⁴⁶ This is evidenced by their invention of the water cure torture method, their burning of villages and killing of non-combatants.⁴⁷

Head-taking, a hallmark of paganism which is most revolting to the western Christian sensibility, was eradicated by the American military governors not through the preaching of the Christian love of neighbors and enemies but by an American show of force⁴⁸ which to the Ifugao is a spirit endowed with invincibility. To be Christianized then for the Ifugaos is to be civilized; to be civilized is to be like the White Apos.

The present day Ifugao is a Christian. He adheres to one or the other western introduced religion or denomination foremost of which is Roman Catholicism, garnering the biggest number of adherents being the most tolerant and accepting of the indigenous rituals and practices of the Ifugaos. Other denominations include the United Church of Christ (UCCP), Seventh Day Adventists, Pentecostals, Jehovah's Witnesses, Methodists, Espiritistas, Iglesia Ni Cristo, Baptists and Evangelists.

An old man belonging to one of the more prestigious family of *mombuni* (ritual officiator) adamantly refused conversion notwithstanding the pleas of his children, grandchildren and great grandchildren. He and a few other old men are faithful adherents to their indigenous religion and openly professed them without apologies or shame.

An ordinary Ifugao when asked if he still performs the traditional rituals would laugh in embarrassment, dismissing the question as seemingly impertinent and with a tone of finality would assert: "We are Christians now and had shed off those practices a long time ago." Professionals, i.e. teachers, doctors, nurses, government employees, etc. politely explain they cannot be present in these time-consuming rituals as they have to be in their jobs which require them to be out of their homes every so often.

Members of the more fundamentalist groups like the Pentecostals, Baptists, Jehovah's Witnesses and the so called Born Again Christians manifest a more disdainful behavior towards their own indigenous belief systems and practices, labeling these as "of the devil."

Although the Catholic Church never condemned nor labeled the indigenous religion as of the devil and is more tolerant of them, it nevertheless refrained from encouraging the practice for pragmatic reasons. Already noted by Lambrecht in his voluminous and scholarly work, *The Mayaoyao Ritual*, the extravagance in terms of the number of livestock and bundles of palay required in the performance of their calendric rites, health restoring rituals and life crises rituals is enough for the family to be in perpetual poverty.⁴⁹

The avowal that they no longer practiced their traditional rites and rituals is to some extent a jocose lie made to put an air of sophistication. The discrimination meted out to them by their lowland compatriots forced them to mimic such discriminatory attitude, the net effect of which is a schizoid behavior towards one's own person and culture.⁵⁰

Whether it is fear of the avenging spirit of the dead ancestors or simply the force of custom as a collective habit that refuses to die out, the life crises rituals, the healing rites and calendric rituals, that mark the agricultural cycles are performed and attended to by everyone who cares to come and join the celebration. As they have done in the days of old, neighbors are expected to help in the preparation of the ritual feast consisting mainly of gathering firewood, pounding rice, assembling the needed cook wares. The host family and their relatives and the *mumboni* take charge of the ritual slaughtering of the sacrificial animals. After divining the gall bladder, the volunteers take over singing and dressing the carcass, chopping the meat and cooking it in vats of boiling water without salt and spices. Rice is cooked also in vats. The boiled rice placed in rectangular rattan woven trays and together with the cooked chunks of meat pieced together in barbecue stick are distributed to every one present. A pregnant woman gets two sticks of barbecue; one for herself and one for the fetus.

It goes without saying that such religious festivities occurring regularly in Ifugao society is community-affirming and solidifying not only

among the living but most especially with the revered ancestors. A people rich in history will not experience entropy.

The Kinship Patterns and Social Organization of the Ifugaos

The Mayaoyao family is egalitarian in nature with both father and mother assuming responsibilities in decision-making. The post marriage residence is not determined by the father's or the mother's locality. The family may decide to settle in any locality, taking into consideration the availability of a house and its accessibility to the place of work — the rice fields. In the case of *panguluans* or eldest children, the ancestral family house is given to them including the rice fields, in consonance with the law of primogeniture.

A clear division of labor is seen in the traditional Ifugan family or household. Women do the work in the *payaw* (terraced pond fields) after the dikes are fixed and the ponds are mulched by the menfolk. Women work consists of transplanting rice seedlings and the weeding, and bundling of the harvested rice panicles. Women also do swiddening where corn, root crops and vegetables are produced. Men, on the other hand, do carpentry, gathering of firewood, carrying of rice bundles from the terraced fields to house yards for drying and other heavy work. Other household tasks such as the care of infants, cooking, washing of clothes, cleaning the interiors of the house and environs, raising livestock for domestic purposes, etc. are equally shared by both males and females.

The typical Ifugao household is the nuclear type — the father, mother, and the unmarried children. At times, relatives or adopted child add to the members of the household. Even with this setup, strong kinship ties are maintained. The family traces its descent from both the paternal and maternal sides, which is a bilateral social system, found in all Philippine ethnolinguistic groups.

The bilateral kinship groups in Ifugao, is the primary social and legal unit, consisting of the dead, the living, and the yet unborn. This postulate formulated by Hoebel based on Barton's ethnographic work holds true at the present time.³¹ Each individual or sibling group is the center of a kinship or family group whose unity must be kept at all cost. This kinship circle includes all descendants of the eight pairs of ancestors -- great, great grandparents, extending laterally to include third cousins. This

includes both the exogamous group and the feuding group. This social configuration figures in the different dispute settlements included in the inventory of cases. It is clear that these kinship groups have both the continuity and corporate character so far as inheritance and responsibility are concerned.

Many Ifugaos know their ancestors back to the tenth or even to the fourteenth generations including the brothers and sisters of their direct ancestors. One such informant, Nemesia P. Natuno of Mayaoyao, who is mentioned in the *tungaw* incident, gladly obliged to write seven genealogies of her ancestors showing the villages to be related by consanguinity and affinity.

As mentioned, it is these genealogical networks that are utilized by the *mon-alons* (go between), the *mon-bonis* in dispute settlements particularly over land and other inherited properties, in marriage transactions, in their relationships with their supreme god, *Kabunian* and their ancestors. These cognatic stocks are well integrated into the personal kindred and kept afresh in the memory of the individual Ifugao by the regular celebration of their calendric rituals, healing rites, thanksgiving ceremonies, etc., all part of their religious traditions.

Marriage as a social institution accounts for the close bond that the consanguinally distant or unrelated families developed. While most anthropologists, including Barton, claim that marriage among the Ifugaos is more of an economic alliance between two families, affection and bonding is evident in the couples. Stable family life is nurtured by the tight kinship bond and community support evident in deeply personal and spiritually imbued culture of the Ifugaos.

There are two types of marriage arrangements among the Ifugaos: through the *agamang* and through parental arrangement. The former is an institution with a physical center which houses separately unmarried young men and women, where socialization among peers is done under the tutelage and supervision of a matron/master. The house built by the community for the said purpose is owned by a widow or a spinster. Courtship takes place in there and the boy and girl can sleep together if they so desire. As soon as they decide to settle down, the parents are informed. Arrangements are made between the families, including the payment of dowry/brideprice and inheritance.

Parental arrangements occurs in infancy where brides and grooms are matched to ensure a bright future for the couple. Such child betrothal takes place mostly among the *kadangyan* not unlike the royal families of the western cultures. The chewing of betel nut and arica leaves signifies the alliance building between the two families that is being held on to until the children are old enough to enter into married life where further transactions between the families are sealed. The familial and community support lends to the stability of the marriage so that one can say marriage is not only a personal matter between individuals but also a communal affair.

There are two types of ritual celebration for marriage. One is *pahang*, a simple wedding ceremony performed by people of ordinary status. It consists mainly of offering at most three pigs with the usual dancing and chanting to the accompaniment of gongs. The more elaborate, *ipad*, is celebrated by the *kadangyan*. It requires more sacrificial animals, pigs, cattle, and poultry and can go on for days.

The Ifugao Living Law

The Cordilleras' bid for autonomy was enshrined in the 1987 Constitution. In no time however was this preempted, surreptitiously though, by competing forces including those in government. Nevertheless, the tenacity is there. The temporary setback, a providential necessity for propelling the struggle to a more thorough-going, forward-upward thrust to genuine autonomy. It is in this global, national and regional milieu of re-assessment and re-assertion of one's right as a people that the Ifugaos are being swept.

It is in this same fast-changing world that the Ifugao indigenous legal institution shows itself a beacon of hope. Without their knowing it, the Ifugaos have kept alive an outstanding legal systems, which continues to astound foreigners with its capacity to bring justice and peace in their communities in an effective and swift manner.

The Inventory

The almost 300 different cases of dispute settlement gathered during the one year period of research show a general pattern in procedure. Lawyers schooled in the rubric of Western Law insist on their

type of juristic concepts as tools against which Indigenous Law will be assessed and critiqued for its adequacy, consistency, generality and utility. These tools are based on the definition of law as the normative order of a coercive social order typical of which is the State.⁶² Ethnocentric as this legalese is, this paper argues that the Ifugao Law is good enough for the Ifugaos in the sense that it has achieved what it purports. This is shown by anthropology's best tool — ethnography. A vivid description of the cases, the restoration of peace and order not only among the litigants but in the community as a whole, the number of cases brought to the municipal or regional trial courts only to be brought back to the *mon-alons* in due time are proof of the vitality of Ifugao law.

Of the cases collated, 34 concerned personal and family relations, 78 on property relations and contracts, 29 on crimes against persons, 29 against property, 11 against honor, four on false accusations, and three on violation of particular taboos. The cases gathered inadequate as they are, are nonetheless substantial in showing human vulnerability and weakness in whatever time and clime. Correspondingly, the cases depicted the collective efforts of the Ifugao people to restore peace and order to the community, clan, family, and individual. And this has taken place since time immemorial even before the emergence of the State, and its apparatus for adjudication namely the courts and the legal system.

Elements of Ifugao Law

Ifugao Religion. All people, because of the propensity to seek order and harmony, self-consciously set up structures and processes. Repeatedly used through time, such structures and processes become culture. That part of culture which deals with settlement of disputes are embodied in norms and traditions subsumed in the dimension of religion.

Thus when an Ifugao is asked why they perform rituals at a *bultong*, wrestling match, to settle boundary disputes, the ready answer is, tradition. Religion for the Ifugao is part and parcel of Ifugao law and provides the system of *pamilyu* (taboos), as well as the morality of justice indispensable to its functioning.

It is taboo to commit or omit acts that would redound to the ruin or disadvantage of another be it his person, property, honor or dignity. What

constitutes a crime in western law is taboo in Ifugao law, paramount to which are the supernatural sanctions. Yet not all taboos observed by the Ifugaos have legal implications. The wearing of a red dress during a thunderstorm is prohibited, but since no harm comes except to the wearer no penalty for breaking the law is warranted and the taboo has no legal relevance.

Taboos which denote arbitrary prohibition of certain things spring from the social conscience involving relationships between human beings and nature; people, plants, land and sea animals, water, sun, moon, stars, clouds, rain, thunder, etc. Non-observance of such taboos implies a break in that relationship. Rituals come into the picture, as they are the symbolic expressions that serve to strengthen such relationships. As such they take on a deeply personal tone. Hence rituals are so pervasive in Ifugao law even as this is personal too.

The Personal Character of Ifugao Law. Barton alluded to the unorganized¹ nature of the Ifugao society as the source for the personal character of their law.⁵³ The presence of the state apparatus is the criterion set by him for the organization of a society. Such western categorization is fallacious, as it is ethnocentric. The fact that there are structures and systems with mechanisms for the establishment and maintenance of order and harmony shows that Ifugao society is alive. It is the well-defined structures and processes governing and unifying the lives of people that is the wellspring for the personal character of Ifugao law. The un-fragmented Ifugao society where people live their lives wholly prevent them from suffering the malady that plagues modern impersonal state societies characterized by dead laws without the spirit that integrates and vivifies.

The paradox that persists in pre-industrial societies such as the Ifugaos defies the Aristotelian doctrine that only State societies are capable of creating legal systems for "only states have courts, only they who have courts have laws."

The Ifugao judicial morality attests to the reality of the non-material world that inheres in world of matter. The dichotomy and contradiction of "it is moral but not legal/it is legal but not moral" is beyond their understanding.

Thus even with the advent of Christianity where the seemingly senseless and magical taboos are eradicated or supplanted by the so-called scientific practices, these are observed and practiced. Breach of these is under pain of penalty. Cases were gathered on how violation of a taboo perceived to have untoward effects not just on the offender but on another party or the whole community was penalized.

Ifugao Case No. 06 Ngoyahon vs Punaya

Ababulon Bantiyan, a resident of Lammagan, Gohang, Banawe, married a certain Punnaya Ballitoc from Lubo-ong, Banawe. After a year they bore a child whom they named Binnotag. When the child, Binnotag was nine years old, his father got seriously ill and died.

In less than a year's time, the widow got married to a certain Langta-achon Ballatong, a bachelor-farmer from Lubo-ong, Banawe. By doing this she broke the *guiboh* — a period of mourning for one whole year within which the widow/widower is not allowed to remarry. In the tradition of the Ifugao, the transgression of this taboo is highly punishable. Getting married before the lapse of one year mourning period is disrespectful of the dead partner and his family.

Hence the uncle of the deceased, Domingo Ngohayon (an uncle twice removed being the cousin of the father of the deceased; in Ifugao blood relationship is reckoned several degrees away and any along this line can initiate a case in behalf of the deceased) on learning of the marriage, went to Lammagan where the couple were residing. He together with a neighbor, Pugong Chag-uh had exacted the following: the *guiboh* of one-six or *ohay-ono'* consisting of two native pigs; one *hape* (native woven blanket); *guinut-to* (men's belt); two *pagchot* (vat), three bronze anklets consisting of three rings bound together to make one count.

It took some time for the newly married couple to raise the fine. They had solicited the help of their parents, relatives and friends. With the giving of these to Domingo, the couple has mended the broken taboo. Domingo went back home and distributed collected fine to the relatives of the deceased.

In the event that the widow/widower wants to get married after the period of mourning, a series of rituals are done in the sequences defined by custom. Such is the Ifugaos regard for the deceased.

Ifugao Case No. 042 Linagga vs. Gano and Puguon

In July of 1954 after the harvest season two women, Ba-a Puguon and Cutmog Abilene, both related by affinity, went to gather *guinea* (field shells) for their viands that day in the pond fields of Winanchagan Linagga at Mammato, Uhaj. When the latter saw the two, he called their attention that they had violated the taboo *hognong*. Winanchagan had not had the prescribed ritual feast yet which is required of all farmers to mark the end of the observance of the taboo for that particular harvest season.

The two women replied that they did not know such was the situation since everyone else had done their ritual in their respective fields. Winanchagan retorted that they should have asked before starting to pick up shells. The two pleaded that they are excused for acting on presumption but Winanchagan was obstinate and imposed a fine on them.

The following day, he called on Domingo Ngohayon of Uhaj, Banawe who is a *mumbaki* (native priest) and asked him to be his *munafon* in exacting the fine.

Ngohayon went as directed to collect the three chickens from Ba-a and another three from Cutmog. He brought these to Winanchagan where together with other *mumbaki*, Ngohayon, performed the *hongga*. The six chickens were slaughtered as sacrificial offerings to Kahunian. These were then cooked and distributed to all the people who were present. Thus the observance of the *hognong* was ended.

Collective Responsibility and Collective Procedure. The individual who commits a violation or a crime has his family, is clan or even the entire village held responsible for his act. In all cases, it involves the family and close relatives of the person directly involved. It is the family who should strongly demand if they are the aggrieved party and strongly resist the demand if they are the defendant. Thus the procedure in the decision making is necessarily collective or collegial. While there are drawbacks in

this type of dispute settlement as the culprit can hide behind his family or kin group, the collective conscience of the Ifugaos will not rest until the wrong has been corrected, and peace and order restored to the village.

Collective recipiency of punishment is collorary to the collective responsibility. The culprit is punished, blamed and castigated by his own family. But the debt and indemnities are collected from the family members and relatives. The unity of the family ought to be preserved at all costs.

The System of Ifugao Law Creation

The general characteristics gleaned from the cases gathered yield in turn two bodies of law distinguishable in any society for that matter. There is what is termed by scholars of law as the substantive law, which defines the rights and duties within the society. Violations of these demand redress. In Ifugao society, substantive law is unwritten but are embodied in the norms, traditions and customs, and deeply related to their religion.

The other body of law is the procedural or remedial law, which governs the social processes by which wrongs are redressed or prevented. Such processes include the personages in charge or designated by virtue of their personal qualities of integrity, selflessness, sharpness of intellect and other qualities recognized by the community. Included also are the procedures followed for seeking redress, the decisions reached for every remedy and the methods for seeking compliance with the sanctions adjudged in such decisions.⁵⁴

The procedural law is the focus of analysis in this paper as this is the more significant. In the evolution of legal system from the unwritten norms and customs embodied in religion to the very specific and detailed written law compiled and codified as found in the modern law books, societies go through the process of procedural over hundreds of years reflecting the changes and transformations in the various dimensions of human existence. Thus Rome for instance, had their laws codified only under Emperor Justinian in the early part of the Middle Ages. The English Common Law reached its written form towards the end of the 13th century. Unfortunately for the Philippines, the process was nipped in the bud with the advent of colonization. Neatly compiled and written alien laws were imposed on the Filipino people. This research is an effort at

capturing the normal process of legal evolution starting from the unwritten norms and traditions subverted and supplanted by outside forces.

The procedural law of the Ifugaos is given importance for it shows how this is made binding and operational in the day to day world of the individuals, clans, and peoples. It describes how effective the indigenous government of the Ifugaos is. Indeed, theirs is a "living law" at its best.

Fernandez, further explains that procedural law describes the mechanism by which Ifugao substantive law is created, developed and expanded.⁵⁵ More importantly, once uncovered and described, the former will have revealed the fundamental or constitutional law of the Ifugao society which best express the collective will and soul of the Ifugao peoples. It is this that governs their lives at the operational level and by which the common is created and sustained.

It is interesting to note that some legal scholars at the UP College of Law pressed for the codification of Indigenous Law for easy reference and for it to take a sophisticated character. Fernandez avers that codification may not be fruitful at this stage. First, the cases are too few to yield adequate compilation of rules that may be called Ifugao Common Law. Second, most of the reports are historical accounts reifying solely on the memory of the informants/participants. Such cannot be as reliable as those written contemporaneously with the handing down of the decisions. Third, due to the passage of time, most of the reports were prepared without giving the full details essential to an adequate statement of the underlying rule of law for each decision. Fourth, most of the accounts came only from some of those who were actually involved in reaching the decision of the case. All these limitations would entail grave risks of misrepresentation and inaccuracy.

Some western-trained Kalinga lawyers, in an effort to modernize their laws, attempted a compilation of Kalinga law. The wise *pangats* (Kalinga go-betweens) seasoned in the intricacies of dispute settlement found the compilation inept and rigid, far removed from their vibrant adjudicatory process. They all were one in rejecting the compilation for reason of inapplicability.

The Process. The cases collated reveal a pattern delineating the mechanism, method and procedures by which disputes are settled which description, needless to say, is important to the understanding of Ifugao legal system as a whole, its parts and their interrelationships in the enactment of the rules of law.

The process starts with a complaint against an alleged wrong. If this is admitted outright or is done in public or is widely known and talked about, the initial complaint might simply be a demand for payment or customary reparation from the culprit. Petty offenses or light trespasses may easily be resolved where the complaint is made known directly to the offender.

Ifugao Case No. 48 Aluwac vs. Linagga

In June 1953, there was a *bachang*, an indigenous type of cooperative labor organized for the purpose of repairing the runo roof of Uhaj Elementary School. This was done in preparation for the opening of classes. Each parent brought with them a bundle of *rono*. Winanchagan took the bundle of *rona* that was placed by the wayside by a certain Puguon Alluwac that he intended to use for his house. The latter recognized this by the type of rattan he used to bind the *rono* reeds.

That same day the 'bachang' Puguon sent Domingo Ngohayon as *mun-alon* to Winanchagan to collect six chickens as fine for stealing his *rona* bundle. Without any objection, Winanchagan gave the six chickens, as it was his fault. However, he told Domingo, the *mun-alon* to inform Puguon that if any member of his family will commit the slightest misdemeanor, the Winanchagan family will turn the tables and fine them too in accordance with the practice known as *ugood* (revenge). What he took was a trifling and should have forgiven him. Also because this is the first time Winanchagan did it.

The aggrieved party/parties usually bring the matter over to a third party, the *mun-alon* or go-between who would lose no time in contacting the aggressor and his kin to apprise them of the case and initiate the payment or other mode of reparation demanded by the aggrieved. Time is of the essence here especially in serious crimes to forestall any form of retaliation.

A *go-between* (*muna-lon*, *munkalon*, or *makalon*) is someone with standing in the community who has experience in the art of mediating disputes, or conciliating the parties thereto, for the purpose of settlement thereof, by agreement on the terms of the reparation to be made for the wrong done.

In the process of enlisting or procuring the services of a *go-between*, the aggrieved recounts the wrong done and the circumstances surrounding the occurrence. It is the *go-between* who must present the complaint to the alleged culprit and his kin which would be the basis for the negotiation proceedings.

The enlistment of a *go-between* is a tacit hiring or commission. Once this is accepted by the *go-between*, he is expected to do his best not only to be faithful to the party hiring him but ultimately to settle the dispute thus restoring once again peace and order to the families in aggression and to the community as a whole.

Fernandez opines that the *go-between* is an advocate of a cause, since his task is to secure reparation for a wrong, by inducing the guilty party of such wrong to pay such reparation.⁵⁶ Such advocacy is by custom remunerative. He is entitled to a fee and this fee is usually substantial.

The cases showed that *mun-alons* do not talk of fees in the first place. His good standing in the community rests on his being selfless and unmindful of whatever burden he has to bear in the course of doing his duty. Very evident in the attitude of *mun-alons* as interviewed by the researcher is their self-effacement and candid behavior. When asked for instance, how they became *mun-alons*, the usual answer is: "ask the people, they are the ones who come and bring their troubles to me."

Fees are in the form of livestock, articles of worth like brass gongs, blankets, *g*-strings, and money. These are distributed to the aggrieved members of the family and their relatives. The *mun-alons* share in the feasts of the sacrificial animals/livestock that are part of the fine. Successful termination of a dispute where all parties are satisfied is reward enough for the *mun-alon*; one feather added to his cap or in the tradition of the Ifugaos — one jawbone of a pig added to his collection.

In securing the agreement, the task of the *mun-alon* is really more of a conciliator who tries to see the reasonableness of the demand and the ability of the accused to pay the fine. In certain cases where the culprit is unable to meet the demand, the *mun-alon* then starts to solicit from other members of the community.

Ifugao Case No.101 Ordain Nagaya-an vs. Baychon Bagoyboy

In March 1977, Ordiagan Ngaya-an, a 35-year-old bachelor and Baychon Bagoyboy, 38 years old and married attended a wake in Chaya, Mayaoyao. As is customary in Ifugao, rice wine and more of the intoxicating gin sold from the store were served at the wake. The two had had a few drinks enough to make them tipsy. On their way home, they stopped by the corner store and together with other friends continued their drinking spree. It was in this situation that Ordiagan stabbed Baychon at the throat without any provocation, causing the rest of the groups to run for their lives. Baychon fought back and struck Ordiagan at the knee. Baychon died from loss of blood while Ordiagan was brought to the hospital.

A month after all the rituals ending all the taboos and other practices connected with death, the family of the deceased along with the *mun-alon* of their choice, Alfredo Panito, went to the house Mrs. Lily Gujicna, sister of Ordiagan (his parents were deceased) to start the negotiation.

Panito facilitated the discussion in a congenial and personal manner, bringing the demands of the defendant in the amount of P12,000.00 for the payment of the dead son. Since this amount was too much for the plaintiff, Panito suggested that a ricefield yielding some 50 bundles of rice per harvest (a bundle is the unit of measurement for rice equivalent to the number of panicles that can be grasped by clawed hands) for the body of the deceased and P6,000.00 for the head. The family and relatives of the defendant accepted the suggestion which is amenable to the party of the defendant.

After two weeks, both parties met at the Mayor's office to finalize the agreement. Tito Bagoyboy changed his mind and demanded that Ordiagan be imprisoned.

Panito, the *mun-alon* argued and pleaded with Tito that nothing will be gained by having Ordiagan incarcerated. At least with the fine, something tangible in memory of his son is his for the keeping. Such a settlement is more humane and beneficial to both parties. Enough prodding of such a nature made Tito finally give in to the suggestion of the *mun-alon*.

Ifugao Case No. 35 Pungod Gupuchon vs. Paeng Ecohan

This is a case of physical injury where Paeng the husband of Immaya felt offended that his wife bore a daughter sired by Pungod Gupuchon. This was told to the former a number of times in a bantering tone by a certain Banawan.

One time, Paeng, in a state of drunkenness, got a *bolo* and went to look for Pungod in Chumang. He saw the latter talking to a group of people. Without any provocation he struck at the nape of Pungod. Pungod was able to ward the blow off so that instead of his head, his little, ring, and middle fingers were chopped off.

Punged together with other witnesses and Chitin, a *mun-alo*, prevailed over Paeng to pay a fine of P3,000.00. He conceded without much ado. However, he was too poor to pay the whole amount too soon. Chuchun went around with him to help him do the *mesborhand* (solicitation of funds for the indemnity) in the community. It took them two months to raise the amount after which the litigants went over to the Mayor's office for the final settlement.

A group meeting or conference on establishing the guilt or should this be admitted as in the case above, the sanctions are discussed with the defendant and his kin, the complainant and his kin, the *mun-alon*, *mumbaki* (indigenous priest or ritual officiator), local office holder, the elders, and other members of the community. The duration of the conference depends on the gravity of the offense, on the denial or admission of guilt and the consequent bargaining of the sanctions. Where the offense is grave and the peace and order of the community is placed in jeopardy, the conference takes hours, days, or even weeks to end. The burden of facilitating the reaching of an agreement rests on the *mun-alon*. So while the settlement is in progress, he or they are on

their toes. The community for that matter too, cannot rest until the case is closed.

In the case where guilt is denied, or placed in issue, the traditional or indigenous remedies including the presentation of witnesses are availed of. Among the indigenous remedies are the rona dart throwing, egg throwing, wrestling, and dipping of hand in boiling water, or touching live coals. In cases of boundary disputes where encroachment is alleged, an on-site inspection and excavation of the buried boulder markers known as *paghok* is done.

Ifugao Case No. 38 Domoguing Family vs. Pukya Family

Pinkhan Pukya from Mugawa, Kiangon now deceased; survived by his three children and wife Aguinaya, owned a rice field in Ubol, Amduntog, Kiangon. The rice field is located on an upper terraced area, below which is the rice field of Alberto Damaging, a 50-year-old farmer also from Ubol, Amduntog, Kiangon. Pinkhan had claimed that Alberto intruded into his rice field. He personally asked Alberto to *monogod* (to retrace and rebuild) the dike at the original boundary. His request was flatly rejected by Alberto who suggested settling the case through *bultong* (wrestling). Pinkhan who had no choice accepted the challenge. This case happened in 1951.

Proceedings

Alberto went home to Bacquing, his homeplace and informed Alfred Dulnuan, the barrio captain of the dispute and the agreed *bultong*. The latter did not agree. Instead he advised Alberto to refer the matter to the Municipal Council in Kiangon through the vice-mayor, Paulino Indopia. The council approved this. Alberto went back home right away to prepare for the trial which was to be held a week later. Alberto after informing the defendant, Pinkhan, went to inform his uncles Domoguing Piggayang, Domingo Bahay, Puhimic Gumalhingging about this. Two *mabokis* (native priests), Pili Buhinta and Pagal who were Alberto's distant relatives were also invited.

Pinkhan, on his part contacted Lomlom Boy-ad, Polahon and the *mabokis* of Nungawa who were all his relatives. These were Ricardo

Dulnuan, Pinkihan Bullong, Tadao, and Angel Humakay. The vice-mayor was also present.

The night before the trial, the *mabokis* of the respective litigants performed the rituals as specified by their custom: *baki* (ritual chant), *bagol* (rite directed to the deity, *Bagol*), *uma-ol* (a rite performed for presence of mind and to prevent mental block), *konong* (rite to gain support from one's ancestors), *banig* (rite performed for physical strength and not to be weakened; literally means "ghost").

Alberto had the rituals performed in his mother's place in Narnay, Amduntog. Pinkihan did his in the Tongalon where he often stayed for the night after his work in the farm.

On the morning of the trial, the parties went to the disputed area, keen in observing all the signs and omens on their way to the field. They brought along with them their *ponibsiban*, a ritual box containing all the sacred items on top of which are the sacrificed chicken. Each party is led by a *maboki* with a spear in hand as if on a warpath. Any bad omen is counteracted with a *holtak* rite. One of these bad omens that required the *holtak* rite was the shouting of curses by the group of Pinkihan to the group of Alberto who were seen on another trail going to the disputed area.

On reaching the site, each party through the help of their *mabokis* handpicked their wrestler. Alberto chose his uncle Pigganay while Pinkihan had his first cousin Lomlom Boy-ad.

Pigganay and Lomlom positioned themselves at the imaginary boundary and the *mabokis* from each party shouted invocations to the Skyworld saying: "Sun and moon that would not sleep, look down upon this disputed area and give our wrestler the necessary strength because the other is grabbing our land."

The wrestlers, Pigganay and Lomlom held on to each other amid shouts and cheers from the onlookers. Pigganay defeated Lomlom who was knocked down right at the imaginary boundary. They repeated the wrestling match on the other side of the rice field and again Lomlom was defeated. Immediately, the *paghok* (marker, a chunk of hardwood) was

stuck in the site where Lomlom was knocked down, serving as the landmark.

After the wrestling match, the two parties in their respective houses performed the *guiboh* (culmination rite). This was done to avert any evil that might befall the litigants and their families as a result of the curses each party heaped on the other during their preparatory rituals.

Ifugao Case No. 83 Butagon vs Chumiwal

Chumiwal kept his savings in their own house in-between the rona blinds (*ifat*) fitted to the thatch roof. He was confident this would be a safe place and did not bother to check it until such time when he needed the money. But when he did, he could not find it. He checked with the whole neighborhood if anybody was seen in the vicinity of his or her house. Butagon was the only one seen the day before, making him a suspect. Butagon learned of this and got mad at Chumiwal. Because of this Chumiwal had no choice but to bring the case to Chuchun who was then the barrio captain. Chumiwal gave the facts including the unreasonable behavior of the suspect.

Because of the obstinacy of both litigants, Chuchun suggested a *monhiwoc* or a dart throwing contest using *rono* shoots as the missile to settle the dispute. The one who misses the target is adjudged as the culprit.

Both parties prepared for this event by getting enough *hiwoc* or *rono* shoots. When everything was set, they positioned themselves at some distance from each other in the presence of the *mun-alon* Chuchun and a sizeable crowd. Butagon was the first to hurl his *rono* dart at the back of Chumiwal. He missed. Chumiwal took his turn hurling the dart straight into the back of Butagon. With this Chuchun pronounced Butagon guilty. Just then a relative of Butagon stood up and said he is willing to testify to the public that it was somebody else who got the money. The people, however, insisted that the *hiwoc* is over and that Butagon is adjudged guilty. Furthermore, there is the all knowing "Afuniyan" who bears witness to all this.

Butagon was asked to pay the fine of one small vat *paryoc* and ten bundles of palay, eight chickens to be given to the relatives of Chumiwal as *orpit* (present). He complied with all this.

Once the truth is determined or arrived at, a decision is reached on the guilt or innocence by consensus of the group; the sanctions are imposed as stipulated by the aggrieved party. These are usually in the form of payment of money, livestock and goods that will be used eventually in the concluding ceremonies to end the case.

The offender may bargain and the fine or sanction may be reduced on equitable grounds such as insufficiency of funds. In instances where the offender is unable to meet the fine or sanction, the community would contribute. In any case the offender is given time to pay the fine or judgment debt. Once the payment is made, this is distributed to the aggrieved persons and his relatives through the go-betweens. Livestock is almost always included in the payment, which is often used in the ritual feast *hichit* where everyone is invited. The celebration of the *hichit* is to heal the wounds of animosities that the dispute engenders. With reconciliation, peace and order is restored to the community as a whole.

Transformation in Ifugao Law Creation

The Ifugao legal system has undergone transformations through the years. In essence though, it still is the instrument people use to bring about justice that is restorative not punitive.

With the incorporation of the Ifugao society into the Philippine State society, some of the Ifugao personages have come to occupy government positions as mayors and barangay officials. They are still being approached and chosen by the litigants not because of their official positions but because they have a reputation and prestige as practicing *mun-alons*. Most of the case reports use official titles like *cabecilla*, *palahente* or *presidente* during the Spanish period and "mayor," "barangay captain," "barangay councilman," etc during recent times. One case (No.58 p.217) had the NPA (New Peoples Army) as the go-between.

They arrived at decisions and agreement for indemnity usually done orally in the presence of the community or at least the relatives of the litigants. This is also now done in writing in the presence of government officials.

A number of Ifugaos have gone to study law and are now practicing lawyers. Several cases were brought to court either at the municipal or regional level only to be brought back to the indigenous legal way facilitated by the *mun-afons* accompanied by the rituals of the *mumbakis*.⁵⁸

Conclusion

In this age of information technology, the need for the IPs to profit from their rich legal tradition by having this written can very well be met. Moreover, it is their obligation to share to the rest of their compatriots who are in need of this type of wisdom. The Philippines will truly be a nation-state when Filipinos outgrow the colonial mindset that only western laws are to be emulated.

There is a need to de-monopolize research and documentation by the academe and the consequent training of the culture bearers themselves to document and systematize indigenous legal systems like that of the Ifugaos. This is the first step in the indigenization of the Philippine legal system.

The Indigenous Law Inventory Launched by the UP College of Law includes a detailed account of cases and their outcomes compiled in a monograph in the archives of Indigenous Law. It also provides the sociological and legal analysis for the cases. The initial endeavor must continue as part of a project preferably by the Ifugao themselves. ♦

Notes

- 1 Malay, 1996
- 2 Leacock & Lee, 1982
- 3 Sosmena, 1984 in Mojares, 1985
- 4 Fernandez, 1994
- 5 Fernandez, 1965 and 1978
- 6 Chambliss, 1973
- 7 Sibley, 1970
- 8 Jenks, 1912
- 9 Russel, 1930; Bryce, 1901; Cameron, 1961
- 10 Fernandez, 1985
- 11 Sherman and Sholem, 1985
- 12 Manuel, 1973
- 13 Manuel, 1993
- 14 Stone, 1966 in Pospisil, 1972

- 15 Scott, 1982
- 16 Carino, 1987
- 17 Alexander & Friedlander, 1980
- 18 Nietschmann, 1980
- 19 Nietschmann, 1980
- 20 Benedito, 1984
- 21 Constantino, 1975; Schirmer and Shalom, 1987
- 22 Benedito, 1984
- 23 Fernandez, 1980 and Lynch, 1984
- 24 Fallows, 1987
- 25 Scott, 1975
- 26 Scott, 1974
- 27 PPDO, 1986
- 28 De los Reyes 1987
- 29 PPDO 1986, Jenista 1987, Dumia 1978, Scott 1979
- 30 Scott, 1975
- 31 Scott, 1975
- 32 Scott, 1974
- 33 Lambrecht, 1929 in Fry, 1983
- 34 Wolf, 1955
- 35 Fry, 1983
- 36 Barrows, 1901 in Fry, 1983
- 37 Sapir and Whorf
- 38 Fry, 1983. Jones said : "...the mountains which contain gold will not be left alone until they have given up their treasure....the rice terraces have reached their maturity and have entered their decline. Wages from the mines will buy rice from the lowlands."
- 39 Fry, 1983
- 40 Reports of the Philippine Commission, Vol 1, p. 527
- 41 Fry, 1983
- 42 PPDO, 1986
- 43 Lambrecht, 1932
- 44 Alarcon, 1857 in Scott 1975
- 45 Jenista, 1987
- 46 Rosaldo 1980
- 47 Schirmer and Shalom
- 50 Barton 1930, Jenista 1987
- 51 Lambrecht, 1932
- 52 Freire and Schelers, 1961, quoted by McAndrew, 1987; Fannon 1963, Boff 1988
- 53 Hoebel, 1954
- 54 Fernandez, 1989
- 55 Barton, 1969
- 56 Fernandez, 1989
- 58 Fernandez, 1989

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