Locating the Indigenous Peoples in the Philippine State

NIMREH L. CALDE

The Cordillera Review: Journal of Philippine Culture and Society 7 (2): 3–23.
https://doi.org/10.64743/IMNI8366

ABSTRACT

Using the European nation-state model as framework for state formation, the early Philippine state has systematically ignored the existence of the indigenous peoples. The attitude of incipient Philippine state was to incorporate the indigenous peoples into the mainstream population under the banner of modernization. This has been manifested in the various laws passed by the Philippine authorities during the American period up until the martial law years. Later with the enactment of the 1987 constitution and the IPRA, the position of the indigenous peoples relative to the Philippines state have been modified. As it stands today, the indigenous peoples possess legal instruments to assert their distinct world-views. It has been observed that the adjustment of this stance was made possible by the acceptance by the Philippine state of the principles of pluralism. Despite its imperfections, the pluralist state model appears to nevertheless offer a more progressive framework for the state recognition of indigenous peoples and for the latter to express such "otherness."

Keywords: indigenous peoples, nation-state, pluralist state, Regalian Doctrine, integration policy

Introduction

This is an attempt to understand the position of the indigenous peoples alongside the evolution of the Philippine state by reviewing some legislative fiats, executive orders as well judicial decisions. It first discusses how the European model of nation-state disregards the indigenous peoples in the process of state formation. The non-inclusion of the indigenous peoples emanates from the view that (a) modernization will eventually diffuse ethnicity and (b) ethnicity is almost always equated with separatism (Maybury-Lewis 2002, 13, 121 and 114).

Following the nation-state framework, the incipient Philippine state did view the indigenous peoples in a positive light. Various laws and Supreme Court decisions are cited to highlight the adoption

of the Philippine state of the policy of integration, incorporation or assimilation of the indigenous peoples. A separate discussion on land ownership is made with the opinion that the integration strategy of early Philippine authorities was most evident in land laws. This demonstrates that the rulers of the nascent Philippine government seem to be inclined towards the modernization theory in their treatment of the indigenous peoples.

Finally, this essay also presents how the state has slowly come to realize that the complete dissipation of ethnicity is virtually impossible. The 1987 constitution and Republic Act 8371 or the Indigenous Peoples Right Act (IPRA) are explained to illustrate this point before the conclusion that some of the basic principles adopted by a pluralist state offer a better space for indigenous peoples to function.

The State and the Indigenous Peoples

At the turn of the twentieth century, new states emerged and were faced with the onerous task of state building. In the process, the European model of nation-state became the standard for emulation. Based on this paradigm, the institutions of the state must be built upon the foundations of a nation. Accordingly, "the most appropriate basis for the state is the nation as defined "ethnically, linguistically, culturally, and historically" (Rush 1992, 35–36). Krader (1968, 5) also explains that "the historical trend has been to reduce the number of state forms to one predominant form—the nation state—by a process of cultural diffusion …"

To this end, several states have attempted to create a nation even when none previously existed (Rush 1992, 38–39). As Anderson (2002, 113–14) observes:

> …often in the 'nation-building' policies of the new states one sees both a genuine, popular nationalist enthusiasm and a systematic, even Machiavellian, instilling of nationalist ideology through the mass media, the educational system, administrative regulations, and so forth.

Others insist that their "constitution do not permit the possibility of more than one 'people' within the national territory" (Kingsbury 2008, 113–14).

Ironically, the concept and practice of the nation eludes illustration despite the fact that it has been extolled by many political leaders and used as a foundation for the establishment of many new states. Nonetheless, attempts at definition have been made. For Rush (1992, 35), a nation is composed of individuals who have a shared culture, myth of origin and/or sense of belonging and purpose. This

definition puts forward the idea that the nation-state is comprised of "one people." For Anderson, the nation is "an imagined political community" (2002, 6). It proposes that nation and nationalism are created images rather than discovered truths. In Anderson's words, these are "cultural artefacts" (ibid., 4).

Whether the nation is imagined or not, the model of the nation-state has a "totalizing" effect on the "identity, acceptance and recognition" of state inhabitants (Kingsbury 2008, 112). Those who do not partake in the perceived shared culture or those who have not participated in the imagined community are excluded from the conceived nation. Apparentlyx, they are the same persons who are ignored by institutions of the state, and most of them are the indigenous peoples. Kingsbury describes the systematic marginalization of the indigenous peoples within the "nation" as follows:

> "History" has often seemed to leave indigenous peoples not so much as participants and subjects but as marginal objects contained within a much broader account of the nation, prominent perhaps as to customs and folk dances but peripheral in national politics and national law. (2008, 112)

Notwithstanding the European nation-state model, the concurrence of the boundaries of the state and the nation rarely occurs. Many states today are peopled by varying ethnic origins and nationalities; "…in fact, the majority of States embody multinational populations" (Vincent 1987, 29). Stated differently, "the multiethnic state is easily the most common form of country" today (Connor 2002, 27). Kingsbury explains that the presence of indigenous peoples

> …simultaneously challenges the dominant conceptions of the State as the political embodiment of a nation comprising all of the people within that State, and emulates the representation of historical "nations" connected to particular territory as a foundation for many modern "nation-states." (2008, 111–12)

Consequently, the nation-state model unfortunately falls short of embracing the peculiarity of the indigenous peoples in the "imagined community." This deficient attention provided to indigenous peoples appears to emanate from two views. The first postulates that ethnic groups and ethnicity would eventually dissipate as modernization and civilization accelerates (Maybury-Lewis 2002, 13 and 121). This view is inspired by the theory of development by Max Weber (Carnoy 1984, 33).

> Schumpeter and the pluralist interpret Weber's analysis by implicitly applying his rationality categories and concept of

> development of entire societies to individual differences within society: individuals are implicitly placed on a continuum of social-psychological development from "traditional" to "modern." (Carnoy 1984, 34)

Ethnicity in this view is explained as a feature that is an aberrant bond existent only in primitive societies (MacIver 1964, 26 and 70). It furthers the thesis that with modernity and democracy, kinship is replaced by citizenship and nationalism becomes indistinguishable from state patriotism.

National policies were then adopted in pursuit of this project. Even the early directives of the International Labor Organization (ILO) were laced with the purpose of modernizing the indigenous peoples so they can be integrated with mainstream populations. To illustrate, ILO Convention No. 107, 1957 declares as follows:

> …that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population…
>
> …the adoption of general international standards on the subject will facilitate action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions.

The second view forwards the argument that the recognition of ethnic differences among the population "would lead inevitably to tribalism, divisiveness and in extreme cases, separatism" (Maybury-Lewis 2002, 114). For the governments of multiethnic states, tolerance of ethnic groups is viewed as a state permission for secessionism and to a certain extent, violence.

> …central authorities have tended to perceive any demand for a significant increase in autonomy as tantamount to, or an important step toward, secession… In doing so, they [central authorities] often further the very result that they ostensibly wish to avoid, for there is an inverse relationship between a government's willingness to grant meaningful autonomy and the level of separatist sentiment. (Connor 2002, 34)

Alongside the establishment of nation-states, the pluralist state has also emerged as a widely accepted system for power distribution. "As a theory of society, pluralism asserts that, within liberal democracies,

power is widely and evenly dispersed" (Heywood 2002, 90). Premised on this framework, the pluralists argue that governmental authority is the subject of competition among different but equally positioned political groups (Carnoy 1984, 11; Faulks 1999, 47). Accordingly, the common good is determined through party and electoral politics.

Another important principle of pluralism is the primacy placed on individualism. It views the individual as,

> …the essential self-determining or at least freely chasing subject, is mistrustful of group-based claims…and calls for neutrality of the state and other social institutions with respect to competing substantive views among groups as to what is good and how to live. (Kingsbury 2008, 115)

Unfortunately, however, pluralism is limited when it comes to creating a space for indigenous peoples to participate. For one, it "fails to acknowledge how unequal structures of power pervade both the state and civil society" (Faulks 1999, 50). The arrangement proposed under a pluralist state disregards the reality that the indigenous peoples, who usually are in the popular minority, find themselves at a disadvantaged position at the onset. The pluralist state's obsession on numbers often leads to the dominance of the majority at the expense of the minority. Holder and Corntassel explain,

> [m]ajoritarian groups can then block an oppressed minority's claim to rights by appealing to the importance of including such minority populations in the dominant group's (collective) goal of state-building or the development of national identity. This may in turn lead to a denial of minority rights under the auspices of respecting the group rights of the majority. (2002, 136)

Another weakness posed by a pluralist state is its neglect to recognize the indigenous people's simultaneous endorsement of individual and collective rights. The pluralist state fails to account for the practice of interdependence of the self and the collective among indigenous peoples. As Holder and Corntassel posit,

> …the practical discourses of indigenous groups have emphasized the interrelatedness of collective and individual rights claims, and the multiplicity of obligations and claims arising from their "dual citizenship" within host states. (ibid., 145)

However, despite these noted failings of pluralism, it appears that it still offers a better framework for indigenous peoples to operate. The other fundamental tenet of the pluralist state, openness towards diversity, provides indigenous peoples a more optimistic chance to pursue their agenda.

Indigenous Peoples in the Philippines

The incipient Philippine state attempted to follow the standard of the European "nation-state." Early administrators tried to integrate indigenous peoples in the mainstream Filipino population in the process of "nation-building." The adoption of the integration or assimilation policies appears to be underpinned by the views that: (a) modernization will eventually render indigenous peoples and indigeneity irrelevant, or (b) indigenous peoples who are not integrated pose a direct threat to the territorial integrity of the Philippine state, or (c) the combination of both. The succeeding discussion will test this theory.

In doing so, this section will present the policy of incorporation or assimilation under the American period and later by the post-World War II Philippine government. A separate discussion is made on the rights of indigenous peoples over ancestral lands and ancestral domains since land ownership is among the more sensitive issues involving the relationship of the indigenous peoples with the state (Casambre 2006, 107–109). Besides, the incorporation policy was largely magnified in the issue of land and natural resource ownership. This discussion demonstrates that the initial government response towards indigenous peoples was the introduction of modernization, even by force, in establishing the Philippine nation-state.

a. The Policy of Integration

The state's strategy of incorporating the indigenous peoples in the mainstream population dates back to the Spanish colonial period through the "policy of *reduccion* or resettlement" (Lynch 2011, 106). The integration policy was made more apparent during the American period. For the Americans the indigenous peoples have yet to attain the degree of civilization needed for self-government. Kramer noted that the Americans viewed the indigenous peoples as "weak, passive, and easily preyed upon by their ostensibly more 'civilized' Christian neighbors" (2006, 216). Consequently,

> U.S. colonial officials had isolated non-Christians administratively through a bifurcated state: as Hispanized Filipinos gradually achieved self-government, they would do so only in "Christian" regions, while American-appointed officials continued to exercise exclusive rule in fully half of the islands' territory identified as "non-Christian." (ibid., 289)

This "bifurcation" was aimed at modernizing the indigenous peoples so they can be fully integrated with their "Christian" counter-parts. For instance, Act No. 253 was passed by the American government in 1901 to lead the indigenous peoples, then called the "Non-Christian tribes," towards the path of modernity and civilization. Section 1 of Act 253 provides:

> There is hereby created, under the Department of the Interior, a Bureau of Non-Christian Tribes, which shall conduct systematic investigations with reference to the non-Christian tribes of the Philippine Islands … with special view to determining the most practicable means for bringing about their advancement in civilization and material prosperity.

In 1917, the Americans passed Act No. 2711 or the Administrative Code of 1917. Act 2711 went even further when it authorized provincial governors to establish resettlement areas for the confinement of indigenous peoples. These designated areas were envisaged as centers for the modernization, by force if necessary, of the indigenous peoples. The Code explains the establishment of resettlement areas as follows:

> **Sec. 705:** Special duties and purposes of Bureau – It shall be the duty of the Bureau of non-Christian tribes to continue the work for advancement and liberty in favor of the regions inhabited by non-Christian Filipinos and to foster by all adequate means and in a systematic, rapid, and complete manner the moral, material, economic, social and political development of those regions, always having in view the aim of rendering permanent the mutual intelligence between and complete fusion of all the Christian and non-Christian elements populating the provinces of the Archipelago.
>
> **Sec. 2145.** Establishment of non-Christian sites selected by provincial governor – With the approval of the Department Head, the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board.

Prompted by Act No. 2711, the provincial government of Mindoro in February 1917 delineated an 800-hectare tract of land as resettlement of the Mangyans. Any Mangyan who went outside the confinement was to be imprisoned. Later, Rubi and other Mangyans wandered outside the land's limits. Rubi et al. were arrested, criminally charged, and thereafter convicted to suffer imprisonment. This prompted Rubi et al. to question the validity of Act 2711 before the Supreme Court.

The Supreme Court nonetheless upheld the soundness of the law. Justice Malcolm explained, *inter alia,* that the confinement of the Mangyans in one place was for the loftier purpose of educating and

civilizing them. In fact, the Supreme Court argued that the relationship of the Philippine government and the indigenous peoples was that of a guardian and a ward. The indigenous peoples accordingly were in the "state of pupilage." As Justice Malcolm described,

> Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many but not all the rights which citizenship implies. And true, indeed, they are Filipinos. But just as surely, the Manguianes are citizens of low degree of intelligence, and Filipinos who are a drag upon the progress of the State.
> …
> Waste people do not advance the interest of the State. Illiteracy and thriftlessness are not conducive to homogeneity. The State to protect itself from destruction must prod on the laggard and the sluggard. The great law of overwhelming necessity is all convincing. (Rubi, et al. vs. The Provincial Board of Mindoro)

Another law conceived by the Americans as a mechanism to integrate and modernize the indigenous peoples is Act No. 1639. This law prohibits any member of the non-Christian tribes from possessing or drinking intoxicating liquors except for the "so-called native wines and liquors which the members of such tribes have been accustomed themselves to make" (Sec. 2, Act No. 1639). On 25 January 1937, Cayat, a Benguet Igorot, was caught in the possession of a bottle of A-1-1 gin while wandering the City of Baguio. Upon conviction, Cayat questioned the law. Like the case of Rubi, the Supreme Court upheld Cayat's indictment explaining that the degree of civilization of the non-Christian tribes is low and that Act No. 1639 was crafted primarily to modernize them. Justice Moran explained,

> Act 1639, as above stated, is designed to promote peace and order in the non-Christian tribes so as to remove all obstacles to their moral and intellectual growth and, eventually, to hasten their equalization and unification with the rest of their Christian brothers. Its ultimate purpose can be no other than to unify the Filipino people with a view to a greater Philippines. (People of the Philippines vs. Cayat)

When the Americans left, the policy of integration was continued by the Philippine Government now run by Filipinos. On 22 June 1957, the Philippine Congress passed Republic Act No. 1888. This law still carried with it the same view that the Americans cast towards the indigenous peoples, i.e. that these individuals are of low grade of

civilization and must be incorporated with the majority of Filipino dwellers. The law pronounced:

> **Sec. 1:** It is declared the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.
>
> **Sec. 2:** To effectuate the said policy and to achieve the objectives of this Act, there is created a commission to be known as the Commission on National Integration …

The Commission on National Integration replaced the Bureau of Non-Christian Tribes as the government arm for implementing the integrationist policies. At this point the label Non-Christian tribe, was dropped in favor of national cultural minorities.

During the presidency of Ferdinand Marcos, the Commission on National Integration was abolished and the affairs relating to indigenous peoples were placed under the Presidential Assistant on National Minorities (PANAMIN) (P.D. 1017 and P.D. 1414). Although the Marcos decrees maintained the name national minority, the reference to the indigenous peoples as "ethnic groups" was used for the first time. In the same vein, the policy principle enunciated in these statutes appears to have slightly deviated from the previous views of the indigenous peoples. Section 1 of P.D. 1414 declared:

> *Declaration of Policy.* It is hereby declared to be the policy of the State to integrate into the mainstream of Philippine society certain ethnic groups who seek full integration into the larger community, and at the same time protect the rights of those who wish to preserve their original lifeways beside that larger community.

Albeit the Marcos decrees were still clearly integrationist in purpose, these pronouncements seemed to have changed in terms of government strategy. The fact that the law, in principle, allows the ethnic groups to maintain and continue with their indigenous practices brings the status of these peoples into a different plane of treatment. Such a declaration, however, is not completely aligned with the other provisions of P.D. 1414. For instance, the law permits total government intrusion into the lands and natural resources of the indigenous peoples. Sec. 3 (h) states that the PANAMIN can "enter … into such contracts, agreements, or arrangements with the government or private agencies" while Sec. 3 (j) provides that among the powers of

the PANAMIN is to "initiate eminent domain proceedings" over the lands of the indigenous peoples.

The sincerity of PANAMIN was put under very serious doubt as some believed that it was established not out of genuine concern towards the indigenous peoples but for political accommodation. Hirtz explained: "[i]t is difficult to characterize PANAMIN: officially it was a government organization, yet this wealthy Filipino [Manual Elizalde] ran it as if it were his own private organization" (2003, 897). Besides, it was also during the Marcos presidency when the "Chico Dam scandal" erupted. This incident relates to the plan of the National Power Corporation (NAPOCOR) to construct a "1,000 MW Chico River Hydro-electric Dam" in the mountains of the Cordillera despite massive opposition from the affected indigenous peoples (ibid., 896). This resistance against the government plan led to the death of Macliing Dulag, a leader of the indigenous people (ibid., 897).

After the ouster of President Marcos, the revolutionary government of President Corazon Aquino issued Executive Order Numbers 122-A, 122-B and 122-C on 30 January 1987. These Executive Orders created the Office of Muslim Affairs (OMA), Office for Northern Cultural Communities (ONCC), and Office for Southern Cultural Communities (OSCC) respectively. In these executive orders, the name national minorities was completely dropped and replaced by "Indigenous Cultural Communities," the name that is now widely attributed to the indigenous peoples. Another apparent policy change was the moving away from the direct integrationist strategy evident in the previous laws. Sec. 3 of Executive Order Nos. 122-B and 122-C declared:

> It is henceforth the policy of the State to ensure the rights and well-being of Northern [Southern] Cultural Communities, which consist of non-Muslim hill tribes and ethnolinguistic minority groups, with due regard to their beliefs, customs, traditions and institutions, as well as to further ensure their contribution to national goals and aspirations and to make them active participants in nation-building.

Except thus for the Aquino Executive Orders in 1987, the behavior of the early Philippine state was geared towards "modernizing" the indigenous peoples. This was framed within the context that modernization, even by force, would consequently result in the integration of the indigenous peoples in the mainstream Filipino population.

b. Land Tenure and Ownership of Natural Resources

The forcible integration or incorporation of the indigenous peoples into the Philippine state is most evident in the government's policies

on land ownership, which, incidentally, is also one of the most sensitive issues confronting the relationship between indigenous peoples and the Philippine state (Casambre 2006, 107-109). This stems from the imposition of the Spanish colonizers of the Regalian Doctrine. Based on this principle,

> … at some unspecified moment during the sixteenth century, the sovereign and property rights (*imperium* and *dominion)* of the Philippine people's forebears were unilaterally usurped by, and simultaneously vested in the Crowns of Castille and Aragon. (Lynch 2011, 6)

Although the official date of the imposition of this Regalian Doctrine could not be clearly established, it is assumed that it began the moment Ferdinand Magellan stuck a wooden cross on Limasawa's land on 31 March 1521. At that moment, all the lands within the Philippines, even those that were yet to be conquered, became part of the Spanish Crown's dominion. Parenthetically, all inhabitants of the Philippines whose ownership of their lands were not recognized by the Spanish government were considered as squatters; their actual possession may have dated a hundred years prior notwithstanding (ibid., 6-7).

The Regalian Doctrine was continued after the Spaniards ceded the Philippines to the Americans on 10 December 1898 (ibid., 195–96). The attitude of the Americans toward the Regalian Doctrine was first tested on 30 March 1904 in the case of Valenton et al. vs. Murciano. Since 1860, Andres Valenton and company were in actual possession of a parcel of land. Thirty years later or sometime in 1892, the government sold the same property to Manuel Murciano. Valenton contested the sale on the grounds that they (Valenton et al.) had been in possession of the land for at least three decades while Murciano never even stepped on the land save in 1892 when the land was surveyed. The Supreme Court however opined,

> The case presents, therefore, the important question whether or not during the years from 1860 to 1890 a private person, situated as the plaintiffs [Valenton] were, could have obtained as against the State the ownership of the public lands of the State by means of occupation. The court finds that at the time of the entry by the plaintiff in 1860 the lands were vacant and were public lands belonging to the then existing Government. The plaintiffs do not claim to have ever obtained from the Government any deed for the lands, nor any confirmation of their possession.
> …
> We hold that from 1860 to 1892 there was no law in force in these Islands by which the plaintiffs [Valenton] could obtain the ownership of these lands by prescription, without any action by

> the State, the judgment below declaring the defendant [Murciano] the owner of the lands must be affirmed.

In accordance with the Regalian Doctrine, individuals who had been in possession of a piece of land for more than thirty years could be removed in favor of the person who just lately appeared. Apparently, the government owned all lands and any who were in possession of lands without governmental confirmation were trespassers and thus could be evicted anytime.

The Regalian Doctrine continued as the underlying tenet on land ownership after the American regime. The 1935 Philippine constitution reiterated the state ownership over all lands. Sec. 1, Art. XIII provides that "All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State." Besides, the 1935 constitution did not even make any reference to the indigenous peoples or their lands. The same dogma has underpinned the 1973 constitution. Sec. 8, Art. XIV declared: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, wildlife and other natural resources of the Philippines belong to the State."

In relation to indigenous peoples, the government's wholesale ownership of all lands ignored an important doctrinal pronouncement embodied in the case of Cariño vs. Insular Government of 23 February 1909. Mateo Cariño, an Igorot of Benguet, filed an application for recognition of his ownership over 146 hectares of land situated in the then Municipality of Baguio, now the City of Baguio. Mateo Cariño based his claim of ownership on "immemorial use and occupation." The government opposed Cariño's claim stating that the land formed part of a government military reservation. Additionally, the government argued that mere possession without the benefit of government recognition is not tantamount to a title. The United States Supreme Court however acknowledged the "immemorial use and occupation" of Mateo Cariño's forefathers. Justice Holmes, the ponente of the Court opinion, explained:

> …Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, he [Cariño] had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce. … We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat.

> …
> It might perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals 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 other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers.

The Court's decision in this case presents a direct rebuke to the Regalian Doctrine. In fact, Justice Holmes in this decision brushed off the Regalian Doctrine as a mere "theory and discourse." Justice Holmes stated:

> It is true that it begins by the characteristic assertion of feudal overlordship and the origin of all titles is the King or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books.

It should be emphasized, too, that the term "native title" first appeared in this decision, although this expression was mentioned only once in the whole text of Court opinion. According to Justice Reynato Puno (2000), the popularization of this term is attributed to Prof. Owen James Lynch, Jr.

Despite this opinion against the Regalian Doctrine, the Cariño Doctrine would never again emerge in Philippine legal jurisprudence to justify native titles. It was only until 06 December 2000 upon the Supreme Court's deliberation on the constitutionality of the Indigenous People's Rights Act (IPRA) that the Cariño Doctrine came up after a century (Lynch 2011, 13). Sadly, notwithstanding the categorical repudiation of the Regalian Doctrine by the Cariño case, the Filipino government clung still to the principles of *jura regalia*.

In fact, even the 1987 Constitution, did not deviate from this framework. Sec. 2, Art. XII provides: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." In other words, even until today the fundamental precepts of the Regalian Doctrine or jura regalia are still in full swing.

The 1987 Constitution and the IPRA

Unlike previous Philippine constitutions, the 1987 constitution is perhaps the closest to what could be considered as the Filipino people's "social contract." The Americans imposed the 1935 constitution while

the ratification of the 1973 constitution was riddled with manipulation and corruption (Lynch 2011, 3–4). The contention that the 1987 constitution exhibits a genuine social covenant could arguably be the reason why the interests of the indigenous peoples are recognized to a certain degree.

For the first time, the fundamental law of the land made mention of the indigenous peoples when Sec. 22, Art. II of the 1987 constitution proclaims that: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." Admittedly, this constitutional provision has presented an opportunity for the development of indigenous peoples alongside other Filipinos, an opening which was never available in the last centuries of the Philippine state existence.

Sec. 15, Art. X of the 1987 constitution also permitted the establishment of an autonomous regional government in the Cordillera region, a geographic area inhabited by indigenous peoples. The underlying premise of this provision could perhaps be rooted in the fact that both the Cordillera Region and Muslim Mindanao had a history of insurgencies.

Prompted by the constitutional recognition of the indigenous peoples, the IPRA was passed by the Philippine Congress on 29 October 1997. The legal recognition of indigenous peoples gave rise to discussions as to the identity of this group of people. This also put into focus rights of indigenous peoples that were not available to the rest of the Filipinos.

The definition and composition of indigenous peoples continues to be a source of discussion among their non-indigenous counterparts. In the case of the Philippines, one way to appreciate the "otherness" of the indigenous peoples is to comprehend the indigenous peoples' experiences in other countries with similar histories of European colonization. Framed in this context, one can compare how indigenous peoples are defined in states where there are "European settlements" (Kingsbury 2008, 113) and those in "colonial states" (Anderson 2002, 164).

European settlements refer to places colonized by Europeans where they established their new permanent residences and upon which they created new states. Examples of these would be Canada, United States of America, Denmark, etc. Colonial states, on the other hand, used to be European colonies but were left by the Europeans during the time of de-colonization. In this case, the government of the country was turned over to the previously colonized subjects. The Philippines falls within this mold (Kingsbury 2008, 113–17).

From this follows a mode of conceptualizing variations in categorizing indigenous peoples with colonial experiences. For those in European settlements, indigenous peoples are simply those who

were not originally of European descent. In this case, there is no debating that the indigenous peoples of European settlements are covered in the 1986 "report of UN Special Rapporteur Martinez Cobo" (ibid., 108) which states:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories. (ibid., 109)

In colonial states where the Non-European/European divide is non-existent, the definition of indigenous peoples is slightly adjusted. According to Kingsbury,

> In the era of decolonization, the term (indigenous peoples) was regularly used by Afro-Asian state governments and colonial governments to refer to non-European majority populations of European colonies…The concept of "indigenous peoples" also has roots in colonial administrators' practice of establishing special laws and policies relating to distinct nonmajority groups. (ibid., 116)

Perhaps too, the absence of the Non-European/European divide in colonial states created different standards for classification. One of these was the degree of influence colonizers had over its subjects. In the Philippines, this brought the chasm between the "Hispanized" relative to the "un-Hispanized;" the "Christianized" viz "un-Christianized" to the fore (ibid., 118). This was the early basis for distinctions in the Filipino population by the nascent Philippine state as manifested in earlier discussions.

However, the definitions for indigenous peoples in European Settlements as well as those in early Philippine categories do not evoke the "indegeneity" of the Philippine indigenous peoples. As such, the IPRA appears to have amalgamated and refined the above-described definitions when it defined indigenous peoples as:

> …people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. (Sec. 3 (h), RA 8371)

At least from the standpoint of the law, the IPRA has defined parameters with regard to who are considered indigenous. This does not, however, prevent the debate on the soundness of the basis for the "otherness" of the indigenous peoples.

On a related note, the IPRA has likewise recognized the validity of native title as well as the concept of ancestral lands and domains. This has invited legal challenges. In 1998, barely a few months after the enactment of the law, retired Justice Isagani Cruz and Atty. Cesar Europa questioned the constitutionality of the IPRA (Cruz vs. Sec. of DENR et al.). Justice Cruz and Atty. Europa contend that the IPRA violated, among others, the Regalian Doctrine enshrined in the 1987 constitution. In deciding the petition of Cruz and Europa, the Supreme Court justice in 2000 rendered an evenly split vote: seven for the petition and another seven against. Interestingly, of the seven who dismissed the petition, six opined that IPRA is constitutional while one observed that Justice Cruz and Atty. Europa did not have the legal personality to sue and that the two did not bring to the court a question ripe for judicial adjudication. The IPRA thus passed the test of constitutionality because of the presumption that the Congress knows what it is doing and it (Congress) is presumed not to pass laws that are in violation of the constitution. Sadly, the continued implementation of IPRA mainly rests on mere presumption of regularity. Even more troubling is the fact that one of the seven who upheld the IPRA anchored his vote on the procedural infirmity of the petition and not on a more substantive ground that indigenous peoples have rights that need legal recognition.

Notwithstanding the divided opinions of the Court, it is clear however that they agree on the sanctity of the doctrine of jura regalia. Justice Puno, who voted for IPRA, explained that the IPRA does not wrest from the state its ownership over the natural resources:

> Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for "future generations."

Justice Vitug likewise affirmed the constitutionality of the IPRA by arguing that the IPRA did not divest the state's dominion over public lands and natural resources:

> The state retains full control over the exploration, development and utilization of natural resources even with the grant of said rights to the indigenous peoples, through the imposition of requirements and conditions for the utilization of natural resources under existing laws.

Even if it grants the indigenous peoples some rights over ancestral land and ancestral domains, the IPRA still amplifies the Regalian Doctrine, a policy which, according to Lynch (2011, 9) is a "perfect marginalization tool."

In the same vein, former President Gloria Arroyo attempted to forge a peace agreement with the Moro Islamic Liberation Front (MILF) using, among others, the principles ingrained in the IPRA. Through a Memorandum of Agreement on Ancestral Domain (MOA-AD), the Philippine Government allowed the formation of a Bangsamoro Juridical Entity (BJE) in Mindanao and gave the entity a defined territory. On 05 August 2008, the Philippine Government and the MILF were about to sign a Memorandum of Agreement on Ancestral Domain (MOA-AD) when the Supreme Court stopped it on the grounds that the MOA-AD was unconstitutional. The Supreme Court jealously guarded the Philippine territorial integrity against the supposed attempt of its division through the BJE. The Court accused the executive department of surrendering a "part of the Philippines' territorial sovereignty" (Ynares-Santiago, 2008). In the decision penned by Justice Conchita Carpio Morales, the Court clarified:

> As with the broader category of "peoples," indigenous peoples situated within the states do not have a general right to independence or secession from those states under international law, but they do have rights amounting to what was discussed above as the right to internal self-determination.

Indeed based on these pronouncements, the prevailing principle still remains to be state-centered. The clear defense of the Regalian Doctrine in the Court's discussion of the IPRA and protective insistence on the maintenance of the Philippine territory as established by the Spaniards in the case of the MOA-AD illustrates this point.

But for sure, despite the legitimating provision of the 1987 constitution towards the Regalian Doctrine, the present constitution is far more receptive towards the indigenous peoples. Despite the state-centric pre-disposition of the laws and its interpreters, it appears that the Philippine state has progressively become more "accomodationist" to the distinct concerns of the indigenous peoples.

Summary and Conclusion

During the period of de-colonization, the European model of "nation-state" was heavily imitated by emerging states. This is underpinned in the belief, erroneous as it was, that (a) the composition of state population is conventionally thought to be homogenous and (b) nationality is most likely claimed by the dominant group. This "totalizing" tendency of the "nation-state" has become inimical to the bare existence of the indigenous peoples. Indeed, the indigenous

peoples cannot find themselves in the structures conceived within the standards of the "nation-state."

The history of the indigenous peoples' relationship with the Philippine state is a difficult if not a painful struggle. Initially, the indigenous peoples were viewed as a group with a low degree of civilization. Besides, the distinct culture and non-conformity of the indigenous peoples to the mainstream Filipino population was perceived as an anathema to nation-building. It was believed that the cultivation of the differences of the indigenous peoples alongside the majority of the Filipino population is hostile to the European model of state formation.

To remedy this supposed irregularity, early Philippine policy-makers adopted the integration, incorporation or assimilation strategy in order to bring to the indigenous peoples the modern ways that the majority of the Filipinos allegedly enjoy at that time. Perhaps, intricately interwoven with this policy was the desire of the authorities that with the introduction of modernity, indegeniety or ethnic difference would slowly vanish. The passage of time indicates, however, that ethnicity remains to be a force that unites some of the peoples in the Philippines.

The passage of the 1987 constitution and the IPRA in 1997 marks a watershed in the evolutionary history of the indigenous peoples' affiliation with the state. This evokes the lesson that in the end, the state is still needed to provide the basis for the legal chasm between the indigenous peoples and the rest of the Filipinos. It certainly needs emphasis that indigenous peoples do not exist in a vacuum. Rather, they operate within the larger context of or in co-existence with other members of the larger population. The passage of the IPRA provided indigenous peoples with a state instrument to assert their legal "otherness."

With these two laws, the Philippine government seems to gradually realize that modernity does not necessarily render ethnic ties into oblivion and neither does ethnicity undermine the foundation of the state. Compared to its earlier attitude, the Philippine state today seems to have become more accommodating rather than dismissive of the indigenous peoples. This likewise manifests a dramatic change in the position of the Philippine state towards indigenous peoples.

This opportunity for state adjustment as well as for indigenous peoples to air their "otherness" is admittedly mostly available in a pluralist state. Despite the noted imperfections of the pluralist state, it appears to still offer the better model for the indigenous peoples to develop their differences. The openness of a pluralist state, sans its obsession on individuality and neutrality, provides indigenous peoples an arena to advance their cause.

No matter how difficult or arduous the relationship between indigenous peoples and the Philippine state, the fundamental principles of pluralism are arguably what provided indigenous peoples the avenue to find recognition and protection from the state. Indeed, the simultaneous demands of indigenous peoples and the openness embedded in the pluralist state apparatus facilitate legal acceptance of the distinctiveness of indigenous peoples' rights. Of course, much is still to be desired for the complete recognition of indigenous peoples especially in light of the state's continued adherence to the Regalian Doctrine. But the continued evolution of the pluralist state can provide hope for indigenous peoples.

On another note, it may be argued that the Philippine state is slowly able to gain bureaucratic or military confidence in its ability to deal with any potential threat of separation from the state by these ethnic groups. It may also be likely that modernization has already diminished ethnic bonds so much so that indigenous peoples now find it more expedient to be a part of state institutions.

REFERENCES

Act No. 253. 02 October 1901. An Act Creating a Bureau of Non-Christian Tribes for the Philippine Islands.

Act No. 1639. 01 May 1907. An act to prohibit the sale, gift, or other disposal of any intoxicating liquor, other than the so-called native wines and liquors, to any member of a non-Christian tribe within the meaning of Act Numbered Thirteen hundred and ninety-seven, and to prohibit the use of such liquor by any member of such a tribe.

Act No. 2711. An Act Amending the Administrative Code. 10 March 1917.

Anderson, Benedict. 2002. Imagined Communities, Reflections on the Origin and Spread of Nationalism. Pasig City, Philippines: Anvil Publishing, Inc.

Cariño vs. Insular Government. 23 February 1909. 212 US 449.

Carnoy, Martin. 1984. The State and Political Theory. Princeton: Princeton University Press.

Casambre, Athena Lydia. 2006. "Indigenous Peoples in Politics and Governance." In Philippine Politics and Governance, Challenges to Democratization & Development, edited by Teresa Encarnacion Tadem and Noel Morada, 105–22. Quezon City: Department of Political Science, College of Social Sciences and Philosophy, University of the Philippines.

Connor, Walker. 2002. "A Primer for Analyzing Ethnonational Conflict." In Ethnic Conflict: Religion, Identity and Politics, edited by S.A. Giannakos, 21–42. Athens: Ohio University Press.

Cruz and Europa vs. Sec. of Environment and Natural Resources. 06 December 2000. G.R. No. 135385.

Executive Order No. 122-A. 30 January 1987. Creating the Office on *Muslim Affairs*.

Executive Order No. 122-B. 30 January 1987. *Creating the Office for Northern Cultural Communities*.

Executive Order No. 122-C. 30 January 1987. *Creating the Office for Southern Cultural Communities*.

Faulks, Keith. 1999. *Political Sociology, A Critical Introduction*. Edinburgh: Edinburgh University Press.

Heywood, Andrew. 2002. *Politics*. New York: Palgrave.

Hirtz, Frank. 2003. "It Takes Modern Means to be Traditional: On Recognizing Indigenous Cultural Communities in the Philippines." *Development and Change* 34 (5): 887–914.

Holder, Cindy and Corntassel, Jeff. 2002. "Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights." *Human Rights Quarterly* 24 (1): 126–51.

International Labor Organization Convention No. 107. 1957.

Krader, Lawrence. 1968. *Formation of the State*. New Jersey: Prentice-Hall Inc.

Kramer, Paul. 2006. *The Blood of Government: Race, Empire, the United States, & the Philippines*. North Carolina, USA: The University of North Carolina Press.

Kingsbury, Benedict. 2008. "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy." In *The Concepts of Indigenous Peoples in Asia, A Resource Book*. Copenhagen/ Chiang Mai: International Work Group for Indigenous Affairs (IWGIA)/ Asia Indigenous Peoples Pact Foundation (AIPP).

Lynch, Owen. 2011. *Colonial Legacies in a Fragile Republic: Philippine Land Law and State Formation*. Quezon City: University of the Philippines College of Law.

MacIver, Robert. 1964. *The Modern State,* 11th ed. London: Oxford University Press.

Maybury-Lewis, David. 2002. *Indigenous Peoples, Ethnic Groups, and the State*. Massachusetts: Allyn & Bacon.

People of the Philippines vs. Cayat. 05 May 1939. G.R. No. L-45987.

Philippine Constitution. 1935.

Philippine Constitution. 1973.

Presidential Decree No. 1017. 22 September 1976. *Prohibiting persons from entering into unexplored tribal grounds and providing penalty therefore.*

Presidential Decree No. 1414. 09 June 1978. *Further defining the powers, functions and duties of the Office of the Presidential Assistant on National Minorities and for other purposes*.

The Province of North Cotabato et al. vs. The Government of the Philippines Peace Panel on *Ancestral Domain et al*. 14 October 2008. G.R. Nos. 183591, 183752, 183893, 183951, and 183962.

Puno, Reynato. 2000. *Cruz and Europa vs. Secretary of Environment and Natural Resources et al*. G.R. No. 135385. Concurring Opinion.

Republic Act No. 1888. 22 June 1957. *An Act to effectuate in a more rapid and complete manner the economic, social, moral and political advancement of the non-Christian Filipinos or national minorities and to render real, complete and permanent the integration of all said national cultural minorities into the body politic, creating the Commission on National Integration charged with said functions.*

Republic Act 8371. 29 October 1997. *An act to recognize, protect and promote the rights of indigenous cultural communities/indigenous peoples, creating a national commission of indigenous peoples, establishing implementing mechanisms, appropriating funds therefor, and for other purposes.*

Rubi et. al vs. The Provincial Board of Mindoro. 07 March 1919. G.R. No. L-14078.

Rush, Michael. 1992. *Politics and Society, An Introduction to Political Sociology.* Hertfordshire: Harvester Wheatsheaf.

Senate Committee on National Minorities. 1969. "Filipino Cultural Minorities. In *Foundations and Dynamics of Filipino Government and Politics*, edited by Jose Abueva and Raul de Guzman, 30–34. Quezon City: Bookmark.

Valenton et al. vs. Murciano. 30 March 1904. G.R. No. 1413.

Vincent, Andrew. 1987. *Theories of the State.* London and New York: Basil Blackwell, Ltd.

Ynares-Santiago, Consuelo Justice. n.d. *The Province of North Cotabato et al. vs. TheGovernment of the Philippines Peace Panel on Ancestral Domain et al*. G.R. Nos. 183591, 183752, 183893, 183951, and 183962. Separate Concurring Opinion.