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Résumé de l'article

La plupart des sociétés contemporaines sont des sociétés multiples qui possèdent plus d'une tradition d'organisation économique, politique et juridique. A mesure que les nations en voie de développement se dirigent vers une intégration croissante des régions et groupes périphériques, les problèmes inhérents à la multiplicité deviennent de plus en plus complexes. Le domaine du développement rural qui comprend à la fois les systèmes de propriété, la perception occidentale de la paysannerie et des populations tribales en est un exemple. Cet article compare le développement diachronique des systèmes de propriété de deux groupes ethniques voisins de la région montagneuse du nord des Philippines. Il vise à démontrer la nécessité d'approfondir les recherches concernant les processus sociaux qui résultent du jeu d'institutions juridiques multiples. Tous les groupes périphériques ne répondent pas de la même façon aux systèmes juridiques multiples; l'examen de ces réponses distinctes pourrait nous dire beaucoup au sujet du phénomène croissant d'inégalité au sein des nations en voie de développement.

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Perfecting Plural Societies: Lessons from the Comparative Study of Property Systems and Jural Disparity in Two Philippine Ethnic Minorities

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Most nation states today are plural societies, with more than one tradition of economic, political and jural organization. As developing nations move towards increasing integration of peripheral regions and groups, the problems inherent in this plurality are becoming increasingly intractable. One significant problem area lies in rural development which involves land tenure and the western perception of "peasant" or tribal peoples as "common potatoes in a sack". This paper compares the diachronic development of property systems in two neighbouring ethnic groups of upland northern Philippines to argue that more research is needed into the social processes resulting from plural jural institutions. Not all peripheral groups respond in the same ways to plural jural systems; the reasons for differing responses may tell us much about the phenomenon of growing inequality in developing nations.

La plupart des sociétés contemporaines sont des sociétés multiples qui possèdent plus d'une tradition d'organisation économique, politique et juridique. A mesure que les nations en voie de développement se dirigent vers une intégration croissante des régions et groupes périphériques, les problèmes inhérents à la multiplicité deviennent de plus en plus complexes. Le domaine du développement rural qui comprend à la fois les systèmes de propriété, la perception occidentale de la paysannerie et des populations tribales en est un exemple. Cet article compare le développement diachronique des systèmes de propriété de deux groupes ethniques voisins de la région montagneuse du nord des Philippines. Il vise à démontrer la nécessité d'approfondir les

recherches concernant les processus sociaux qui résultent du jeu d'institutions juridiques multiples. Tous les groupes périphériques ne répondent pas de la même façon aux systèmes juridiques multiples; l'examen de ces réponses distinctes pourrait nous dire beaucoup au sujet du phénomène croissant d'inégalité au sein des nations en voie de développement.

This paper discusses problems experienced in societies with more than one operational jural system¹. Plural societies exist in many situations where dual economies, multicultural and/or multiracial populations coexist within the boundaries of a single nation state. In the Philippines, for example, many minority ethnic groups stand in sharp contrast to the majority culture² of the rest of the country. The state government approach to groups such as these has been consistent with the policies of most pluralistic nations — a continuous attempt at total integration into the majority culture. Like many western nations, the Philippine government assumes that a plural society need not be totally integrated through common religion, social institutions or even economic organization, but argues that a society cannot exist without common political and legal institutions. This raises the question of what happens in a nation state if there are two or more centres of authority, or at least of power, which do not form part of an inte-

grated system; especially if one power is trying to exert control over the other (Barnes, 1969).

It is obvious that if the two powers are large and well organized, something similar to a civil war may result. More often, however, especially in the post-colonial world, the struggle is an unequal one and is often waged through economic control of productive resources. In many areas of the Philippines, upland tribal populations have stubbornly tried to retain authority over their traditional territories and over property control and management. These disputes have often been waged in the realm of jural and political jurisdiction. What is surprising is that many Philippine tribal jural systems with their attendant rules and regulations for access to and control over productive resources have survived centuries of effort to supplant them with state systems of law. The two strategies of maintaining judicial jurisdiction and territorial control are connected.

Property systems have two components; the first component may be called the territorial component since it involves the socio-political-jural institutions controlling resources found within territorial boundaries. The second component may be called the use component since it involves the use and enjoyment of resources by individual members of the group. Tribal elders have often learned through bitter experience that any set of factors which endangers the full expression of the first or territorial rights, will also endanger the second or use rights. But this does not mean that all members of tribal groups will always respond in the same way to national integration attempts. This fact, and its importance, can be demonstrated by comparing and contrasting the property systems of the Ibaloi of Benguet Province and the Bontok of Mountain Province in the Cordillera Central of northern Luzon, the Philippines. These two groups have many cultural similarities, but nonetheless, have demonstrated very different reactions to Philippine state interference in their traditional property systems. These different reactions have had interesting consequences in their tribal property law.

One approach to understanding property systems is demonstrated by Sonius who has written:

... the word ownership tells us nothing about the owners' actual powers: only the statutes and regulations of each nation or state can show us how far these powers reach (1963: 23).

In other words, property relations are defined by law — whether the formal law of written statutes and courts staffed by legal professionals, or the so-called informal law of custom administered by a

council of elders or a chieftain and his court. In either case, the polity, whether a community or a nation state, decides which interests in productive resources are to be recognized as rights and granted to individuals, and which interests are to be retained as rights by the polity as a whole. Once this division of powers over property is codified and regularized into oral or written law, the jural apparatus operates to protect the rights of the property-holders against all others. In western nations, it is commonly believed that, once it is established, the law is relatively free of political considerations; that is, the rights of the poor and powerless ideally have the same protection in the judicial process as those of the wealthy and the powerful.

Perhaps because of this western perception of the supposed sanctity of the law, George Appell (1974) has suggested that in order to document property systems, the law must be consulted to determine when a social entity is recognized as a property-controlling entity. In other words, such an entity (whether comprised of an individual or group of individuals) should be legally recognized as a right and duty-bearing unit relative to property. This would ensure that identified property rights are emic categories. Further, it suggests that use of property is obtained through and protected by law and not by informal political process. Also, if the property-holding unit numbers more than one individual, their rights in common in the property are a recognized attribute of their jural personality. The members of this social group are recognized under the law as standing in special legal relationship one to the other. All such entities, their property rights and their social and legal relationships will exist over time, protected by their recognition in the legal realm — and this gives them many attributes in common with western concepts of property — holding, such as private property and corporations.

However, as many recognize (including Appell himself), there are problems with the jural validation of the empirical existence of such groups — and of their property rights. First, interests in and access to property are not free of political manipulation even in the smallest indigenous setting. Second, as early as 1906 Marcel Mauss raised the issue of the possible existence of competing jural systems within a single state (see Nader & Metzger, 1963 and Pospisil, 1971). The ethnographic evidence for plural jural systems has since become enormous — with most examples coming from colonial regions of the globe (see for example, Nadel, 1942; von Benda-Beckmann, 1979, 1983). Thus, Rodman (1982:75) is well supported when he states: "Today most anthro-

pologists accept the notion that multiple levels of law exist within each society". The continued existence of such plurality suggests that like access to and use of property, access to and use of the jural system is a complicated issue.

This is a particularly important problem, since as Pospisil has stated:

In any society the legal rules concerned with land tenure are the most important, after laws of inheritance, with respect to social structure (1971:274).

Thus, law is often the instrument for controlling productive property, and through property, for influencing social organization. This has long been understood. However, evidence that interest groups are in constant competition for the control of productive resources complicates the picture in many societies. Members of such groups often find it economically and/or politically advantageous to employ the discrepancy between two or more competing jural systems, indeed, to promote the continuing plurality of the jural system for their own ends.³ This evidence challenges the notion that political consensus serves as a basis for jural authority and thus of social organization in any society. Which brings us back to Barnes and his question. Once we have accepted the existence of plural jural systems, he argues that we must drop the notion that legality depends on a political consensus of opinion. He states:

... within a plural society, the norms of one segment may conflict with those of another ... rival courts are instrumentalities used in the wider struggle for powers of all kinds (1969:102).

In comparing and contrasting access to property and rules about access to property in two communities of the Cordillera Central, this process of continually recreating jural pluralism as a result of the motivations of individual interests can be demonstrated. The evidence from the differing experiences of the Ibaloi and the Bontok tribal peoples suggests the question of equitable plural societies may be more complex than previously suspected.

The Ibaloi and the Bontok

The data on which this paper is based were drawn from two doctoral studies; one on the Bontok of Tukuran village in Mountain Province (Prill-

Brett, 1987) and the other on the Ibaloi of Kabayan village in Benguet Province (Wiber, 1986). Both Bontok and Ibaloi settlements are found along river valleys and on spurs between 900 and 2,100 metres above sea level in the south and central Cordillera mountain range. These two ethnic groups occupy neighbouring territories and share cultural features with a number of other so-called "Igorot" ethnic groups of the region.⁴ Both Tukuran and Kabayan are predominantly agricultural with wet rice grown on irrigated terraces and root crops cultivated on steep swidden fields. Historically, Bontok and Ibaloi villages were autonomous political and social units existing within defended borders. Within these village "states", kinship ties were based on principles of cognatic descent. Blood ties were traced from an apical ancestor through both male and female lines to create what Eggan (1967:188) has called cognatic descent groups. Kindreds, or ego-centred kin groups were also important and extended laterally to the third cousin level. Both the cognatic descent group and the kindred still have economic and political importance, although only in Bontok society can the cognatic descent group currently form a property-holding unit. These cognatic descent groups also function as jural units, holding common responsibility for the actions of individual members — and as ritual units in the important ancestor cult.

Important considerations of rank and political prestige cut across kinship ties within Ibaloi and Bontok villages. Wealthier members of the community have higher status, and share significant political and religious responsibilities. Called *kadangyan*, these families tend to intermarry to preserve their position. In both Ibaloi and Bontok societies, the opinions of the eldest members of these elite families carry more weight in the council of village elders, which is the main political and jural unit of the community. In Bontok society, the elders of the elite families lead through achievement and charismatic leadership qualities. Together, the Bontok *kadangyan* families shoulder the responsibility for and cost of cooperative ritual feasts, labour teams and other social events. In return, poorer "clients" form economic and political support for the elite individuals' political factions. Bontok society is further cross-cut by the formation of *ator*, associations of men who represent their domestic households. These *ator* have been compared to wards or political subdivisions (Jenks, 1905) but they are not territorial-based, nor kin-based, although men will usually join the *ator* of their father. Each household in a Bontok village is tied to an *ator*, which has several political, religious and jural functions, as well as controlling

property and providing some economic support for members.

In contrast, Ibaloi society presents several important differences in socio-political organization. Leadership in Ibaloi villages has at various times also been based on a council of elders in which the elite took a leading position. In some communities, however, historical circumstances after the sixteenth century arrival of the Spanish eroded the authority of this council. At the same time, the power of individual elite males increased to the point where chieftain-like positions called *baknang* were created.⁵ Competition for these positions among members of the community elite took the form of redistributive feasts and a ranked series of graded rituals became the criteria for becoming a *baknang*. In time, the *peshit* or prestige feasts became the inherited prerogative of a few traditional elite families in each community, preventing upward social and political mobility.

The same key productive resources are important to both Ibaloi and Bontok villages; however, the attendant property-holding social entities affiliated with them vary in significant ways. In the following discussion, these resources are discussed in order of the cultural value placed on them by Ibaloi and Bontok peoples. Also included in the discussion are the devolution (transfer to the next generation) and alienation (permanent disposal of use-rights) rules practised in the transfer of property rights. Of course, these practices have changed over time and this has affected property relations and the property-holding groups which have formed. For example, historically neither Ibaloi nor Bontok community members would allow one among themselves to alienate land to a non-member of the community. By definition, non-members were enemies and the community reserved the right to maintain territorial integrity to prevent internal collusion with external threats. This practice is still enforced in many Bontok communities, but is no longer practical in most Ibaloi areas — for reasons which will become clear in the following discussion.

Productive Resources: Land

Historically, it appears that both the Ibaloi and Bontok villages recognized different types of rights in land depending on the degree of labour invested by an individual or group of individuals and the number of permanent improvements made to the productive capacity of the land. When a person created a swidden garden, he/she created usufruct rights in that land until such time as the rights were

TABLE 1
Property Relations in Bontok Villages

Types of Property	BONTOK Property-holding Social Entities	BONTOK Rules of transfer
Rice Paddies (inherited)	1. -individual	1. -primogeniture & homo-parentalism -co- <i>tayan</i> members hold residual rights of purchase
	2. -corporate (<i>ator</i>)	2. -held in common, transfer by common agreement.
Rice Paddies (conjugal)	1. -joint (couple)	1. -bulk to eldest and rest to younger offspring. -sale by agreement of both partners.
Irrigation Systems	1. -individual	1. -water rights attached to land.
	2. -irrigation association	2. -same as above
	3. -communal	3. -held in common water rights attached to land.
Heirlooms & Consumables (ie. livestock)	1. -individual	1. -transfer at will
	2. -corporate (<i>ator</i>)	2. -sale only for ritual events common agreement
Gold Mines	Not applicable	Not applicable
Swidden Lands/ Fruit Tree stands	1. -corporate (<i>tayan</i>)	1. -devolves to all offspring equally -sale only for ritual events by common agreement
	2. -corporate (<i>ator</i>)	2. -held in common -sale by common agreement
	3. -individual	3. -devolves to all heirs equally -reverts back to corporate or communal
	4. -communal	4. -usufruct rights to individual members
Pine Forest/ Wild Areas	1. -communal	1. -usufruct rights to individual members
	2. -corporate (<i>tayan</i>)	2. -held in common -sale by common agreement
	3. -corporate (<i>ator</i>)	3. -held in common -sale by common agreement

TABLE 2
Property Relations in Ibaloi Villages

Types of Property	IBALOI Property-holding Social Entities	IBALOI Rules of Transfer
Rice Paddies (inherited)	1. -individual 2. -joint (siblings)	1. -devolution at will, usually equally among offspring -co- <i>bunak</i> members hold residual rights of purchase 2. -shares treated as above
Rice Paddies (conjugal)	1. -joint (couple)	1. -devolution at will and sale by joint agreement
Irrigation Systems	1. -individual 2. -irrigation association 3. -communal (?) (disputed)	1. -water rights attached to land 2. -same as above 3. -disputed
Heirlooms & Consumables (ie. livestock)	1. -individual	1. -transfer at will
Gold Mines	1. -individual 2. -nuclear family (<i>bunak</i> ?) 3. -association 4. -communa (disputed)	1. -transfer at will 2. -transfer by common agreement 3. -same as above 4. -no transfer allowed
Swidden Lands/ Fruit tree stands	1. -individual (<i>bunak</i> ?) 2. "Public" (state) (disputed)	1. -transfer at will 2. -transfer through state laws of usufruct or fee simple
Pine Forest/ Wild Areas	1. -communal 2. "Public" (state) (disputed)	1. -held in common 2. -transfer through state laws

allowed to lapse due to non-maintenance of the garden site. Should more long-lasting improvements be made by an individual, such as planting fruit trees or a woodlot, or building fencing, his/her children and descendants would all inherit equal rights in such property to be held in common. A descent group was created and individual descendants would rotate the use of such lands or share equally in the fruits of it, but they could not alienate their individual "share" or portion of the group estate. All members of the descent group had to agree together to alienate their rights to such property before a sale or transfer would be valid. If significant improvements were made to a portion of descent group land by an individual member, as with building rice paddies and irrigation systems, the person(s) involved in the work created an even more well-defined set of individual rights in the land. These rights would be directly devolved to one heir in the next generation, and other individual members of the descent group only retained some rights over alienation, as will be discussed below. While this pattern was common to both the Bontok and the Ibaloi, differing historical processes resulted in the development of some differences in the rules of devolution and alienation and in the formation of very different property-controlling entities.

Payew: Rice Paddies

The most highly valued resource in both Kabayan and Tukuran are the rice paddies or *payew*. In Bontok society, these can be owned by an individual, or by a group of individuals such as an *ator*. In Ibaloi society, they can only be owned by a single individual, although if the plot is small, siblings may agree to share the proceeds from it without the customary physical division. Devolution is not a straightforward process in either society. For the Bontok household, primogeniture (eldest inherits more) and homoparentalism (daughters inherit from mothers, sons from fathers) ensure that one or two offspring will receive all paddies which were inherited by their parents from preceding generations. Paddies created by the parental generation are termed conjugal property and these may be evenly divided among all offspring. Paddies created by the group labour of *ator* members are held by all *ator* members and are passed intact as corporate property to the next generation of *ator* members. Among the Ibaloi, on the other hand, both types of paddies are devolved at will by the parents; usually they will attempt to divide the land equally among all off-

spring. However, normal processes of devolution can be interrupted in both societies by the operation of a ritual process connected with funeral requirements and the ancestor cult. When a person dies, certain formalized sacrifices must be made and feasts hosted for a wide group of concerned people. Among the deceased's kin, the individual who can best meet the costs of these expenditures may take rice paddies as collateral against the day he/she will be repaid by the legitimate inheritors. In very young families, the siblings of the deceased could disinherit the offspring through this process, since without their inherited lands, children could never repay the expenditure.

Transfer of rights through permanent alienation of inherited rice paddies (as opposed to conjugal paddies) is possible in both communities, but it is viewed as dangerous due to potential sanctions by the ancestors who created the property and hold a continuing interest in it. Certain legitimate needs such as funeral expenses or ritual curing sessions can be financed through the sale of inherited paddy. However, all residual rights held by co-descendants of the ancestor who created the rice paddy must be extinguished before such a sale is considered legitimate. This means that, in practical terms, an individual can only offer an inherited rice paddy to a co-descendent group member, who will usually buy it for less than non-kin would be expected to pay. Since it is not being alienated outside of the descent group, such a sale does not require extinguishing other family member's residual rights and is not felt to incur the ancestor's wrath. Conjugal paddies are not subject to such restrictions but do require joint agreement of the married couple before sale. Among the Bontok, paddies created by *ator* labour can only be alienated to meet legitimate *ator* debts, which usually arise out of fines levied against an *ator* member by village elders for some breach of Bontok law. Such sales require the agreement of all *ator* members.

Uma: Swidden Gardens

Swidden fields, periodically opened for sweet potatoes and vegetable production, are also important resources. In both Kabayan and Tukukan these fields are called *uma*. Rights to such fields are held by four different kinds of entities in Bontok villages — the common holding of the entire village, the corporate holdings of individual *ator*, the corporate holdings of descent groups and the holdings of individuals. Drucker (1977) has noted that, at various

points in time, the same piece of land may cycle through several of these levels through normal processes of alienation or devolution. Because of their patterns of use and the nature of the rights individuals have in them, neither communal village *uma* lands nor individual *uma* plots are alienable. Corporate *uma* can be alienated, but only through group consensus and only for the same types of reasons as inherited rice paddies. Sometimes these lands will be sold to individuals, sometimes to other corporate groups. When an individual purchases such land, it begins the process of descent group formation — just as personal improvements of village common lands would do. Drucker points out that after several generations a corporate descent group often becomes large enough to encompass most members of the village and at this point, their property will be treated as communal village lands (1977:7). These processes mean that land as a productive resource is always available to individual members of the Bontok community. Households in Tukukan have rights to as many as 18 pieces of swidden land; none of the Tukukan households are landless.

In contrast, in the Ibaloi community of Kabayan there remains little evidence of any group-held swidden lands or any other kind of communal village property except for "communal" forest tracts which have been granted to the village by state authorities to meet firewood and building needs. Informants could not remember an Ibaloi term for communal resources. Most land is now considered private property. Approximately one quarter of the households in Kabayan are landless, although many of these have access to land as sharecroppers. It is obvious that this was not always so; communal levels of property rights probably existed in the past. For example, in 1755 Ibaloi gold mining villages contracted with neighbouring agricultural villages to place their stock of cattle on village-controlled grazing lands (see Scott, 1974:153). Elders in Kabayan could recall a time when, as young boys, they drove family cattle out to such common village pastures on a daily basis. Other evidence is suggested by the pattern of land title acquisition during the early American administration (circa 1910), when more people were acquiring state title to parcels of land. Title to large blocks of land was often granted in the name of one individual, with the full recognition that these blocks contained a number of holdings in which several different people had indigenous rights of access and use. Kabayan elders suggest that American administrators viewed these block titles as consistent with the patron-client rela-

tionships common in the Philippine lowlands, where patrons often acted as legal representatives for their clients. However, it may be that these group titles were initiated by Ibaloi applicants who were trying to adapt the individualistic, state title registration system to Ibaloi concepts of group rights in land. In Kabayan, and in surrounding Ibaloi areas, many ongoing land disputes are a result of the block title system. Descendants of the individual named on the title often attempt to deny the customary rights of other individuals in the land. They act in a manner inappropriate to rights shared with a group, for example, by taking out bank loans using the entire parcel described on the title for collateral. If they default on these loans, the other members of the group find their ancestral lands being foreclosed by the bank.

People in Kabayan are aware that *uma* fields were not considered "private property" in the past. In any discussion of these today, however, they are quick to contrast their "legal" *uma*, registered under state procedures, with the *uma* of the so-called pagans higher on the mountain slopes. Kabayan farmers know that these "illegal" swiddens are viewed as squatters by the state, even though many of them are occupying lands their ancestors worked. Further, as a result of state tenure regulations, crops and cropping patterns are diverging between "legal" and "illegal" swiddens. At the beginning of each rainy season, fires open the *uma* on the slopes above Kabayan just as they do those of the folk at higher altitudes. But in Kabayan, taxes are paid on the *uma* just as they are on rice paddies. Given the cost and difficulty of tax registration, people are constrained in their land rotation practices and must use commercial fertilizer to keep *uma* production going. As a consequence, the farmers of Kabayan are pressured to plant commercial vegetables in order to gain cash income. When prices are low, Kabayan farmers can experience serious losses and fall into debt.

As with rice paddies, *uma* fields in Kabayan are currently devolved to offspring on an equal share basis. Unlike rice paddies, however, there are no significant rules against individuals alienating such fields outside of the descent group. The problem for owners of both rice paddies and swidden fields is that despite their attempts to conform to state regulations, the Philippine government has so many contradictory tenure regulations applying in this region that no land titles are really secure. Further, there is no infrastructure in place to support the national requirements. These are problems that many upland minority groups in the Philippines have in common (see Lopez, 1987, Anderson, 1987).

For example, land which lies at over eighteen degrees of slope cannot be held under private tenure; in excess of ninety percent of Benguet Province is over eighteen degrees of slope. Yet another regulation allowed mountain people ten years (expiring in 1985) to perfect title to "ancestral lands". A third state decree designates all land in the critical watershed region of the Ambuklao hydro-electric dam (including most of the Kabayan Municipality) as public lands to protect them from "deforestation" as a result of agricultural development, despite the fact that most deforestation on the upper slopes has resulted from timber concession grants and not from agricultural activities. And finally, the revised Forestry Code states that public lands under the control of the Bureau of Forestry only include that which has standing trees; a ruling which has resulted in forestry staff planting trees in disputed areas and village people burning them off. As a result, the people of Kabayan pay state taxes on land to which they have no legal title (see Aranal-Sereno and Libarios, 1983 for a discussion of the doubtful legality of this practice).

Kola 'Kol: Irrigation

Rice paddies and *uma* may have been treated more similarly in the past than they are today in Bontok and Ibaloi communities. On the other hand, irrigation systems were probably treated very differently in the past but today appear very similar. In Bontok society, irrigation was, and continues to be developed by three distinct social entities: the individual (single-canal system); the corporation (multi-canal system, sometimes based on the *ator*); and the community (village-wide cooperative, multi-canal systems). In all three of these types, water rights are attached to the land and cannot be alienated separate from a land sale. Glick (1970:230-231) has called this pattern the "Syrian" model of water tenure and contrasts it with the Yemenite model where units of irrigation water are sold separate from the land it irrigates.

Among the Ibaloi, irrigation systems were traditionally developed by the elite, using slave labour or labour hired in exchange for meat or animals. Sometimes an elite individual would finance an entire irrigation system, but more frequently, several members of the elite would contribute to the construction in proportion to the amount of land they planned to irrigate. Their rights in water would subsequently be proportionate to their landholdings within the system; water rights in Kabayan are

tied to the land as they are in Tukuran. Recently, however, the state government has increased irrigation-related disputes in Bontok and Ibaloi villages through their perception that all upland irrigation systems are actually "communal". Policy based on this perception has allowed some farmers in Kabayan to tap water from canals in which they have no customary rights. They create paddies between the irrigation weir and the original terraces, in high-altitude, wasteland areas where rice does not do well. Consequently, they prevent sufficient water reaching the paddies below, where rice plants can be productive. Similarly, the government has occasionally granted a few bags of cement or metal pipes to the "communal" Kabayan irrigation system. Since Kabayan contains at least eleven semi-autonomous canals, such grants precipitate conflict over how these resources are going to be allocated within the community. Finally, government agencies have attempted in both communities to identify a single member as the irrigation association leader in order to hold them responsible for repayment of development loans and collection of water fees. Such a bureaucratic arrangement is alien to the organization of irrigation in either community.

Baley' Tok: Gold Mining

While the Bontok and Ibaloi economies are very similar in terms of agricultural production systems, many Ibaloi communities were historically involved in a gold trade. A resource not commonly utilized in Bontok villages, gold was mined and exchanged for lowlands and overseas trade goods such as cloth, beads, Chinese ceramic jars and livestock. This trade network significantly pre-dated Spanish contact; severe disruptions to Ibaloi social life followed the Spanish arrival in the lowlands in the late 1500's and their subsequent attempts to subjugate the Ibaloi. Indeed, there appears to be a relationship between military expeditions, and the rise of the *baknang* ("chiefs") in Ibaloi society (Scott, 1974:115-118). In the post-contact period, the Ibaloi region was not homogeneous. It appears that at least four different types of Ibaloi communities arose, distinguished by their economic and political systems. These types included: swidden villages, clustered defensively on the heights and subsisting entirely on root crops and hunting; rice-based villages found along the Agno River valley; mining communities and, finally, gold-trade communities on the western slopes. According to Ibaloi oral history, the *baknang* emerged in the early 1600's, in the region of the western slopes, closest to the Spanish threat (see

Bagamaspad and Hamada-Pawid, 1985). In order to control headhunting and animal-raiding forays into the lowlands, and to reduce the amount of gold going out to lowlands traders, all of which incited Spanish interest in the region, a few heroic figures in Ibaloi communities arranged peace pacts with their neighbours to control the trade routes (Scott, 1974: 117-118). Once east-west traffic was controlled, it appears that a few men became middlemen and gained control of all gold trading. This was followed by diversification of economic interests and by intermarriage into all but the swidden villages to consolidate their hold on various kinds of resources.

Although the Bontok were also subject to the depredations of Spanish military expeditions into the Cordillera, they were less involved in trade connections with lowlands sources. In his analysis of transformations to Kalinga society (another ethnic group in this region), Lawless (1978: 147) pointed out that when a long distance trade-based economy is disrupted, the form of obtaining wealth does not change, merely the content changes. That is, those who can no longer gain wealth from free trade with external partners will engage instead in price-difference trading within their own communities. Usury, manipulation of society norms and monopolization of scarce resources follows. Because of the gold trade, this process appears to have occurred among the Ibaloi substantially before it developed among the Kalinga. Gold mines, like rice paddies, were held by individuals, who often worked their mines with slaves captured in internecine raiding. Placer mining was an open resource, although rich areas were often improved with permanent sluice boxes which turned them into a private resource. However, once middlemen emerged, they became the recipients of trade goods from the lowlands, including the all-important livestock necessary for the ancestor-based ritual feasts. They rapidly began to employ usury in the lending of animals for ritual butchering to gain control of other economic resources, most notably labour. Slavery, once restricted to war captives, became expanded to include debt slaves and born slaves. Labour control gave them the means to control land through improvements. None of this occurred less than one hundred kilometres to the north, in Bontok villages.

Diachronic Factors in the Development of Upland Property Systems

By 1830, repeated Spanish attempts to control the Igorots of the Cordillera were beginning to bear fruit. Military bases were established in both Ibaloi

and Bontok areas. Different principles of rights to land were forcibly brought to bear, even in many of the more isolated swidden villages. The first of these principles was the Regalian Doctrine, whereby the Spanish colonial forces "extinguished" native title to all land in the Philippines and transferred it to the Spanish Crown by right of discovery and conquest (Aranal-Sereno and Libarios, 1983: 421). It appears that the elite class among the Ibaloi subsequently found several reasons besides access to lowlands gold markets for some cooperation with Spanish military governors. After 1800, a few elite families among the Ibaloi appear to have received Spanish land grants. These grants were probably based on the Royal Decree of 1797 in which natives who could show continuous occupation and cultivation of land for root crops or grazing were eligible for permanent tenure (Report of the Philippine Commission, 1901, Vol. 3:76-77). It should be noted that under traditional tenure rules, neither of these pursuits would have established permanent, individual, devolvable tenure in land. Further, by serving as the local Spanish representatives, backed by Spanish military force, their administrative authority over poorer Ibaloi people increased. Taxation also worked to the advantage of the elite since it forced independent swiddeners who lived on the heights to come down and work for them in order to pay the Spanish head tax or *cedula*. It does not appear that there were concomitant reasons for the Bontok elite to cooperate with the Spanish. Bontok communities preserved a closed face to the outside world.

In Kabayan, as elsewhere in the Ibaloi region, the impact of the colonial system meant that only representatives of the Spanish crown could grant rights in any productive property. The Ibaloi elite do not appear to have suffered from the impact of this imposed tenure system until the advent of the American regime in 1898. The Spanish-American war led to American support for Filipino revolutionaries; however, after the Spanish were driven out the Americans remained for a further 50 years, delaying political independence. In the Cordillera during this period, the pragmatic considerations affecting whether or not tribal peoples would be given state title in land basically revolved around whether or not another, informed and interested party met the requirements for gaining the title first. The Ibaloi elite, some of whom had used Spanish tenure laws to permanently appropriate lands for grazing and gold mining, now found American prospectors and entrepreneurs with superior access to resources doing the same thing under American tenure laws. Other American regulations made illegal the slavery and usury which had supported the former eco-

nomic endeavours of the elite. This meant that the Ibaloi *kadangyan* had to begin to shift their controlling interests away from labour and into land and western-style educations if they were to preserve their economic advantages.

In this endeavour they were initially assisted by the Torrens system of land title employed by the American regime. As Aranal-Sereno and Libarios comment:

The Torrens system has been continuously used as a device to guarantee untrammelled exercise of the rights of individual owners. It has also been used as a system to convert communal ancestral lands into individually titled 'parcels' of land (1983: 433).⁶

Under Torrens title, the owner of the land is determined by the holding of a valid certificate which uses a specific formula for describing the property. It gives the owner wide-ranging rights in this property, including exclusive use, enjoyment and alienation rights. On the other hand, it does not burden the owner with very many responsibilities, unlike indigenous rules. For example, the Torrens system makes few requirements regarding productive use or improvements made to the real estate and does not take into consideration shared usufruct patterns common in many forms of customary land tenure. As a result, the Torrens system further helped the Ibaloi elite to reject the customary rights of others in land in favour of individual economic control. Ironically, the elite had to use customary laws in order to establish their right to apply for Torrens title under the American regulations, which they did by claiming kinship connections throughout the Ibaloi region (see Keesing and Keesing, 1934: 170) and by misrepresenting the strength of their indigenous claim. Many people of Kabayan remember the early American period as a time of increased abuses by their elite. Since a Torrens title is issued to an applicant when no other pre-existing claims to the land are found officially registered in the Land Title office, any landholder in Ibaloi communities could find that his/her improved lands suddenly fell within the boundaries of a *baknang's* state title. Further, this process of land registration greatly facilitated transfers of land and land speculation since rights to land did not rely on use and improvements. The Torrens system transformed real estate in Ibaloi communities into a commodity, something to be bought and sold in distant places without local people's participation and outside of their control.

The Ibaloi elite initially competed successfully against the advantages of the first Americans in the Cordillera and used the Torrens title system to con-

trol large areas of pasture lands to support a cattle industry, to gain control of tracts of rice lands and to plant coffee plantations. To do this they sometimes employed indigenous tenure rights to gain access to land and then created permanent rights through state-granted title. One problem which they did not foresee, however, was that in wrenching themselves out of the traditional corporate property-holding groups of their indigenous society, they became individual property-holders facing the much more politically and economically powerful corporate groups of the colonial society, the mining corporations, the corporations which made up state government (including municipalities, provinces, forestry ministries) and even the kin-based economic corporations of the ethnic Chinese. This development⁷ means that while the individual is left without corporate group support for traditional claims to property, they are usually faced not by another individual, but rather by another corporate group. Further, once land becomes privatized, it will soon be sold, broken up, or fractionalized among heirs. The process of population growth, education of the poorer people, cash employment and legislative requirements for the improvement and use of titled lands (a post-World War Two development) soon broke the hold of the traditional elite over the land resources.

How did the Bontok fare during this period? Their deeper isolation in the mountains of the Cordillera, without important trade connections to the coast, made them less vulnerable to the Spanish. Stratification based on wealth and age occurred, but was not tied to trade-related activities. The economy of the Bontok village and the position of the wealthy elite never came to depend on getting gold or any other trade commodity to lowlands purchasers. The Bontok did trade with surrounding peoples for salt, metal, cloth and prestige goods, but these items supplemented their economy and did not serve as a source of wealth-generation. The position of the elite remained firmly rooted in local agricultural production systems where demands for labour could only be filled through reciprocal kin or *ator* ties. Although share tenancy and war-captive slavery was common, usury, debt slavery and other forms of labour control were never developed. In the precontact and early contact period, the traditional internecine warfare between Bontok villages reinforced the mutual interdependence of co-villagers, as well as the revenge groups of kindred and *ator*. Only later, after the western technology of war was introduced, did the Bontok work through the peace pact to reduce inter-village conflicts. Even then, the *ator*, the descent group and the kindred were the recognized

jural units and were held accountable for the actions of their members in the maintenance of these peace pacts, further reinforcing their role in community life. Consequently, the position of the council of elders as supreme judicial and political voice has never been eroded in favour of a single chieftain-like position. On the other hand, the group holdings of the *tayan* (cognatic descent group), the *singpangator* (members of one *ator*) and the *ili* (village) have continued to cushion the individual household from economic deprivation or from exploitation.

Bontok communities, therefore, showed a much more closed face against encroachment by colonial juro-political forces. The village remains in many cases, a self-sufficient political and jural unit with a thin veneer of political offices designed by and integrated into the state bureaucracy. It has territorial control over its land, water and other resources, distributes use rights according to traditional customary law and has been able to reject any concession to state law such as land title registration. They have had success with this position because of their relative isolation, because of the general poverty of the Philippine state and the lack of a sufficient police or military presence to enforce state laws, and because there have been few commercial interests attracted to their region. This is changing, however, as so-called "benevolent" development projects are initiating change in this area, including the business interests of multi-national corporations such as the Cellophil Pulp and Paper Corporation and state-financed hydro-electric dam development (Prill-Brett, 1985).

But perhaps the most important reason that the Bontok have been able to resist the imposition of state judicial authority is because, unlike the Ibaloi, there have been no dissenting interest groups within their communities which have utilized the discrepancies between state and customary law to further their own goals. For reasons which remain unclear, the Bontok never developed the gold resources found within their territory. Perhaps trade connections with the coast were more difficult to establish given their location, or perhaps their earlier development of wet-rice technology inhibited gold processing, which competes even now for scarce water resources in some Ibaloi communities. In Ibaloi areas, those people more heavily involved in the lowlands trade had very definite interests in keeping their ties with their lowlands trade partners open. However, they also had to be careful not to stimulate Spanish expeditions into their part of the Cordillera. A finely controlled volume of trade into the lowlands was developed as a response to this special set

of circumstances. As the Spanish hold on the lowlands was consolidated and more effort was directed to subduing the mountains, the Ibaloi traders began to cooperate with the Spanish, for example in allowing missions to be established (Scott, 1975a: 178-182). As a result, in many Ibaloi communities, a property system developed which was based on a combination of state and customary law. Since, for many reasons and for many people, this plural jural system had distinct advantages, interest groups actually operated in a fashion which reinforced the plural system. In many modern-day Ibaloi villages, this plural jural system increases the opportunities for conflict over valued resources, especially those resources once controlled by groups. These group interests were restrictive in the development of the new economic endeavours of some individuals such as ranching among the elite and later, access to irrigation among the poor, but this does not make them "communal" interests. That many of these interests in property have recently been misconstrued by state authorities as "communal" in nature has created additional problems in Ibaloi communities. Recent government attempts to "reintroduce" so-called communal tenure systems has only increased local conflict, especially in irrigation.

Conclusions

It is obvious from the comparison of the diachronic developments in Bontok and Ibaloi communities that under certain conditions, plural jural systems are merely "levels of legal activity" — each with an independent authority centre and jurisdiction, as Pospisil (1971: 107) has suggested. It may be possible for two or more systems to coexist without coming into conflict, but this is probably rare. More usually, these levels of legal activity are in direct confrontation. In such a case, as Barnes has pointed out, courts become the instrumentalities of a political power struggle. It is obvious that in countries such as the Philippines, state administrators expected that the customary legal systems of minorities would eventually atrophy when faced with "modern" state systems which were viewed as more relevant to new economic developments. However, it appears that in most cases, the two jural systems grow inextricably intertwined. Concepts from one are often freely borrowed and adapted to use in the other. As von Benda-Beckmann (1983) has argued, this probably results from the fact that jural pluralism may be continually reconstructed to meet the purposes of specific interest groups within the plu-

ral society. This is because law does not "behave", people "behave"; legal pluralism results in what he has called a jural jungle, where people are influenced in complex ways by different legal conceptions and in which they use these conceptions in various purposive strategies. A single unified jural system would not have benefited the Ibaloi elite who used customary law to establish certain kinds of rights in property and then used state law to achieve different kinds of rights in the same property. In Vanuatu, Margaret Rodman (1984) has found the same pattern of appropriation, followed by permanent alienation of group lands by individual members of the elite. In the Bontok situation, the two opposing jural systems are struggling for supremacy in a much more straightforward manner. Pospisil (1971: 344) would call this the struggle between customary and authoritarian systems of law. In the Bontok case, the struggle has been waged as much as possible through a persistent and unified, community-wide rejection of state laws; obviously a very different situation from that being experienced by the Ibaloi.

The contrast of the Bontok and the Ibaloi experiences with plural jural system leads us back to the initial question asked in the opening paragraphs of this paper. How many property systems, with their attendant bodies of law and authority systems controlling access to productive resources, can one society tolerate? Where plural jural systems exist, can it be resolved through a "separate but equal" judicial system approach as advocated by Bradford Morse (1983: 395)? It is obvious that this would not be equally acceptable to the Ibaloi and to the Bontok. Questions such as these cannot be resolved without research into the social and economic factors affecting property systems. Most importantly, it is unlikely that they can be resolved without a better understanding of political processes going on within peripheral societies.

Further, such research is essential to viable development planning of the Third World or regions within western nations. The comparison of the Bontok and the Ibaloi has suggested certain critical areas where pluralism may be generated, such as the interests which divide or unite people within encapsulated social systems as well as within those of the wider dominant society. Which brings us to a final note in regards to the fate of the indigenous Bontok corporate and communal groups within traditional villages; as paternalistic government involvement in the development of these communities grows, the indigenous ability to organize corporate or cooperative groups for economic purposes appears to be

declining (Goodell, 1985). As with the Ibaloi, it is clear that this phenomenon is strongly linked to reduced autonomy and the destruction of indigenous jural mechanisms for controlling group boundaries and property interests. It is interesting to note that many Cordillera ethnic groups are experiencing a rise in community factionalization as development projects are introduced. Educated youth no longer respect the authority of the traditional elders. Sometimes these individuals combine western-style economic endeavours (wage employment, petty capitalism, professional careers) with the pursuit of state political offices in their home villages (mayor, treasurer, tax collector). Such new economic and political opportunities are followed, it seems, by a rejection of old property rules and regulations and by the rise of interest groups which drive a wedge into the united face that mountain communities can present against the world of jural changes.

NOTES

1. An earlier version of this paper was presented at the Canadian Ethnology Society Annual Meetings, Edmonton, May 15-18, 1986.
2. For a discussion of the consequences of such attempts at integration in many pluralistic nations see Appell, 1985.
3. See for example, B. von Benda-Beckmann, 1979, 1983, Margaret Rodman 1984, and William Rodman, 1985.
4. The term Igorot refers to mountain people of the Cordillera but is sometimes used in the lowlands in the derogatory manner of "hillbilly".
5. Sources for this period in Philippine history include Blair and Robertson, 1973 (especially volumes 14 and 20), Scott, 1974, 1975a, 1975b, and Bagamaspad and Hamada-Pawid, 1985.
6. It should be noted here that "communal ancestral lands" is a misnomer since rights to land established through descent were always different from rights to land established through residence in a community.
7. This process was also documented in Hawaii by Marion Lam, 1983.

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