RECLAIMING THE SACRED WITHIN THE LEGAL PLURALISM PHENOMENON: INDIGENOUS PEOPLES’ RIGHTS OVER CULTURAL PROPERTY

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RECLAIMING THE SACRED WITHIN THE LEGAL PLURALISM PHENOMENON:
INDIGENOUS PEOPLES’ RIGHTS OVER CULTURAL PROPERTY

by

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A THESIS

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Indigenous peoples’ (IPs’) collective rights over their sacred and cultural properties are inherent human rights recognized in international declarations like the United Nations’ Declaration on the Rights of Indigenous Peoples (UN-DRIP) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The incorporation of these international declarations’ standards within the United States (US) and Philippine federal laws conflicts with the attainment of indigenous peoples’ collective rights to protect and preserve indigenous peoples’ sacred cultural properties. Through a critical and indigenous methodological framework of legal pluralism, this study describes how the Omaha sacred (medicine) bundle and the Ifugao sacred bulul are currently protected and preserved within indigenous/customary laws of their respective communities, vis-à-vis the federal laws which also provision the management of sacred cultural properties of indigenous peoples (i.e. the US’ Native American Graves Protection and Repatriation Act or NAGPRA and the Philippines’ Cultural Properties Protection and Preservation Act or P.D. 374). The results of this study outlines the political, cultural, and socio-economic complexities that revolve around the protection and preservation of indigenous knowledge within indigenous communities; and identifies its direct implications to the actual attainment of indigenous peoples’ rights and human rights as stipulated in the UN-DRIP and ICESCR.
Throughout the duration of writing this thesis, an uprising started and continues to grow by thousands of Baguio City residents and Filipinos. SM – Baguio, a super mall, planned to uproot and earth ball 142 trees and cut down 40 trees on Luneta Hill. This hill was previously a mini forest and public area before the City Government allowed the SM Group to clear the land in order to build the mall. What is left of the trees on Luneta Hill was to be cleared in order to expand the mall’s parking lot. The people have stirred a mass movement to stop the killing and removal of these trees. This body of literature and its advocacy to protect and preserve that which is sacred, hopes to be an addition to the Save the Baguio Pine Trees uprising.

This thesis is dedicated to those
who in their pursuit to find where they belong,
never forget where they came from.

And to my sister, Raphaelle Gliceria Chua Buenafe.
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It is my belief that any creation of an individual is the product of the attempts of that individual to share, receive, and express that which was given to them. Therefore, this thesis is NOT MINE, in the sense that everything I have written down is only my own understanding of the knowledge that was shared to me by others who also pursued to express the knowledge they had been given. My life has been an accumulation of these reflected expressions of knowledge I naturally discover (and try to understand as best I can) through my traverse of this social cosmos – I have met many people through attempts at connection and on this particular thesis they deserve my utmost praise and gratitude:

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This thesis hopes to share the Omaha and Ifugao knowledge, perspectives, and experiences to one another as well as with the world; so thank you so much for choosing to share it with me.
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CHAPTER ONE: INTRODUCTION

The pursuit to protect and preserve something sacred is a contentious ideology which is being provisioned by multiple sets of legislature – customary/indigenous laws, federal laws, and international declarations which are founded on often contrasting notions of indigenous sacred cultural property. When you go to a museum and pay a fee to look at an ‘exotic thing’ from an ‘exotic culture,’ you glimpse at a physical manifestation of indigenous knowledge and it may spark your curiosity about the indigenous group that created it. Conversely, if you are an indigenous person who has been taught by your ancestors, relatives, and community that sacred properties are ‘holy’ things that only authorized ‘holy’ people know how it should be treated – you stay away from it because tampering with it may lead to ‘bad’ consequences. Complex issues abound when indigenous peoples (IPs) may or may not pursue to reclaim their sacred properties in order to protect and preserve their heritage for future generations; whilst persevering to guard the ‘holy’ power within this object by respecting the mores that provision how it should be handled. Internal factors such as group assertion and mobilization of indigenous cultural communities (ICCs) to protect and preserve sacred properties that may or may not be in-use by the community and/or reclaiming these items from federal museums or private collectors are often not pursued because of the need to first address other pertinent socio-economic issues in ICCs (i.e. community health, lack of employment, migration into the metropolis, cultural stigma of indigenous beliefs, etc.). Another reason the lack of pursuance to reclaim sacred properties by ICCs is partially because of existing federal laws and non-binding international declarations which assert
(both blatantly and subtly) that state sovereignty is preeminent to tribal sovereignty; having state laws and federal agencies enforce the provisions on reclaiming sacred properties even if these items derive from indigenous cultural communities (ICCs).

Legal pluralism can be used to explain the multifarious issues surrounding the protection and preservation of indigenous sacred properties as an occurring social phenomenon; especially if framed within critical and indigenous research methodologies. Legal Pluralism (which will be defined in the next chapter) explains the dynamics of three sets of jurisprudence and legal systems that compete and conflict for adherence when dealing with claiming the right to protect and preserve sacred properties – customary laws of indigenous peoples, federal law, and international law. This study is a cross-cultural discussion of indigenous sacred cultural properties from two indigenous cultural communities (ICCs) - the Omaha’s sacred (medicine) bundle (United States) and the Ifugao sacred bulul (Philippines). Specifically, this cross-cultural study will utilize the UN-DRIP and ICESCR as international declarations, the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 in the US and the Cultural Properties Protection and Preservation Act or Presidential Decree 374 (or PD 374) of the Philippines as federal laws, and the customary laws and indigenous knowledge systems surrounding the Omaha sacred (medicine) bundle (USA) and sacred Ifugao bulul (Philippines) as these ICC’s sacred and cultural property. All three sets of legislation exist simultaneously to protect and preserve IP’s sacred cultural properties, both generally and specifically.

This study will particularly identify the Omaha (US) and Ifugao (Philippines) customary laws that provision the management of the Omaha sacred medicine bundle and
sacred bulul through the narratives of Omaha and Ifugao elders that I interviewed. The ethnographic data and academic discourse regarding the Omaha tribe and Ifugao ICCs will be cited in the relevant literature, but the emphasis of the data collection and analyses will utilize the information collected from Omaha and Ifugao elders’ treatises.

Classifying sacred (medicine) bundles is difficult because there are many types but they can be identified by commonalities in their use and ‘assembly,’ which is determined by the bundle’s keeper (see Figure 1.1). Sacred bundles can be considered as Waiⁿ or a common name for a pack – “a receptacle made of skin, frequently of parflesche, in which articles could be laid away and kept safely… [articles inside these packs] are considered waxābe, sacred” (Fletcher and la Flesche 1992: 404). This means that sacred (medicine) bundles may be a Waiⁿ, or pack because it is a collection of sacred items grouped together by the bundle’s keeper and used for ritual purposes. One of the many Omaha sacred (medicine) bundles is located within the Omaha reservation in Macy, Nebraska on the property of the last known medicine man in the reservation, Charlie Parker, within a cinderblock infrastructure so that no one “disrupts” or “misuses” it.¹ This study will describe the perceptions and narratives of Omaha elders from the Omaha Reservation in Macy, Nebraska who have been on the Omaha Tribal Council and are all ordained ministers of the Native American Church on the Omaha Reservation. Their views regarding the contentious issues of protecting and preserving the Omaha sacred (medicine) bundle from within the community will be described vis-à-vis their views on NAGPRA 1990 as a national law that provisions its control, use, and management by

¹ These quoted terms come from interviews and phone conversations conducted on October 23, 2011 with Omaha tribal authority, Mr. Clifford Wolfe, Jr. of Macy, NE – an Omaha elder, ordained minister of Native American Church on Omaha Reservation, and former member of the tribal council; and an Omaha community member who wished to remain anonymous in this research.
federal agencies and museums. The implications of the Omaha elders’ testimonies describes the contentious issues revolving around the attainment of IPs’ rights to self-determination, autonomy, and upholding their cultural integrity as described in the UN-DRIP and ICESCR.

Figure 1.1 Pawnee sacred bundle housed in Pawnee Indian Museum State Historic Site in Republic, Kansas. Though this is not an Omaha sacred bundle, the Great Plains tribes’ sacred (medicine) bundles look very similar. The author would like to respect the beliefs of the Omaha that their sacred (medicine) bundle would not be photographed. (Source: Kansas State Historical Society Website 2011, http://www.kshs.org/p/sacred-pawnee-bundle/10118)

This study compares the Omaha situation to that of the sacred Ifugao bulul or Ifugao rice granary guardian spirit (see Figure 1.2), which is being sold and traded as antiques, cultural properties, and tourist souvenirs. The sacred Ifugao bulul is “the most common and traditional ritual sculpture…The Ifugao rice granary [guardian] spirit…[usually] in a pair of figures of a man and a woman…[is] used in rituals seeking a bountiful harvest, revenge, or healing a sick person” (Atienza 1994:168, 296). The bulul is a guardian spirit which is created through rituals, deemed a holy symbol for the Ifugao, created by specific members of the community, and undergoes rituals in order to be
considered sacred – a process that is witnessed and justified by the entire community. It is not supposed to be created for profit, but it is now currently being sold and distributed around the world as an antique, artistic piece, or as a souvenir.

**Figure 1.2** Sacred Ifugao Bululs (Kortmann 2009)

Ifugao province in the Philippines is located in the Cordillera Administrative Region (CAR) which identifies the indigenous communities by different ethno-linguistic groups who live within the CAR provinces (see Figure 1.3).
Ifugao bululs are the most commonly carved symbols sold in Baguio City, the capital city of CAR, and sold as “exotic” souvenirs and antiques, and distributed or showcased in museums around the world. Profit is not the true purpose of the bulul, but some Ifugao have sold their heirloom bululs in order to cope with the growing poverty and lack of secure employment in the CAR provinces. In this study, the pursuit to protect and preserve the Ifugao bulul within the community is described through the treatises of Ifugao mumbaki (shaman/priest) and munpaot (woodcarver) – the designated people in the community who “make” the bulul. These treatises focus on the issues surrounding how the Ifugao protect and preserve the bulul within their community amidst the lack of implementing legal protection of cultural properties\(^2\), which the Ifugao bulul is identified as under the PD 374 (Cultural Properties Protection and Preservation Act of the Philippines). The Ifugao treatises is compared to the Omaha sacred (medicine) bundle.

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\(^2\) Under this federal law, the Ifugao bulul is considered an important cultural property but is not thoroughly protected by this law because it is not classified as a ‘national cultural treasure.’ The difference in protecting ‘important cultural properties’ to those that are classified as ‘national cultural treasures’ will be further discussed in the review of literature and data analyses chapters.
situation that is described by the Omaha elders on the reservation since both ICCs live in countries where federal laws exist to provision the use, management and control of indigenous sacred cultural properties in museums – where some Ifugao bululs and other Omaha heritage items have been placed. The pursuit (or lack thereof) of both ICCs’ to protect and preserve their sacred cultural property has direct implications to attaining their human rights as indigenous peoples.

The use of a critical and indigenous research methodology or framework emphasizes the importance of traditional/indigenous knowledge for all people and its capacity to “solve contemporary problems and address Eurocentric biases” (Battiste 2008: 498) by outlining how traditional knowledge has been misused and misappropriated; thereby, further endangering the lives of IPs. The major discord between the state legislation and customary laws is that western jurisprudence is based on the promotion of individual human rights of ownership while simultaneously allowing precedence of sovereign rights of states to own and manage properties within the state’s territory. This is in complete clash with customary laws of IPs to protect and preserve cultural properties which are based on collective rights of ICCs – a collective right as a specific indigenous community to protect and preserve heritage, and not claim rights to individually own sacred properties. There exists a lack of studies which specifically emphasizes and describes the perceptions and experiences of indigenous peoples in attaining their sovereign right as IPs to protect and preserve their cultural heritage amidst the predominance of state legislation. That is why this study will utilize a critical and indigenous research framework to emphasize the views of Omaha and Ifugao elders which act as spiritual leaders in their communities and reinstate their perceptions
regarding the political, cultural, and socio-economic complexities of pursuing and proclaiming the right to protect their indigenous sacred cultural properties.

Thesis/Problem Statement

The competition and conflict that arise from the control and/or possession of the Omaha sacred (medicine) bundle and sacred Ifugao bulul within indigenous/customary laws and federal laws (NAGPRA, USA and P.D. 374, Philippines), implicates the actual attainment of indigenous peoples’ collective and human rights as stipulated in international declarations (UN-DRIP and ICESCR).

Main Objectives:

1) To discuss the legal pluralism phenomenon through a critical and indigenous research framework by describing the conflict and competition for adherence of customary and federal laws and how this reality implicates the attainment of IPs’ rights which are stipulated in international declarations;

2) To describe the current views of Omaha (USA) and Ifugao (Philippines) tribal authorities on how to protect and preserve sacred properties through who has control and/or use of them; and

3) To provide a treatise on indigenous peoples’ collective and human rights through the political, cultural, and socio-economic complexities surrounding the protection and preservation of their sacred cultural properties.
Specific Objectives:

1) Describe the Omaha sacred (medicine) bundle and sacred Ifugao bulul as IPs’ sacred cultural properties which are authenticated, protected and preserved through who has control and/or use of them;

2) Define the authentication, protection, and preservation process through three sets of jurisprudence that co-exist as standards for protecting and preserving these sacred cultural properties:

   - Indigenous/Customary Laws: traditions, beliefs, customs, and practices of the Omaha (USA) and Ifugao (Philippines) regarding the sacred (medicine) bundle and bulul, respectively;
   - Federal Laws: Native American Graves Protection and Repatriation Act or NAGPRA (USA) and the Cultural Properties Protection and Preservation Act or P.D. 374 (Philippines);
   - International Laws: Universal Declaration of Human Rights’ International Covenant on Economic, Social, and Cultural Rights (UDHR-ICESCR) and United Nations Declaration on the Rights of Indigenous Peoples or UN-DRIP (i.e. autonomy, self-determination, and upholding cultural integrity); and

3) Outline the implications of adherence to multiple sets of jurisprudence in the legal pluralism phenomenon as implicative of the actual attainment of indigenous peoples’ collective and human rights.
Hypotheses

The legal pluralism phenomenon exists in the inherent conflict and competition of federal laws and customary laws that both simultaneously aim to protect and preserve sacred cultural properties, but are hindering the actual attainment of indigenous peoples’ collective and human rights. The implementation of federal laws in the US and Philippines are left to the discretion of the federal and/or museum authorities that have their own worldviews on how to manage the protection and preservation of IPs’ sacred properties. These subjective standards of museum authorities implementing federal laws are not in congruence with the epistemological and ontological foundations of indigenous/customary jurisprudence – even if the sacred properties these museums control and/or use derive from indigenous communities. The federal agencies that uphold federal laws only follow the tenets of these laws to manage sacred properties, seldom involve the indigenous communities which these properties came from, and neglect IPs’ collective and human rights as stipulated in the UN-DRIP and ICESCR.

Recursively, indigenous cultural communities (ICCs) have their own jurisprudence regarding the management of sacred cultural properties which are based on customs, beliefs, rituals, etc. that are part of a larger indigenous/traditional knowledge system. But these indigenous/customary laws are not incorporated into the implementation and management of cultural properties by federal agencies. Based on interviews with tribal authorities, this study believes that ICCs from both the US (i.e. Omaha) and the Philippines (i.e. Ifugao) choose to uphold and assert their right to autonomy, self-determination, and cultural integrity (which are affirmed in the UN-DRIP and ICESCR) in order to pursue to protect and preserve the sacred bundle and bulul
through customary law and jurisprudence; due to indigenous peoples’ knowledge and experience of the exploitative and excluding nature of Western-rooted legal systems to disregard customary law of IPs (Battiste 2008:502). But what is more prevalent in this contemporary pursuit of ICC’s to protect their sacred cultural property is that this endeavor is viewed as less critical to more pertinent community issues that revolve around political, cultural, and socio-economic complexities that need to be addressed such as lack of employment and poverty, a cultural stigma of abandoning indigenous beliefs, acculturation into “modern society,” etc.

Therefore, this study’s hypothesis is that the dynamics of customary laws and federal laws conflict and compete with each other for adherence because it does not incorporate the cultural, political, and socio-economic complexities being encountered by most ICCs. That is, the proactive pursuit of IPs to be involved in the education, management, and protection of their sacred cultural items from within their communities is a life-long commitment and responsibility (that not many are willing to carry out), and therefore often falls sub-standard to addressing and mitigating other crucial community issues such as health, poverty, cultural stigmas, etc.

Relevance, Scope, and Delimitation of Study

Indigenous people do not claim rights to owning sacred cultural properties as individuals; they claim their collective right as indigenous peoples belonging to a specific indigenous cultural community (ICC) to protect and preserve their heritage for future generations. Yet a lot of these sacred properties are no longer within the protection and preservation of the indigenous communities that created them – they are stored and displayed in museums, historical societies, universities, sold by antique dealers as home
or office décor. In part, this has to do with the fact that hardly anyone in the community takes initiative to protect and preserve them because they never learned how to from the now deceased or rapidly decreasing yet designated people in the community (i.e. Omaha medicine men and Ifugao mumbaki). The protection and preservation of most indigenous peoples’ sacred properties is currently in a state of insecurity because it is not being managed by the indigenous communities from which it had derived; it is being provisioned by state legislation and federal/state agencies and/or there is no mobilized effort of indigenous peoples to protect and preserve their sacred cultural properties because of the need to resolve more pertinent political, cultural, and socio-economic issues within the community (i.e. poverty and lack of employment, health, cultural stigma to indigenous beliefs and ”old ways,” etc.).

International declarations such as the United Nations Declaration of Indigenous Peoples’ Rights (UN-DRIP) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are venues which indigenous peoples (IPs) can assert their right to self-determination, autonomy, and cultural integrity in order to reclaim their sacred cultural properties which are being managed by state institutions; albeit through charters which are non-enforceable documents (UN-DRIP and ICESCR unless ratified) that uphold individual human rights, not collective/group rights. Furthermore, securing individual human rights AND indigenous collective rights through these international charters are undermined when juxtaposed to the prevalence of sovereign rights of states which holds precedence in international declarations. The Philippines is a signatory to the UN-DRIP and has ratified the ICESCR since 1974; but the US has only recently endorsed the UN-DRIP under the Obama administration and has not ratified the ICESCR. The UN-
DRIP is a non-binding, non-juridical international declaration, and therefore holds no legal commitment among signatory states to endorse its principles within their federal laws. The ICESCR is considered a more “legally-binding” commitment, but only if it has been ratified within the state.\(^3\)

This study emphasizes the views of Omaha and Ifugao elders that were interviewed; specifically in regard to their experiences and knowledge of the authentication, protection, and preservation of the sacred bundle (Omaha) and bulul (Ifugao). This study does not express the views of all Omaha and Ifugao peoples, nor does it assume to describe them; it is a series of treatises of those interviewed. Also, in order to promote a critical and indigenous research framework, the researcher opted to include but not emphasize the views of museum and legal authoritative bodies which administer the federal laws (in the US and Philippines) and who provision the control and management of indigenous cultural properties in federal museums/agencies (note, they have no authority nor jurisdiction among private collectors). The reason for emphasizing indigenous views to the complex discourse surrounding the protection and preservation of sacred indigenous cultural properties is because these items *derive and are created by these specific indigenous cultural communities (ICCs)*. By providing the treatises of indigenous informants as viable evidence on this topic, this study hopes to contribute, advocate, and promote for more research on cultural heritage management and human

rights to incorporate the views, knowledge, and lived experiences of IPs for reviewing, modifying, and implementing federal and international jurisprudence that affects ICCs globally.

This study has its own limitations since it is the researcher’s honest attempt to describe a highly sensitive and complex issue - managing indigenous sacred properties through the pre-emptive nature of Western jurisprudence that directly impedes and contests the concept of sovereign rights of IPs; and the current political, cultural, and socio-economic situation of ICCs that are deemed by most as a much more pertinent issue to advocate for. The fact that the researcher is trying to relay and describe the views of the Omaha and Ifugao elders interviewed in an academic paper and discourse already implies that the vernacular of ‘research’ will not be able to capture the lived experiences of all Omaha and Ifugao (as well as other indigenous communities) which have been subjugated to the predominance of state sovereignty, legislation, and colonialism that continues to disenfranchise them of their basic rights as humans and indigenous communities. This is not an ethno-history study on the reclamation efforts of IPs to protect and preserve their sacred properties; even if this is briefly discussed in the review of relevant literature chapter. Instead, this study focuses on the contemporary views of the Omaha and Ifugao interviewed and what their ICCs are currently experiencing amidst the pursuit to revitalize their indigenous heritage for future generations.

The cross-cultural element of this study relays the treatises of two ICCs – the Omaha in the US and the Ifugao in the Philippines, in order to compare and contrast the complexities that revolve around the reclamation efforts of IPs to protect and preserve their sacred properties. There are definitely more similarities than differences in these
two groups’ struggles and pursuits to protect and preserve their sacred properties (even if it is conditional, not causal). This commonality easily implies the shared contemporary struggles and pursuits of IPs in general which will be further discussed in Chapter 5: Conclusions and Recommendations.

All in all, this research makes the attempt to share and emphasize the need to bring out the ‘indigenous voice’ in cultural heritage management, human rights, and anthropological studies by utilizing the narratives of Omaha and Ifugao elders that were interviewed as concrete evidence of perceptions regarding the protection and preservation of their sacred properties. Essentially, this study advocates for the protection and preservation of indigenous, cultural and sacred properties as a direct reflection of the attempt to secure the rights to protect and preserve one’s identity and heritage for future generations.

Plan of Presentation

This study basically describes the complexities that surround the attainment of IPs’ rights to self-determination, autonomy, and cultural integrity to protect and preserve their sacred cultural property (rights which are stipulated in international declarations), how these are hindered by the predominance of cultural properties management provisions set by state legislation (i.e. NAGPRA 1990 and PD 374), and contemporary political, cultural, and socio-economic complexities that are faced by indigenous communities that hinder mobilization and group assertion for protecting and preserving
their sacred cultural properties within their respective communities. The research is therefore divided into the following chapters and subtopics:

The introductory chapter poses the empirical question of the research – how and why are IPs’ rights not attained through legal pluralism when pursuing to protect and preserve their indigenous sacred cultural property? This question is preliminary to understanding the competition, conflict and complexities that surround three sets of jurisprudence – international declarations such as the UN-DRIP and ICESCR, federal laws such as the NAGPRA 1990 and PD 374, and Omaha and Ifugao customary/indigenous law. These sets of legislature seek to address the issue of protecting and preserving indigenous sacred cultural properties which are provisioned by federal agencies, not IPs – even if these sacred items derive from ICCs. The introductory chapter therefore specifies that in this study, the Omaha sacred (medicine) bundle and the Ifugao sacred bulul are two examples of indigenous sacred properties that are compared in terms of the indigenous informants’ perceptions, knowledge, and lived experiences regarding the pursuit to protect and preserve them within the community amidst federal laws that also mange its control and use. This section briefly states the importance of utilizing a critical and indigenous research methodology as a decolonizing mechanism in the academic discourse by promoting the ‘indigenous voice’ (i.e. indigenous informants’ treatises) as a form of social justice. The thesis statement, objectives of the study, and hypotheses is followed by a brief description of the relevance of the study and its major scope and delimitation. This is followed by an overview of the chapter topics which outline the major conclusions and results.
The second chapter is a review of relevant literature which is separated into thematic categories and defines basic terminologies used throughout the study. First, legal pluralism will be defined as the social phenomenon that occurs in this study. Specifically, it explains the competition and conflict of three sets of legislature – international declarations (UN-DRIP and ICESCR), federal laws (NAGPRA 1990 and PD 374), and indigenous or customary laws (Omaha and Ifugao), which all co-exist to protect and preserve indigenous sacred property. The next theme that will be discussed in this chapter is a review of the major articles in the Universal Declaration of Human Rights (UDHR) – International Covenant on Economic, Social and Cultural Rights (ICESCR) in terms of Economic and Cultural Rights, and the UN-Declaration on the Rights of Indigenous Peoples (UN-DRIP) in terms of rights to self-determination, autonomy, and cultural integrity. Specifically, Articles 1-4 and 15 of the ICESCR will be discussed which touches on themes of rights to self-determination, state party responsibility, equality, limitations of the covenant, and the right to cultural life. The UN-DRIP articles that will be discussed will be divided into themes of (a) IPs’ Collective Rights (Annex, Articles 1, 7, 46), (b) Rights to cultural integrity and the dignity and diversity to express culture (Annex, Articles 8, 10-16, 31), (c) Rights to self-determination and autonomy (Annex, Articles 3-5, 18, 25-29, 32, 34), (d) Rights to free, prior, and informed consent (annex, Articles 19-21, 23-24, 29, 32), and (e) Encouraging state compliance and the international community’s role (annex, Articles 8, 11, 17, 37-42). The next theme will be a brief discussion of the control, use, and management provisions of federal laws in the US and Philippines regarding indigenous sacred properties. Specifically, the Native American Graves Protection and Repatriation Act of
1990 (NAGPRA 1990) in the USA and the Cultural Properties Protection and Preservation Act (P.D. 374) in the Philippines will be discussed by emphasizing the written laws’ provisions in authenticating, protecting and preserving indigenous sacred properties. The third theme in the review of relevant literature will be ethnographic data on the Omaha sacred bundle and sacred Ifugao Bulul as forms of indigenous/customary laws that also provision the management and authentication, protection, and preservation of these two indigenous sacred items. Lastly, the review of relevant literature will briefly describe the discourse surrounding critical and indigenous research methodologies applied to protection and preservation of traditional knowledge. Examples of critical and indigenous research methodologies are based on indigenous and non-indigenous scholars’ work on historical reclamation efforts of IPs to control and/or possess their sacred cultural properties (e.g. Omaha sacred pole).

Chapter 3 will discuss the research methodology of this study which utilizes both critical theory and indigenous epistemologies in its theoretical and conceptual framework. The study’s conceptual framework is displayed in a diagram/flowchart of the main thesis and results of this research, while the theoretical framework is how the independent, intervening and dependent variables of this study were operationalized in the lens of critical and indigenous theories. This section will also discuss the sources of data and means of data collection as deriving from:

a) Ethnographies on sacred properties, written laws (federal and international), public documents/museum archives, academic discourse regarding indigenous sacred cultural properties; and
b) Interviews with key informants: tribal authorities, museum and federal agencies, NGO’s and Public Organizations that advocate for the rights of indigenous peoples.

The data underwent a recursive process of collection and analyses based on critical and indigenous methodologies.

Data Presentation and Analyses is described in chapter 4 and presents an overview of the indigenous informants’ interviews during fieldwork in the US (May 2011, October 2011-March 2012) and the Philippines (August-December 2006). These treatises provide epistemological and ontological perspectives on the political, cultural, and socio-economic complexities surrounding the pursuit to protect and preserve the Omaha sacred bundle and sacred Ifugao bulul. Specifically, the treatises of the indigenous informants are divided by the sacred Ifugao bulul (Philippines) treatises of the mumbaki or shaman of Ifugao - Kalingayan Dulnuan (Kiangan, Ifugao), Teofilo Gano (Hapao, Ifugao), Jose Inuguidan (Tuplac-Kiangan, Ifugao), and Indopyah Palatik (Kiangan, Ifugao); and munpaot or wood carvers of Ifugao – Joseph Dong-I Nakake (Hapao, Ifugao) and Junior Habiling (Hapao, Ifugao). Also, the Omaha sacred (medicine) bundle is discussed by Omaha elders and ordained ministers of the Native American Church and/or (previous) Omaha Tribal Council Members (Mr. Clifford Wolfe, Jr., Mr. Mitchell “Chiefie” Parker, Mr. Wilford Lovejoy, and Mr. Rufus White). This information/discourse will be collected and analyzed following three major themes. First, the political complexities are discussed - the concept of these ICCs’ sovereign rights is contested due to the pre-emptive nature of federal laws to predominate and force adherence of the citizens within its territory. Secondly, the cultural complexities are
described – an analyses of how federal and international laws disregards the continuous struggle of IPs’ to utilize customary laws when protecting and preserving their sacred cultural properties (i.e. international and federal laws are not always culturally-appropriate and sensitive to the experiences and diversity of ICCs). Lastly, the socio-economic complexities of this study advocates for the need to address and re-solve pertinent socio-economic issues that ICCs forbear whilst persevering to protect and preserve indigenous knowledge in its tangible and intangible forms.

Authorities from the National Museum of the Philippines and Repatriation Coordinator of the National Museum of the American Indian (under the Smithsonian Institute) who implement or adhere to federal/state laws were also interviewed regarding their interpretation and process of implementing federal laws. Data is presented in the context of legal pluralism’s political, cultural, and socio-economic complexities and implications on the pursuit to protect and preserve the sacred Omaha (medicine) bundle and Ifugao bulul through the experiences of tribal elders/authorities’ experiences, knowledge, and perspectives. Results of the study prove the lack of an existing comprehensive legal mechanism to protect and preserve the Omaha sacred (medicine) bundle and sacred Ifugao bulul because all forms of jurisprudence do not address these complexities, nor the individual-pursuits of indigenous peoples on a community level. This implication directly reflects reasons indigenous people’s rights to self-determination, autonomy, and cultural integrity continues to be unattained.

Chapter 5 discusses the main conclusions and recommendations of the study which emphasize that according to some Omaha and Ifugao elders and community members, the current NAGPRA and PD 374 law and implementation is a hindrance to
the protection and preservation of sacred properties because it does not incorporate Omaha and Ifugao consent and input of indigenous knowledge nor indigenous customs/customary law in its formulation (i.e. epistemological foundations of the ideologies surrounding ownership and property) and implementation. The provisions set in NAGPRA and PD 374 are viewed by Omaha and Ifugao elders respectively as forcing their compliance to the processes of repatriation or ownership, even if it is the tribe’s sacred property. The reality in the ICCs of both groups is that some people are selling most their heirloom sacred properties to private collectors, pawn shops, antique dealers, etc. or are literally stored away to avoid being tampered with. Most Ifugao bululs are sold to make ends meet and there is a lack of mumbaki apprentices among the Ifugao youth to learn about the “old ways” of protecting and preserving Ifugao cultural properties in rituals. Among the Omaha, the sacred (medicine) bundle on Charlie Parker’s property (the deceased last medicine men on the Omaha Reservation) was stored in a cinderblock infrastructure and buried on Mr. Parker’s land by his grandson without the consent of the tribe. The items in that infrastructure also contained other sacred heirlooms that some Omaha opted to store here because they felt they could not manage these properties according to the “old ways” or traditional/customary laws/rituals/practices. There were also some Omaha elder views which perceived a lack of initiative among the current tribal council to create an Omaha Museum based within the reservation that protects and preserves these items in culturally-appropriate ways (as envisioned by Doran Morris, the former head of the tribal council which reclaimed the sacred pole form the Peabody Museum). The main reasons described by the elders for these circumstances of protecting and preserving sacred properties within the community is mainly because of the socio-
economic situation within the reservation/community that requires more immediate attention (i.e. employment, health, etc.); but some members of the community have taken it upon themselves to do what they can in order to guard and respect the ‘holy’ power of sacred properties (see Mr. Lovejoy’s testimony in Chapter 4).

Based on these perceptions, it can be implied that current US and Philippines legislation, such as NAGPRA and PD 374, is being provisioned and implemented in ways that de-limit the rights of Native Americans and Ifugao (as indigenous peoples) to self-governance, autonomy and cultural integrity (three rights which are acknowledged in international charters such as the UN-DRIP and ICESCR). This is because all sets of jurisprudence do not address nor incorporate the political, cultural and socio-economic complexities that these ICCs face in lieu of revitalizing their cultural heritage. This study therefore provokes not only a reformulation of the epistemological foundations and implementation of NAGPRA and PD 374 to include indigenous consent and knowledge, but is also a call for indigenous communities to take initiative in finding ways to protect and preserve their cultural heritage from within their communities despite the critical political, cultural, and socio-economic issues that they must face every day. The pursuit of protecting and preserving sacred indigenous property is a life-long commitment that asserts IPs’ rights to self-governance, autonomy and cultural integrity. This is becoming an individual choice to advocate for in small ways everyday within the community. Even if this is not easy, members of ICCs are doing what they can to pass on the knowledge of indigenous heritage to future generations on a daily basis. This recommendation is something the international, federal and customary law should be and proclaims to do, but is not currently resolving or helping make the situation any easier.
CHAPTER TWO: REVIEW OF RELEVANT LITERATURE

The Legal Pluralism Phenomenon and Cultural Property Rights

Legal Pluralism is a pervasive social phenomenon encompassing issues relevant to the protection and preservation of indigenous peoples’ sacred cultural properties. The Omaha sacred (medicine) bundle and sacred Ifugao bulul are cultural properties of the ICCs they derive from to be protected and preserved through the provisions set within three legal systems: Indigenous/Customary Law (Omaha and Ifugao rituals, beliefs, and practices), State/Federal Law (the US’ Native American Graves Protection and Repatriation Act of 1990 or NAGPRA, and the Philippines’ Cultural Properties Protection and Preservation Act or P.D. 374), and International Law/Declarations (the UN-DRIP and ICESCR). Legal Pluralism is defined as

the coexisting structure of different legal systems under the identity postulate of legal culture in which three combinations of official law and unofficial law, indigenous and transplanted law, and legal rules and postulates are conglomerationed as a whole by the choice of [the] socio-legal entity (Melissaris 2009:27).

The operational definition of legal pluralism used in this study is basically the existence of different bodies of law within the same sociopolitical space that compete for the adherence of a group of people subject to them (Prill-Brett 1994:687). This simply states that legal pluralism is when a combination of three sets of laws co-exists and is adhered to depending on the choice of the sociopolitical/socio-legal entity that must abide to it. But when legal pluralism is observed in the implementation of policies, the “choice” to abide is always situated into the context of costs and benefits. Melissaris (2009:25-44)
provides an overview on the concept and framework of legal pluralism as both a legal theory and jurisprudence (concerning rights and the tasks of the law to uphold). In this study, I use legal pluralism as a legal theory in the phenomenon of protecting and preserving indigenous sacred cultural properties through customary, federal, and international jurisprudence. Specifically, the indigenous (Omaha and Ifugao customs, beliefs and traditions), national (NAGPRA and PD 374) and international laws (UN-DRIP and ICESCR) all aim to administer the management of protecting and preserving indigenous sacred property. This study explores the dynamic nature of legal pluralism as a concurrent social phenomenon that not only exists to manage the protection and preservation of indigenous sacred properties, but also implicates the attainment of indigenous peoples’ human rights. This study will emphasize the knowledge and experiences of Omaha and Ifugao elders in their pursuit to protect and preserve their sacred properties within their communities since these are their inherent human rights as IPs (as stipulated in the UN-DRIP and ICESCR); vis-à-vis the federal laws of the country they inhabit (US and Philippines) that also govern the same thing but assume adherence of citizens through the sovereign rights of states. Legal pluralism describes the emerging competition and conflict of each legal system to administer the management of sacred cultural properties which implicates the attainment of indigenous people’s rights to self-determination, autonomy, and cultural integrity. The critical issue addressed in this study is that international relations, security studies, and human rights discourse is impacted by legal pluralism because of the existence of multiple jurisprudence ideologies, decision-making bodies, and implementation regulations which often compete and conflict for adherence rather than uphold and attain the ideals of security and peace.
As a postcolonial state, the Philippines have legal systems that are imported from dominant cultures and are forced on indigenous populations (Kidder 1979:289; Prill-Brett 1994:687). Similarly, Native Americans such as the Omaha, have been subjected and subjugated to the preeminence of US (federal) laws acting through the power of state sovereignty; even if Native Americans (as all other IPs) had inhabited the (state) territory prior to the passage of any national laws or the invocation of state sovereignty. Most studies that use legal pluralism to explain the phenomenon/situation of indigenous people have been geared to focus on ancestral land rights (Bentley 1984; Silliman 1985; Merry 1988; Prill-Brett 1994; Hirtz 1998; Unruh 2003). Traditionally, land ownership of ancestral domains by indigenous cultural communities was defined by consanguinial kinship inheritance, validated by various customary laws that guide resource management (e.g. oral traditions, rituals and beliefs of the community, etc.). The national government (i.e. US and Philippines) pursuing a policy of integration has promulgated and attempted to implement land policies that have displaced or dispossessed the indigenous communities of their ancestral lands. These western legal mechanisms clash with the customary laws of indigenous peoples which include the rituals and traditions implemented by tribal authorities.

For the sacred (medicine) bundles of the Omaha, it is the ‘medicine men’/”Indian doctors’ who are basically the “keepers” of (medicine) bundles; while for the sacred Ifugao bulul, it is the mumbaki or shaman who conducts the sacred rituals for other community members who need a bulul to be “made.” The NAGPRA review committee in the US and the Cultural Properties Division of the National Museum of the Philippines are the federal agencies that govern the management, control, and use of indigenous
sacred properties; as well as the repatriation process to return these items to the ICCs from which they originated. The UN-DRIP and ICESCR are international charters that assert the rights of indigenous peoples such as self-determination, autonomy, and cultural integrity as IPs’ inherent human rights. Because of the co-existence of these three sets of jurisprudence (i.e. legal pluralism as a social phenomenon), the competition and conflict for adherence is implicated of the challenges to attaining IPs’ rights to self-determination, autonomy, and cultural integrity.

Since these Western-rooted federal and international legal systems are epistemologically founded on individual rights to ownership (as opposed to collective rights of IPs toward heritage), legal pluralism as a phenomenon of competing and conflicting sets of laws “ensures a cognitive imperialism around knowledge that positions some groups in power and others to be exploited and marginalized” (Battiste 2008:500). IPs from specific ICCs must adhere to the provisions, processes, and file claims according to federal laws (i.e. NAGPRA and PD 374) in order to repatriate IPs’ cultural properties; making customary laws of IPs fall sub-standard to the prominence of federal laws, which are considered legitimate due to a state’s sovereign right over its territory. This de-limits ways indigenous peoples can assert their sovereignty by contesting the acknowledgement of indigenous peoples’ sovereignty, self-determination, and autonomy rights which are sheltered by international law as well as integral to political negotiations within the (US and Philippines) state (Brown 2003:10). It is essential to point out that in liberal democracies, which the US, Philippines, and international legal systems are founded on, “without laws [that] define rights and mark limits, parties have little incentive to negotiate” (Brown 2003: 247). The prevalence and forced adherence to
federal laws by all citizens, by bestowing rights through enforced policies upon IPs for them to reclaim their sacred properties, allows for no incentive for IPs to negotiate; since IPs’ rights to self-determination and autonomy should be acknowledged as it is in international declarations and covenants (i.e. UN-DRIP and ICESCR). Federal laws’ “overt practices of enforcement” (Brown 2003:247) are applied to manage ownership, protection, and preservation of sacred cultural properties which are left to implementing bodies of these laws – often excluding and forcing IPs to adhere to the federal law to reclaim IPs’ cultural properties.

International Declarations on Indigenous Peoples’ Rights

The International Labor Organization (ILO) defines indigenous peoples as tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community…whose status is regarded wholly or partially by their own customs or traditions or by special laws or regulations (emphasis added, ILO 1989; Battiste 2008:499).

The UN-DRIP and International Covenant on Economic, Social and Cultural Rights or ICESCR have similar definitions for IPs, but I use this definition mainly because it emphasizes the international law’s acknowledgement of IPs’ customary laws – “their own customs or traditions or by special laws or regulations.” The customary laws of IPs are not regarded as “laws” in a Western legal sense, but customs or traditions that are founded in indigenous/traditional knowledge. Similarly, the human rights regime has become a normative standard to protect inalienable rights of every human being – including indigenous peoples ( IPs). Hafner-Burton and Tsutsui (2005:1383) describe the human rights regime through its purpose –
to identify and classify which rights are globally legitimate, to provide a forum for the exchange of information regarding violations, and to convince governments and violators that laws protecting human rights are appropriate constraints on the nation-state that should be respected (Hafner-Burton and Tsutsui 2005:1383).

I mention this particular definition in this study because the pursuits to protect and preserve indigenous sacred cultural properties are inherent rights of indigenous peoples under the functions of the human rights regime. The competition and conflict that arise from the provisions set by federal laws (i.e. NAGPRA and PD 374) to manage the control, use, and repatriation of indigenous sacred cultural properties are in many ways, violating the global rights of indigenous peoples to self-determination, autonomy, and cultural integrity (as stipulated in the UN-DRIP and ICESCR). This study hopes that the testimonies of Omaha and Ifugao elders will give information about the specific constraints on their rights and to convince the (state) governments that these IP rights should be respected and implemented in culturally-appropriate ways in state legislation.

The United Nations’ Declaration on the Rights of Indigenous Peoples (UN-DRIP) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) will be discussed in this study as examples of international declarations which partially address the right of IPs to protect and preserve their sacred properties. The UN-DRIP will be examined in terms of IPs’ rights to self-determination, autonomy, and upholding cultural integrity – rights that can be directly applied to the pursuit of protecting and

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4 The ICESCR and the ICCPR (the International Covenant on Civil and Political Rights) are the twin covenants that further elaborate the Universal Declaration of Human Rights (UDHR). It is through these covenants that the UDHR can be ratified by states and holds more juridical clout once it is ratified. The ICESCR emphasizes the cultural and economic rights in the UDHR, while the ICCPR emphasizes the civil and political rights. The ICCPR, ICESCR, and UNDHR together make up the International Bill of Human Rights.
preserving IPs’ sacred cultural properties. Yet, the UN-DRIP is a non-binding document, and there exists no current domestic (legal) mechanism to provision and uphold its principles in the face of violation. International covenants such as the United Nation’s International Covenant on Economic, Social and Cultural Rights (ICESCR) is a more juridical agreement among signatory states if it is ratified; but failure to ratify the ICESCR in states often neglects economic and cultural rights of indigenous peoples because there is no legally bound agreement to upholding it. The US signed the ICESCR in 1977, but has NOT ratified the covenant⁵. Furthermore, the US has only recently reversed its opposition to the UN-DRIP⁶ on December 16, 2010 under the Obama administration during the second White House Tribal Nations Conference - being the last of the four states to reverse its stance (Australia, Canada and New Zealand were also originally opposed to the UN-DRIP) (Richardson 2010). Conversely, the Philippines has been in favor of the UN-DRIP since its drafting process period and has both signed and ratified the ICESCR since 1974. The UN-DRIP acts only as a non-binding agreement of signatory states to protect indigenous peoples’ rights within their territories, and the ICESCR which is a legally binding agreement (when ratified) relies heavily on domestic (legal) mechanisms to implement it. In terms of adopting and enforcing these international declarations, it is apparent that the recent adoption of the UN-DRIP yet non-ratification of the ICESCR in the US and the adoption and ratification of both declarations in the Philippines have implications on the state’s interests and stance

⁵ The ICESCR signatory and ratified countries can be found on the UN Treaty Database (http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en).
regarding its indigenous citizens – how does this regard the state’s stance and actions in terms of the protection and preservation of indigenous sacred cultural properties? This may imply the differential treatment of the US and Philippines government towards the ICCs that inhabit the state territory (since they may or may not uphold the UN-DRIP and ICESCR), but as will be discussed in the next sections, the federal laws of the US (NAGPRA) and Philippines (PD 374) both similarly limit the attainment of IPs’ rights by the conditions set in the provisions of the state laws to protect, preserve, and repatriate sacred cultural properties.

The United Nations Declaration on the Rights of Indigenous Peoples or UN-DRIP (as I will be referring to it in my study) was adopted by the UN General Assembly on September 13, 2007. It recognizes the ongoing injustices done unto indigenous people (IP’s) and lays out standards that affirm their “survival, dignity, and well-being.” The declaration promotes and recommends that signatory states must incorporate these standards within their national laws, because indigenous peoples’ rights are inherent human rights which are recognized in the international system (i.e. UN). The articles in this declaration emphasize protection and preservation of indigenous peoples’ sacred cultural properties as physical manifestations of their traditional knowledge. The following rights and their corresponding UN-DRIP article numbers are analyzed to emphasize the IPs’ rights to protecting and preserving sacred properties:

a) Right to dignity and diversity to express culture by eradicating all forms of discrimination, and being protected for this right; right to practice and revitalize traditions freely including religious freedom, ceremonial objects and repatriation, language, establish educational system, public information/media access, intellectual property over cultural heritage, traditional knowledge, and traditional
cultural expressions (annex, article 11-16, 31);
b) Right to self-determination and autonomy through control of IPs over their land, territories and resources, as well as political institutions/decision-making bodies (choice to create/administer their own or participate in the state’s); respecting the link of IPs to their traditional knowledge, culture, and practices (i.e. rituals, beliefs, customs, etc. surrounding sacred properties) (annex, article 3-5, 18, 25-29, 32, 34);
c) IP rights as Collective Rights, and each indigenous person is subsumed in individual human rights (annex, article 1, 7, 46).

It is from Lorie M. Graham and Siegfried Wiessner (2011:403-427) that I emphasize why the two main areas of the UN-DRIP are 1) Self-determination and autonomy and 2) Cultural and Linguistic Integrity; as I apply this to the discussion of the legal pluralism complexities that revolve around the protection and preservation of indigenous sacred cultural properties. First, tribal sovereignty (which will be discussed in the proceeding sections) is inextricably linked to the right to self-determination and autonomy, seen in Articles 3 and 4:

... [IPs] freely determines [their] political status and freely pursues their economic, social and cultural development... (Article 3, UN-DRIP) ...which is attained by the right to autonomy or self-government in matters relating to their internal and local affairs... [and create] ways and means for financing their autonomous functions... (Emphasis added, Article 4, UN-DRIP)

If the right to self-determination and autonomy are declared in this international set of norms, which the US and Philippines have approved, then this should entail that these signatory states agree to indigenous/tribal sovereignty, and should not have IPs subjugated to state sovereignty. This is not happening because tribal sovereignty would mean that IPs hold just as much power as states to “to force compliance with its commands within its community... [and] has the power to limit its authority beyond the borders of its community via agreements or concurrent practice with the
sovereigns of external communities” (Graham and Wiessner 2011:407). In other words, indigenous sovereignty is supposed to be parallel to state sovereignty, due to the emerging and evolving context of international legal order (and its implications on sovereignty solely belonging to states). But international legal order is only placing provisions of international declarations and covenants that bind states to grant a “reasonable degree of sovereignty to indigenous peoples” (Graham and Wiessner 2011:408). The “reasonable degree of sovereignty” to IPs is calculated by states in allowing certain actions be done by IPs within their territories, so long as it does not undermine state sovereignty and national interests. This makes the concept of tribal/indigenous sovereignty, in reality, obsolete; and international declarations that promote indigenous sovereignty as less impactful when juxtaposed to state sovereignty and domestic policies. The fact remains that the paradigm of sovereignty in the modern world is the nation-state, not ICCs; yet therein lies hope that the notion of sovereignty is evolving in international law from an exclusive consent-based system to a values-based international legal order (i.e. Universal Declarations of Human Rights) (Graham and Wiessner 2011:408), even if they currently have no specific legal repercussions if it is not upheld domestically.

Another important facet to the rights of IPs to self-determination and autonomy is the right to effective consultation, or free and prior informed consent to any government programs/plans/laws that affect IPs directly or indirectly. When conceptualizing how international declarations should be implemented, or even when reviewing federal laws that affect IPs, it is essential to administer effective consultation when trying to efficiently apply, implement, or reclaim the right to self-
determination and autonomy (Graham and Wiessner 2011:413). Free and prior informed consent with ICCs by government agencies means that state agents must first understand that IPs do not aspire statehood in the sense of modern nation-states (i.e. not within a statist framework). IPs’ right to self-determination does not rely on the state to determine this right; instead it is the right of IPs to:

- live and develop as culturally distinct groups, in control of their own destinies and under conditions of equality; founded on an aspiration to preserve inherited ways of life, changing traditions as they see necessary, and make cultures flourish. This means that their autonomy is utilized in a way to make nation-states recognize the types of indigenous government they have (whether it be democratic or not) (Graham and Wiessner 2011:410).

Legal pluralism acknowledges that IPs have their own sets of laws and actions to pursue their rights that may be different from what state and international laws declare and/or implement (i.e. laws are made in diverse communities, not just the state). But the shortcoming of legal pluralism is that although it considers the co-existence of multiple sets of jurisprudence to be competitive and conflicting, it does not offer solutions to remedy the conflict and competition of this seemingly inevitable condition of jurisprudence. That is why in this study, I will try to not just discuss the protection and preservation of the Omaha sacred (medicine) bundle and Ifugao bulul as a legal pluralism phenomenon, but emphasize the need to have the groups involved in these sets of jurisprudence (indigenous, federal, and international) listen to the “indigenous voice” – the knowledge, views, and experiences of the Omaha and Ifugao elders in hopes that some day it may lead to a more collaborative decision-making process “…to give rise to optional shared-governance” (Graham and Wiessner 2011:2011) which is reflected in the aims of Article 5 of the UN-DRIP.
In terms of cultural integrity, the right to practice and revitalize cultural traditions and customs (Article 11); the right to practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies (Article 12); and the promotion and protection of indigenous languages, safeguarding the land to which they have a “distinctive spiritual relationship” is stated in UNDRIP. Basically this means that the right to uphold cultural integrity is the “right of the peoples to practice and transmit their customs, traditions, languages, and belief systems to future generations… [and the] right to maintain the dignity and diversity of their cultures” (Graham and Wiessner 2011:414-415). The transmission of indigenous knowledge from one generation to the next is crucial to the survival of any ICC. That is why this concept is indivisible from self-determination and autonomy, since upholding cultural integrity is basically promoting and protecting a way of life. Therefore, the protection and preservation of indigenous sacred cultural properties, which are physical manifestations of indigenous knowledge, is one realm in which the right to uphold cultural integrity can and should be asserted. The protection and preservation of these heritage items are implicated to the survival of the indigenous cultural community, because it is a symbol of their identity and knowledge systems. This right to culture, which is essentially a group right (expressed in Article 1: Universal Rights of the UN-DRIP), can be advanced in a legal framework built primarily on human rights claims of individuals against nation-states (Graham and Wiessner 2011:415).

Therein lies the dilemma –the right to culture is a group right, but filing for asserting them in the face of violations of these rights against ICCs are usually
claimed by individuals. It is impossible for one individual of an ICC to thoroughly represent all the views of their tribe/community; yet the provisions set in federal and international laws require a “representative” to deal with (probably for bureaucratic purposes). The issue of tribal representation is a challenge in the UN-DRIP because although this declaration provides some kind of international legal order on the entitlements of IPs, it does not directly address the diverse interpretations of these rights, especially since indigenous cultural communities are culturally diverse within themselves and distinct from other social/ethnic groups of the state. Also, the UN-DRIP only requires and expects maximum compliance for signatory states, and that the state itself must create standards of implementing this; to which domestic implementation will be evaluated by inter-governmental bodies using the UDHR in its review process (i.e. UN special rapporteur). So how have states and the international community implemented the UNDRIP specifically? They have not, because federal laws that affect IPs in signatory state’s territories are still subjected to adherence to them; and the UN-DRIP has no clear domestic (legal) mechanisms to provision its implementation on the local level.

The Committee on Economic, Social and Cultural Rights, another human rights body, implements the ICESCR (International Covenant on Economic, Social and Cultural Rights) to safeguard a group’s right to cultural diversity by understanding the linkages between the individual and ensuring collective human rights. The ICESCR was adopted by the UN General Assembly on December 16, 1966 and enforced by January 3, 1976 to be in accordance to the Universal Declaration of Human Rights (1948). This international covenant is different from the UN-DRIP for it does not specifically cater to indigenous
peoples’ rights, but formulates that it is every human’s social, economic and cultural right to self-determine the use of their properties - “based upon the principle of mutual benefit and international law” (Article 1, UN 1966). This declaration describes the epistemological foundations of this covenant by prescribing how signatory states should uphold these rights within international law. It seemingly demarcates a State Party’s responsibility to undertake steps to make the resources available in order to fully realize this treaty, but that “Developing Countries….may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals” (Article 2, UN 1966). This declaration is analyzed to highlight that when it comes to control, use, and/or ownership of properties based on social, cultural and economic, rights (as opposed to just mainly indigenous peoples’ rights) the discourse on ownership and property is different (Article 15, UN 1966). In terms of the right of all people to self-determination (Article 1, UN 1966) which includes the right to determine their political status and freely pursue their economic, social and cultural development, this article is very similar to the UN-DRIP’s Article 3 and 4. The differences in these international declarations pertains to the discourse of owning sacred cultural properties, which is implicating discordance of epistemological foundations and implementation of these international declarations within the national (manages properties individually) and indigenous community level (manages properties collectively). Specifically, Article 4 of the ICESCR states that “limitations can be placed on these rights only if compatible to promoting the general welfare in a democratic society” (UN 1966). This poses a limitation to the assertion of the rights in the ICESCR by requiring that the rights and actions of individuals must mirror the purposes of democratic societies. Not all ICCs’
political institutions follow a democratic system of governance (in how we know it to be in a Western statist framework). Instead, indigenous/customary laws are based on rituals, beliefs, practices, rituals, etc. that is communal in nature, not bureaucratic. The aims of the ICESCR are therefore promoting a singular type of society, the democracy, in a Western statist framework that does not apply to ICCs.

The sovereignty issue in this phenomenon is basically a concept that is rooted in the western ideology of Liberal Democracy. I utilize Neack’s definition of sovereignty in this study by emphasizing the components of sovereignty:

a) External Sovereignty: states act as autonomous political units; equal to other states claiming privileges and responsibilities; use same rules of conduct to protect itself from other states;

b) Internal Sovereignty: supreme decision-making and enforcement authority in a particular territory and population (Neack 2007:18-19).

From this definition, the scope of state sovereignty is implemented from within its territory and population as well as asserting its autonomy and supreme decision-making power to be equal to that of other states. Federal/state jurisprudence and legislation is implemented upon the citizens of the state’s territory as the sovereign right of the state and pre-emptively assumes the citizens’ adherence because of state sovereignty. The state then implements and administers these laws through its government (institution) which has a monopoly of force that can be used towards those citizens who ‘break the law’ – and is legitimised again, by the concept of state sovereignty.

As stated earlier, indigenous sovereignty in the international legal system ideologically is supposed to be parallel to state sovereignty, by providing provisions of states to grant a reasonable degree of sovereignty to indigenous peoples (Graham and Wiessner 2011:408). So even with the acknowledgement of indigenous peoples’
sovereign rights within international declarations such as the UN-DRIP and ICESCR which the US and Philippines are signatories of, federal laws such as NAGPRA and PD 374 still assume the predominant state sovereignty over indigenous sovereignty because it stipulates the provisions in managing ICCs’ sacred properties. That is, the state dictates the management of Native American’s and Ifugao’s ancestral remains and sacred objects and NOT these ICCs themselves, even these items are theirs. The preeminence of state sovereignty contests and limits indigenous sovereignty and their claim to rights of self-governance, autonomy and cultural integrity stipulated in international declarations.

In terms of international relations and security studies discourse, the reality that state sovereignty is predominant over legally-provisioned indigenous or tribal sovereignty (from international declarations, covenants, and conventions) has put the human security of indigenous peoples in critical threat. Neack (2007:17) states that “essentially, all states seek to protect three core values: territorial integrity and protection of citizens, political independence and autonomy, and economic well-being.” But international declarations on the rights of indigenous peoples are a direct threat to the protection and securing of these state core values since it also legitimizes (in the arena of international declarations) that indigenous peoples also have a set of rights to attaining their own core values as a collective entity, distinct from the state. In other words, the attainment and assertion of indigenous or tribal sovereign rights by indigenous peoples residing in the territories of a nation-state are a direct threat to the attainment and assertion of state sovereignty; and vice versa. The complexity of the state and indigenous security situation is even more ‘tangled up’ when sovereign states that are signatory to these international declarations on the rights of indigenous peoples, such as the US and
Philippines, implement federal laws such as the NAGPRA 1990 and PD374, which outlines the process of repatriating, controlling, using, and basically managing ICCs’ cultural items (sacred objects is specified) by provisioning which of these items federal agencies may control, use or return once ICCs prove that it belongs to their tribe. The rights of Native Americans and indigenous Filipinos to assert self-governance, autonomy, and cultural integrity are undermined when state laws like NAGPRA and PD374 outline the regulations of managing and repatriating indigenous peoples’ sacred properties. Therefore, state laws are basically telling ICCs on how they can have their sacred properties repatriated and protected under the state, even if these properties derive from specific Native tribes/communities. The assertion of ICCs to their rights to self-governance, autonomy, and cultural integrity, which are recognized in international law/declarations, is an avenue for indigenous peoples to resist the preeminence of state sovereignty and state law; but simultaneously threatens the protection of the nation-states’ security/core values.

Federal Laws- the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA 1990), USA and the Cultural Properties Protection and Preservation Act (P.D. 374), Philippines

Rights to owning, controlling and using sacred properties of IPs which are stipulated in international and federal laws allow for a stratified basis of who gets to decide how to protect and preserve cultural properties - usually the legitimating authorities are political elites of the nation-state, even if these cultural properties derive
from specific indigenous communities. The security of Native American’s (NA’s) and Ifugao sacred properties that are in federal agencies and museums lies in the hands of specific federal agencies (i.e. NAGPRA Review Committee and National Museum of the Philippines), and the repatriation of these items to ICCs means that they must follow the processes set and approved by the federal agencies who implement these federal laws, even if they are dealing with IPs’ sacred items.

- The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA 1990) in the US

Fine-Dare (2002) discusses the history of the US repatriation movement and the foundations of the current NAGPRA law by providing the historical and legal contexts of repatriation through case studies of Native communities’ reclamation efforts to have museums and federal agencies return their sacred objects pre and post-NAGPRA. Manifest destiny was used as the justification of European colonizers to “collect, own, and basically possess the territories, resources, bodies, and property of native-turned-enemies” (Fine-Dare 2002:14). Founded on Lockean philosophies of justifying ownership through individual labor and utility, US and Western law regarding ownership was based on notions that Native Americans (and IPs in general) did NOT own individual property because they had collective wardship of land and therefore made these resources unimproved, unproductive, and did not have viable ownership to it (Fine-Dare 2002:19). Land allotment and assimilation policies of US laws from the 18th-19th century took away Native Americans lands for settler populations, forced Native Americans to relocate to reservations which made them dependent on government rations and subsidies, and
generations of children were taken away from their families and forced to go to boarding school in order to “cleanse” them of their “savage” ways and assimilate the youth to the Colonial lifestyle (Fine-Dare 2002:32). Specifically, the Lewis and Clark’s Corps of Discovery from 1803 to 1805 legitimized Thomas Jefferson’s purchase of Louisiana territory from France (Fine-Dare 2002:20); and the animals, plants, and Native American artifacts that were collected during the trek was sent to the Peale’s Museum in Philadelphia to solidify the colonizer’s control over the Native American territory they acquired. The collection of Native American sacred cultural properties that were being housed in museums and federal agencies for public viewing became a symbol of colonial expansion and imperialism over Native communities.

The NAGPRA law was modeled after the 1989 Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act (LB 340). It became the first state law to “require public museums to return all tribally identifiable skeletal remains and burial offerings to Indian tribes that requested them for reburial” (Fine-Dare 2002:102). This was due to the efforts of Lawrence Goodfox Jr., chairman of the Pawnee Tribe of Oklahoma in March of 1988, when he asked the Nebraska State Historical Society (NSHS) to “return the remains of hundreds of deceased Pawnee individuals and their burial offerings stored in the NSHS museum… [because] without the correct burial practices and offerings the spirits of their dead would wander without peace” (Fine-Dare 2002:101-102). The executive director of NSHS at the time refused these claims “on the ground of protecting scientific knowledge…a bone is like a book…and I don’t believe in burning books” (Fine-Dare 2002:101). The Pawnees of Oklahoma (whose ancestors lived in Nebraska territory, which is why the NSHS had their remains) were assisted by the
Native American Rights Fund (NARF) and other Nebraska tribes (including the Omaha) to lobby for legislation for repatriation in Nebraska. The battle to create such a legislation accounted for legal pluralism in full affect – taking into consideration the dynamic nature of competition and conflict for adherence between federal Indian law, constitutional law, previous Nebraska state law, and United States common law “which allows no alien ownership rights to dead bodies” (Fine-Dare 2002:102). The Pawnees persistently lobbied their reclamation rights with the three bodies/levels of US government and by September 11, 1990, through LB 340 of 1989, the skeletal remains and funerary objects of the Pawnee ancestors were finally reburied in Genoa, Nebraska – the site of the last settlement of the Pawnee before they were forced to relocate from their Nebraska homeland to Oklahoma reservations (Fine-Dare 2002:102). This historical example of Nebraska law on repatriation and Native reclamation efforts relays the discord in epistemological foundations or the concept of owning sacred properties of federal agencies like NSHS that clash with native communities’ perspectives from the onset of creating federal legislation. Furthermore, the history of NAGPRA in Nebraska describes how the implementation of the law is proof that Native communities were not always notified about the collection of their sacred objects in museums; and were forced to reclaim them through federal law and jurisprudence, NOT customary law.

NAGPRA governs the ways in which federal agencies, museums, and tribal communities must comply to in order to have sacred objects repatriated back to an indigenous community; specifically

-Section 2 (c) which defines what cultural items (i.e. sacred objects) are;
-Section 3 describes how to prove cultural affiliation, meaning how the law designates which indigenous group the sacred property belongs to;
-Section 5 describes the requirement of museums and federal agencies which have sacred objects in their collection to create an inventory for these items and to notify the community of their possession and how Native communities must have access to this information; and
-Section 8 of NAGPRA stipulates the functions of the review committee to foresee that museums and agencies have inventories and that repatriation claims be administered according to this law (National Park Service US Department of the Interior: NAGPRA1990).

With a decade after the implementation of NAGPRA, federal records show that “only 10% of an estimated 20,000 remains in public collections has been inventoried” (LaDuke2005:80). This federal law upholds US sovereignty in that all citizens must adhere to these provisions, consequentially de-limiting the sovereign right of Native Americans as IPs to self-determination and autonomy over their own sacred property through customary law – leaving NAs in an inevitable insecure status when it comes to protecting and preserving their own cultural integrity and heritage (i.e. NAs’ sacred properties are not the state’s).

- Cultural Properties Protection and Preservation Act (Republic Act No. 4346 as amended in the Presidential Decree No. 374) of the Philippines

The National Historical Institute (NHI) is responsible for the construction, reconstruction, maintenance of national shrines and monuments. The Presidential Decree No. 260 therefore issued in 1973 that a historical act need to be recognized to create historic preservation programs. This decree also gave power to the NHI to declare
historic sites, buildings and monuments for preservation purposes. In 1975, Presidential Decree No. 374 or P.D. 374 amended the Republic Act No. 4346 (the Philippines’ Cultural Properties Act) stating that the national museum of the Philippines “should supervise, preserve, conserve and restore outstanding structures, buildings, monuments, towns and sites declared as national cultural treasures and properties” (National Committee on Monuments and Sites 1988:4). It was here that ‘important cultural properties’ were classified in Section 3 of this law as old buildings, monuments, shrines, documents and objects (emphasis added) classified as antiques, relics or artifacts, landmarks, anthropological and historical sites. These also included specimens of natural history which are of cultural, historical, anthropological, and scientific in value and significance to the nation. It also adds that cultural properties can be household and agricultural implements, decorative articles or personal adornment. Cultural properties are identified as those used as industrial and commercial art such as furniture, pottery, ceramics, wrought iron, gold, bronze, silver, wood or other heraldic items (National Committee on Monuments and Sites 1988:47). Sacred Ifugao bululs are considered important cultural properties under these descriptions. The importance of cultural properties recognized by this act is due to the exceptional historical and cultural significance that such property has to the Philippines, but also demarcates them from being classified as ‘national cultural treasures.’

The difference between an ‘important cultural property’ and a ‘national cultural treasure’ lies in how the law describes the latter - a unique (emphasis added) object found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to this country and nation. It may be in the form of an
antique - cultural property found locally which are one hundred years or more in age or even less, but their production having ceased are becoming rare; and artifacts - articles which are products of human skills or workmanship, especially in simple product of primitive arts or industry (emphasis added) representing past eras or periods (National Committee on Monuments and Sites 1988:47). How ‘important cultural properties’ are defined in this act is important to emphasize because they have exceptional historical and cultural significance to the Philippines; even if they are not classified as ‘national cultural treasures.’

With these definitions, it is hard to understand why the sacred Ifugao bulul has not yet been included in the protection of this act as a ‘national cultural treasure,’ and they are instead classified as ‘important cultural properties.’ Bululs can be considered as an antique because the skill or art of carving this granary guardian for sacred rituals is one hundred years or more in age, since most bululs were inherited as heirlooms. The “unique” quality of the bulul is highly subjective, but under the categories stipulated by this law, its demand in the culture industry (i.e. commercial art, woodcarving industry, antiques, etc.) prompts the need for P.D. 374 to prevent its misuse and misrepresentation and truly protect and preserve its intrinsic cultural value. Furthermore, the bulul can also be classified as an artifact and antique because it is a product of human workmanship and Ifugao skill in wood carving and ritual use, since it has been a part of Ifugao traditional knowledge since time immemorial. Therefore, the inclusion of the sacred Ifugao bulul in the protection of this decree is possible since it is an antique and artifact that is currently being privately sold, collected, and displayed in museums; but since it is categorized as
an ‘important cultural property’ it is not being protected and preserved as a ‘national cultural treasure.’

Section 2 of the P.D. 374 declares it the policy of the state to “preserve and protect the important cultural properties and national cultural treasures and to safeguard their intrinsic values” (National Committee on Monuments and Sites 1988:15). This declaration states that whether or not cultural properties like the sacred Ifugao bulul is categorized as an ‘important cultural property’ or a ‘national cultural treasure,’ this policy must still protect and preserve its intrinsic value. Measuring the intrinsic value of culture is basically left to the discretion of the authorities implementing this law to state which cultural properties are more important than others (i.e. ‘important cultural properties’ are not as intrinsically and culturally valued as ‘national cultural treasures’). The individuals of the National Museum who are responsible for the implementation of this decree are noted in Sections 4 and 5 of PD 374:

- The Director of the museum undertakes a census of the important cultural properties of the Philippines, keeps a record of their ownership, location and condition while keeping a register of the same;

- Private collectors and owners, when required by the Museum Director, must report to the office of the National Museum any new acquisitions, sales, or transfers thereof; and

- Panel of Experts are appointed and authorized by the Director. They are three men [persons] in the fields of anthropology, natural sciences, history and archives, fine arts, philately and numismatics, and shrines and monuments, etc. who study, deliberate/decide which among the cultural properties in their field of specialization shall designate what are ‘National Cultural Treasures’ or ‘Important Cultural Properties’. Once a product is decided as such, the Director shall within ten days cause the designation list to be published in at least two newspapers of general circulation. (National Committee on Monuments and Sites 1988:48).
The process of authentication, protection, and preservation of an important cultural property requires the owner of such a property to pay for the registration and authentication processes of the national museum before they can have their cultural property protected as such. Whereas ‘national cultural treasures,’ which can be in the form of an antique and artifact, is deliberated by a panel of experts who are appointed and authorized by the director of the museum. The panel of experts is composed of three persons from any of the following fields: anthropology, natural sciences, history and archives, fine arts, etc. They study and deliberate or decide among the cultural properties in their field of specialization is a ‘national cultural treasure’ or an ‘important cultural property.’ Once a product is decided as a ‘national cultural treasure,’ the national museum director publishes the designation list within ten days in at least two newspapers of general circulation; and government funds are allocated to help aid the national museum to protect and preserve such ‘national cultural treasures’ (National Committee on Monuments and Sites 1988). It is important to emphasize that government funds are allocated only to those properties deemed as ‘national cultural treasures’ by the panel of experts and NOT to the ‘important cultural properties.’

Sec. 7 explains the procedure needed to be followed in being designated a ‘National Cultural Treasure’:

a) Owner (if property is privately owned) shall be notified at least fifteen (15) days prior to intended designation to attend the deliberation
b) Decision of the panel will be given within a week after its deliberation
c) A reconsideration filed to the owner may be done within thirty days; if not the original decision of the panel is executory.
d) A request for reconsideration filed within thirty days and subsequently again denied by the panel, may further be appealed to another panel chair
manned by the Secretary of Education, with two experts as members appointed by the Secretary of Education. Their decision will be final and binding.

e) Designated ‘National Cultural Treasures’ shall be marked, described, and photographed by the National Museum. The owner retains possession of the same, but the museum shall keep a record containing such information as: name of articles, owner, period, sources, location, condition, and description, photograph identifying marks, approximate value and other pertinent data. They may not be taken out of the country for reasons of inheritance. (National Committee on Monuments and Sites 1988:49).

Section 16 briefly states that dealers of cultural properties shall secure a license as a dealer in cultural properties from the Director of the National Museum (National Committee on Monuments and Sites 1988:51). Unlike NAGRA which does not require inventories from private collectors and therefore can only repatriate items listed by federal agencies (i.e. museums) and return them to federally-recognized tribes, PD374 in the Philippines requires dealers of cultural properties (which include private collectors) to secure licenses with the Director of the National Museum of the Philippines, who provisions the types of items they buy, sell and trade.

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It is apparent that within the federal laws of the US and the Philippines, one clearly evident aspect of legal pluralism is implied – ICCs, who have their own set of customary/indigenous laws in managing sacred properties, must abide the provisions set by the federal agencies/museum authorities (i.e. the US NAGPRA Review Committee and the Cultural Properties Division and Panel of Experts of the National Museum of the Philippines) in order for ICCs to reclaim their sacred properties in these museums. Furthermore, the protection and preservation of Native Americans’ (NAs’) sacred
properties that other agencies have possession can only be repatriated if NAs themselves abide to the requirements set by NAGPRA law to prove that these items indeed belong to them (i.e. proving cultural affiliation, Sec. 3- Ownership, (b) (c)-Claims of NAGPRA 1990). During this entire process, NAs pay out of their own pockets to travel to museums that may hold their sacred objects, processing/filing claims for repatriation through the NAGPRA review committee, and provide “evidences” (i.e. written documents) that the NAGPRA Review Committee deem as legitimate to show NAs’ cultural affiliation with the sacred object (or human remains). It is important to note that most ICCs have tribal authorities that are designated to “keep” these sacred objects, but are not literally written down on a document to legitimate their authority and responsibility. This duty to safeguard (and not individually own) sacred items are passed down through oral traditions, rituals, and practices which are often not in written/document-form.

As for the sacred bulul in the Philippines, the Ifugao can only register and have the National Museum of the Philippines authenticate their bulul in order for it to be registered as an ‘important cultural property,’ NOT as a ‘national cultural treasure.’ Ifugao must also pay out of their own pockets to travel to the National Museum of the Philippines in Manila (a ten hour bus ride one-way) in order to have this federal agency authenticate it as a bulul, and then register the item so that no museum or collector may “own” that specific sacred object. But this is only “protected” with a piece of paper that registers the sacred object as an authentic bulul; unlike sacred objects deemed as “national cultural treasures” (which Ifugao bululs are NOT) wherein national funds are allocated to protect and preserve them by the National Museum. Tribal sovereignty and the right of ICCs to self-determination, autonomy, and upholding cultural integrity as
stipulated in the UN-DRIP and ICESCR are clearly undermined, constrained, and neglected in the provisions set in NAGPRA 1990 and PD374 to protect and preserve their indigenous sacred cultural properties.

Indigenous/Customary Laws: Ethnographic data on the Omaha sacred pole and sacred Ifugao Bulul

Sacred properties derive from indigenous cultural communities (ICCs) and are the physical manifestations of an indigenous/traditional knowledge system based on specific customs, beliefs, traditions, and identity. The knowledge behind how to make a sacred cultural property, the mores/sanctions behind its use (i.e. rituals), and its connection to upholding the teachings of the Creator and elders/ancestors to be passed to each generation through specific people in the community, are dynamically protected and preserved within indigenous communities through oral traditions, rituals, etc. which make up indigenous jurisprudence and customary law (Battiste 2008:497). Sacred properties are managed in specific ways according to the customs, traditions, and beliefs of the indigenous community where it derived. The culmination of an indigenous cultural community’s (ICCs) customs, beliefs, rituals, practices, etc. on the management of sacred properties can be described in their customary laws.

By locating the historical and contemporary significance of the Omaha sacred (medicine) bundle and Ifugao sacred bulul, this study discusses the integral aspect of indigenous/customary laws that are encapsulated in the collective rights of IPs. Chapman
(1994) notes that the UN Working Group on Indigenous populations 1991 declaration affirming the collective rights of IP as

entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property...have the right to special measures of control, develop and protect their sciences, technologies and cultural mechanisms, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual performing arts (Chapman 1994:219).

Marthur (2003:4480) discusses how addressing the question of the collective rights of ICCs, as those entitled to seek protection of traditional knowledge, requires a conferral of recognition and status of those who hold traditional knowledge (i.e. ICCs) amidst policy questions about the role and functions that ICCs communally hold (as these are part of their heritage and culture). Restrictions are set from common/collective rights to private rights in Western/Federal and International laws because most of the time, sacred objects are protectable only when knowledge and innovation generate profits (i.e. intellectual properties) and not to meet social needs. This creates a problem regarding IPs’ assertion of customary laws and collective rights to knowledge and resources as “piracy” and “theft” by US patents which mostly derive from “Third World” biodiversity and knowledge (Shiva 1997:10-11).

- Customary Law – Omaha sacred pole and (medicine) bundle

As stated earlier, there are many kinds of sacred (medicine) bundles and its use and contents are determined by its keeper (i.e. clan bundle, family bundle, bundles that accompany the sacred pole, war bundles, etc). Sacred bundles can be considered as Warⁿ or a common name for a pack – “a receptacle made of skin, frequently of parflesche” (Fletcher and la Flesche 1992:404), and the articles enclosed are considered waxúbe or
sacred. The contents of the pack or bundle (wathíxabé or “things flayed”) is what makes the Wät³ sacred or waxúbe. This study focuses on the sacred (medicine) bundles of the last known Omaha medicine man of the late 1980s, Charlie Parker, who kept and used a sacred bundle when conducting rituals as a medicine man in the Omaha Reservation. His (medicine) bundles, along with other sacred items from other families, are housed in a cinder-block infrastructure on his property which no one is currently protecting and preserving through Omaha customary law, since it has been buried underground by Mr. Parker’s grandson⁷. There is not much ethnographic data on the Omaha sacred (medicine) bundle, but much has been written about the customary laws and reclamation process of another integral Omaha sacred property – the sacred pole or Umon’hon’ti (contemporarily spelled hereafter as Umóⁿⁿhoⁿⁿ’xti), the “Rea/Authentic Omaha,” or the “Venerable Man” (see figure 2.1).

The sacred pole is physically made of wood but the “pole itself represents a man” (Fletcher and La Flesche 1992:224) – a living sacred being. The ethnographic data and repatriation process of the sacred pole is discussed here in order to emphasize the importance of protecting and preserving sacred objects among the Omaha tribe. The details of the sacred pole’s repatriation and current state are implicative of the similar challenges and complexities currently experienced with protecting and preserving other sacred properties of and by the Omaha Tribe. I use the reclamation efforts to return the sacred pole to the Omaha as an example of how pre-NAGPRA and pre-UN Charters, the Omaha were vigilant in negotiating with the Peabody Museum (federal agency). But I

⁷ The details of the sacred items placed in a cinderblock infrastructure and buried underground on Mr. Charlie Parker’s land by his grandson are further elaborated in Mr. Rufus White’s testimony seen in Chapter 4, during an interview conducted on February 26, 2012 at the Omaha Reservation in Macy, Nebraska.
also question why the Omaha decided to leave the sacred pole in the curatorship of the Nebraska State Historical Society in Lincoln, Nebraska (which will be discussed in Chapter 4 with the Omaha elder’s testimonies). Interestingly, the views of some Omaha regarding negotiations, provisions, and processes to have the Peabody Museum return the sacred pole should not have been so difficult because the Omaha were claiming their property that they had left with the museum on loan. Similarly, the current status of sacred bundles in Charlie Parker’s residence, post-NAGPRA, are in critical condition of being neglected, misused, or stolen because there is no collective initiative from Omaha tribal authorities to protect and preserve them, even if their predecessors during the 1960s-1980s (Pre-NAGPRA) were able to reclaim the sacred pole. The differing views of “some Omaha progressives…to preserve these objects was to transfer them into what they considered the safekeeping of museums” (Summers 2009:25); an effort that was in direct conjunction of land losses that were taking place for the Omaha in the 1880’s. These accounts foretell that the loss of land for Native Americans was simultaneously appropriating the loss of sacred objects – one that legalized these processes through federal laws.

8 These will be further discussed in Chapter 4 that presents the treatises of the Omaha elders interviewed on the Omaha Reservation in November 2011 and February 2012.
Figure 2.1 The Sacred Pole or *Umdōho'xti* (“Real/Authentic Omaha”) (Fletcher and La Flesche 1992:225). It is physically made of “…cotton wood, 2.5 meters in length...subject to manipulation...bark has been removed...shaved and shaped at both ends...the top rounded into a cone-shaped knob...circumference is 15 centimeters near the head and 19 centimeters in the middle and 14 centimeters toward the foot...lower end is fastened by strips of tanned hide, a piece of harder wood...with a groove cut to prevent the straps from slipping...shows no indication of ever having been in the ground...no decay apparent...name of this piece of wood is *zhibe* or leg since the Pole itself represents a man” (Fletcher and La Flesche 1992: 224)

When the Omaha migrated from their ancestral homelands (see Figure 2.2) from the Ohio River Valley to the Mississippi River around 1400-1700 (see Table 2.1) they “needed something to anchor them and hold them together...to establish tribal unity...*Umdōho'xti* did this” (Summers 2009:19-20). The sacred pole was “central to the tribe’s ceremonies during their buffalo hunting days” (Fletcher and La Flesche 1992:3), but by the 1840s the Omaha were forced to move from ‘Big Village’ or *Tō'wo'nga* (*Tō'wo* ‘village’, *to'nga* ‘big’) because of famine, disease (small pox outbreak in 1800-1802), and vast population decreases from attacks by the Sioux tribes. By 1844 they relocated from
‘Big Village’ to an area near Papillion Creek, eight miles west of Bellevue, Nebraska where the Indian Agency had been set up (see Table 2.1). Their population at this time was about 1,300 and with the outbreak of smallpox in 1800-1803 which had killed 400 Omaha including their chief at the time (Chief Blackbird), they were also experiencing constant attacks by the Sioux tribes and were constantly forced to migrate (Douglas County Historical Society 2007:7). This provided for an insecure state of food and survival of the Omaha nation; so it was perceived that moving near the Indian Agency in Bellevue, Nebraska would grant them some degree of security from the US government.

The 1854 Treaty with the Omaha had commissioned George W. Manypenny, as the Indian Commissioner in Bellevue, to arrange an Omaha delegation to go to Washington to negotiate a land treaty cession with Agent Thomas Greenwood (Boughter 1998:61-63). Since the tribe was undergoing drastic population decrease from famine, war, and disease, the signing of the treaty was a promise (that would later be broken) by the US government to grant protection and security for the Omaha. This idea that the treaty would provide the Omaha with safety and shelter may have been miscommunicated intentionally by Logan Fontanelle or Chief White Horse who was the interpreter for the Omaha and US Indian Agent in 1840 at the Bellevue Agency in Nebraska (near where the tribe had set up its village) (Boughter 1998:49). Boughter (1998) notes that Logan Fontanelle may have been paid off by the US government with a disclaimer of annuities to be granted towards the Omaha who ‘worked with’ the US government once they convinced (Omaha) chiefs to sign the treaty (since these chiefs could not read the treaties themselves). Logan Fontanelle was the first to sign the 1854 treaty followed by Yellow Smoke (the last keeper of the sacred pole), Little Chief,
Village Maker, Joseph La Flesche (father of Francis La Flesche who worked as an ethnologist for the Smithsonian and would help Alice Fletcher convince Yellow Smoke to bring the sacred pole to the Peabody Museum in Harvard), Standing Hawk, and Noise. Based on this treaty, the Omaha reserved about 300,000 acres for themselves on a reservation that is only a portion of their ancestral lands in present-day Thurston County, Nebraska reservation (the current Omaha reservation is only 307.474 mi$^2 = 196,783.36$ acres, less than two-thirds of the land they were promised under this treaty) (see Figure 2.2).

Figure 2.2 (Left) Map of migration of Omaha from 1770’s to 1844 (Ridington and Hastings 1997:45); (Right) Omaha Nation territory (in green), and Omaha Reservation within Omaha territory (in Orange) (National Endowment for the Humanities 2012)
Table 2.1 Timetable of Omaha migration, treaties and sacred pole ‘taking’ and ‘returning’ (Douglas County Historical Society 2007: 6-10; Boughter 1998: 61-62; Campbell 2002:6; Vore 1919: 115-117)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1700</td>
<td>Omaha lived near Ohio and Wabash Rivers with Quapaw tribes of woodland migrated west, split settled near Missouri River (NW Iowa)</td>
<td>See Figure 2.2 for map</td>
</tr>
<tr>
<td>1775</td>
<td>Conflicts with Sioux tribes and Ponca split off from NW Iowa settlement → Omaha settled in Bow Creek in North-Eastern Nebraska</td>
<td>Campbell 2002:6</td>
</tr>
<tr>
<td>1800</td>
<td>Small Pox outbreak in Tonwantongo or ‘Big Village’, death of 400 residents in village including Chief Blackbird</td>
<td></td>
</tr>
<tr>
<td>1800-1802</td>
<td>Treaty of Prairie du Chien: Omaha ceded lands in Iowa with understanding that they still had hunting rights there</td>
<td>Douglas County Historical Society 2007:6-10</td>
</tr>
<tr>
<td>1831</td>
<td>Treaty took remaining hunting land in NW Missouri</td>
<td></td>
</tr>
<tr>
<td>1844</td>
<td>Treaty took remaining hunting land in NW Missouri</td>
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<tr>
<td>1844</td>
<td>Abandoned Tonwontonga/o for the last time and relocated their village on Papillion Creek eight miles west of Bellevue. They numbered about 1,300 at this time. Their settlement there near the Indian Agency continued for the next ten years.</td>
<td></td>
</tr>
<tr>
<td>1846-47</td>
<td>Approximately 4,000 Mormons spent the winter of 1846-1847 here based on an agreement with Big Elk (illegally made, based on some resources). Winter Quarters was the site of the first white settlement within the current limits of Douglas County.</td>
<td></td>
</tr>
<tr>
<td>1854</td>
<td>7 chiefs signed treaty with US commissioner George W. Manypenny to cede remaining lands by 1856 on premise that they would be granted “suitable residence” (Article 1, Treaty with Omaha 1854). The first signature on the treaty was that of Chief White Horse, also known as Logan Fontenelle. Other signers were Yellow Smoke, Little Chief, Village Maker, Joseph LaFlesche, Standing Hawk, and Noise. Under new pressures created by passage of the Kansas-Nebraska Act, most of the land in eastern Nebraska (about 4,000,000 acres) was ceded by the Omaha Indians to become part of the public domain for less than 20 cents an acre. The Omaha reserved about 300,000 acres for themselves on a reservation that is a portion of their ancestral lands in present-day Thurston County, Nebraska. The passage of the Kansas-Nebraska Act granted territorial status to Kansas and Nebraska. The Territorial Legislature subsequently created “Omaha City” and Douglas County.</td>
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</tbody>
</table>
The land west of the Missouri River was opened to settlement. President Franklin Pierce signed the Kansas-Nebraska bill into law on May 30th and appointed Francis Burt of South Carolina as the Territorial Governor.

- The draft treaty authorized the seven chiefs to make only "slight alterations", but the government forced major changes. It took out the payments to the traders. It reduced the total value of annuities from $1,200,000 to $84,000, spread over years until 1895. It reserved the right to decide on distribution between cash and goods for the annuities.

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1855</td>
<td>A party of Sioux killed Logan Fontenelle in present day Boone County. The Omaha relocated to a reservation on the bank of the Missouri River about twelve miles from the present town of Walthill in Thurston County; this is where they presently reside. <strong>If they had 300,000 acres to themselves in the 1854 Kansas-Nebraska Act, then why do they only reside on 307.474 sq. mi. on their current reservation (307.474 mi² = 196,783.36 acres)?</strong></td>
<td>Douglas County Historical Society 2007:13</td>
</tr>
<tr>
<td>1870s</td>
<td>Bison were quickly disappearing from the plains, and they had no hunting grounds to continue this subsistence. Omaha were increasingly dependent on the cash annuities and supplies from the US government that was stipulated in the 1854 treaty. The supplies they received were forcing an adaptation to subsistence agriculture.</td>
<td>Watkins (ed.) 1919: 115-117</td>
</tr>
<tr>
<td>1879</td>
<td>Jacob Vore was appointed as US Indian agent to the Omaha Reservation in September 1876, and when he was tenured decided not to distribute the 20,000/year cash annuity to the Omaha but supplied agricultural tools (i.e. harrows, wagons, harnesses and various types of plows). Vore told the tribe that the reason he was doing this was because officials from Washington DC disapproved their annuity and they could not do anything about this decision.</td>
<td></td>
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<tr>
<td>1887</td>
<td>Dawes Act or the General Allotment Act (The Dawes Severalty Act) which was sponsored by Congressman Henry Dawes of Massachusetts was designed to breakup Indian land allotment on reservations by having individual plots owned by individuals. This became a tool for assimilating NAs into the individual property ownership system under US law in order to provide land for non-Indians to settle in. This was the major Indian policy on land until the 1930s that forced Indians to become farmers (farming that resembled the White settlers/colonizers’ methods); further assimilating them into the dominant</td>
<td>Kidwell 2007</td>
</tr>
<tr>
<td>Year</td>
<td>Event</td>
<td>Note</td>
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<tr>
<td>1888</td>
<td>Yellow Smoke, the Sacred Pole’s last keeper, is convinced by Alice Fletcher (ethnologist for the Peabody Museum) and Francis La Flesche (Ethnologist for the Smithsonian Institute) to give them the pole for safekeeping so that it stays in “some eastern city where he [sacred pole or Venerable Man] could dwell in a great brick house instead of a ragged tent.”</td>
<td>Ridington and Hastings 1997:xvii-xix,24; Fine-Dare 2002:103</td>
</tr>
<tr>
<td>1980-1988</td>
<td>Doran Morris and other Omaha delegates go to Peabody Museum to negotiate return of Pole (through letters and assistance of Robin Ridington – Harvard Alumni and UBC Anthropology professor and Dennis Hastings (In’aska) the Omaha Tribal Historian</td>
<td>Ridington and Hastings 1997:23-39</td>
</tr>
<tr>
<td>1989</td>
<td>Returned the Pole to Omaha at their reservation and had pow-wow for it</td>
<td></td>
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<tr>
<td>12 Aug 1990</td>
<td>Sacred pole left in curatorship and “special arrangement” of NSHS where it resides to now and must have written permission from Doran Morris Jr. to view it</td>
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</table>

*The Omaha Tribe* was published in 1911 and “the first major ethnography written jointly by an outside fieldworker” and ethnographer from the Peabody Museum, Alice Fletcher, and “a member of the tribe being described,” Francis La Flesche (although some Omaha contend that he is of Ponca descent and living among Omaha at the time) (Fletcher and La Flesche 1992: 2) who was working as an Ethnologist for the Smithsonian Institute at the time (Ridington and Hastings 1997:xvii-xix). This book is one of the last of the series of 19th century ethnographies, and existed pre-NAGPRA and pre-UN Charters on Human Rights. It “places the sacred pole at the very center of their book” (Fletcher and La Flesche 1992:3) and describes how the sacred pole or *Umónhonxiti* or “the real Omaha” or the “Venerable Man” (since it was considered a living being) who was being kept by Yellow Smoke (its last keeper, see Figure 2.3), was persuaded by Francis La Flesche (see Figure 2.3) to send the Venerable Man to “some eastern city where he could dwell in a great brick house instead of a ragged tent” (Ridington and...
Hastings 1997:xvii-xix,24; Fine-Dare 2002:103). This source describes the sacred pole and bundle of the Omaha by discussing how these sacred objects are used in the Omaha community – in its sacred legends (oral history), ceremonies, buffalo hunts, the keepers of it, its origin, in songs, symbolism, and how its use is connected to other sacred objects (Fletcher and la Flesche 1992:217-260).

Through Omaha oral tradition, the sacred pole was found by a hunter who was the son of a tribal council member. He was hunting and got lost, so he followed the “motionless star” which led him down a path that attracted him to a tree that was illuminated - so bright that it appeared to have been burning yet was not being consumed by heat. Meanwhile, his father was meeting with other members of the great council about devising a way to keep the bands of the tribe together to save the tribe from extinction. When the hunter returned home, he told his father about the illuminated tree that was not consumed by the heat of its shine. His father accompanied him to see the tree, acknowledged it to be a gift from Wako"da (Creator), and cut it down to be whittled down to a portable size (Fletcher and la Flesche 1992:217-218). The sacred pole became the symbol and a living being that epitomized the “the Real Omaha” – hence its name Umó"ho"xti (the Omaha refer to themselves as Umó"ho"). According to custom, Umó"ho"xti “became the center around which Omaha life was focused” (Summers 2009:20).

As I have outlined in the migration of the Omaha and the cessation of their lands to US government amidst the growing outbreak of small pox, famine, and war being experienced in their community, Yellow Smoke (see Figure 2.3) agreed to send the Sacred Pole on loan to the Peabody Museum for safekeeping in 1888 (Fletcher and La
Flesche 1992:3). It was the tribe’s understanding that Yellow Smoke opted to do this instead of being buried with Umóⁿhoⁿxti because he had hoped that one day the tribe would reclaim the loan of the sacred pole and be able to properly care for it as a sacred living member of the tribe - once the Omaha were no longer experiencing such drastic conditions of hardship. Therefore in 1888, Umóⁿhoⁿxti was brought to the Peabody Museum through the museum’s ethnologist Alice Fletcher (see Figure 2.3) and documented through ethnographies written with Francis La Flesche (see Figure 2.3), an Omaha-Ponca whose cultural affiliation is contested to this day.

Figure 2.3 (Left) Yellow Smoke, 1883 – the sacred pole’s last keeper, (Middle) Alice Fletcher – Peabody Museum Ethnologist, (Right) Francis La Flesche – Omaha/Ponca ethnologist. (ThunderDreamers.com 2005; Department of Anthropology, National Museum of Natural History; National Anthropological Archives, Smithsonian Institution, Photograph 4504)

The Omaha became involved in negotiating with the Peabody to return Umóⁿhoⁿxti while simultaneously supporting the Pawnees’ reclamation efforts to have the Nebraska State Historical Society return Pawnee ancestral remains and burial goods around the late 1980s (Ridington and Hastings 1997:23; Fine-Dare 2002:103). The
advocacy and reclamation efforts of the Omaha also included the companion to

\textit{Umō'ho'xti}, the \textit{Tesō'ha} (Te ‘buffalo’, sō‘white at a distance’, ha ‘hide/skin), the

Sacred Buffalo Hide, and two sacred catlinite pipes which are associated with the sacred pole and hide; all of which were in the Peabody Museum’s collection since 1888 (Fine-Dare 2002:103). How the sacred pole made its way back to the Omaha was through the efforts of Robin Ridington, a Harvard graduate and University of British Columbia professor, Dennis Hastings (\textit{In’aska}) the Omaha tribal historian, and the initiatives of Doran Morris Sr. (Omaha Tribal Chairman in the late 1980’s and great grandson of Yellow Smoke) (see Figure 2.4). Ridington and Hastings arranged an Omaha delegation to see the pole at the Peabody Museum on June 27, 1988 (Ridington and Hastings 1997: 23-39) due to Doran Morris’ expressed initiative and interest to Robin Ridington to get the Pole back -

Every three years council was elected, and I’ve got another year left, and I’ve been thinking about this for a long time...you know my great-great-grandfather was the last keeper, Yellow Smoke...with the election coming up-the interest is going to be lost in this...so, I’m going to do this within the year-take it home to where it belongs-otherwise we’ll have to wait another nine years (Ridington and Hastings 1997: 34).
On March 8, 1988 Robin Ridington, upon Doran Morris’s request, wrote a letter to Dr. Carl Lamberg-Karlovsky, director of the Peabody Museum. The following is an excerpt of that letter:

**Figure 2.4** Doran Morris and Edward Cline receiving *Umöhoxti* from Peabody Museum on June 27, 1988 (Photo taken by Hillel Burger found in Ridington and Hastings 1997:2)
I have been in touch with the Omaha tribal historian, Dennis Hastings, and with Doran Morris, chairman of the Omaha Tribal Council. Mr. Morris is a great-grandson of Yellow Smoke (*Shūdenazi*), the last keeper of the Pole, who gave it over to the keeping of Alice Fletcher and Francis LaFlesche in 1888. Mr. Morris tells me that the tribe understands that Yellow Smoke was persuaded to transfer the pole to the Peabody for safekeeping rather than support the alternative plan of having it buried with him. The Sacred Pole has now resided in the Peabody Museum for a full century. I suggest that 1988 is an appropriate time to reconsider the ‘disposition to be made of these sacred objects, which for generations [have] been essential in the tribal ceremonies and expressive of the authority of chiefs.’ Perhaps we could correspond further about a ‘point of view as from the center’ to accommodate both Omaha interests and those of anthropology (emphasis added, Ridington and Hastings 1997:25).

After this letter was written, Dr. Lamberg-Karlovsky did not immediately reply, so Robin Ridington wrote to him again on May 2, 1988. Ridington went to the Omaha reservation in Macy, Nebraska later that month and met with Dennis Hastings and Doran Morris. They called Joan Mark, Alice Fletcher’s biographer and asked for her help to arrange an Omaha delegation to visit the Peabody Museum (Ridington and Hastings 1997:25). It was on June 27, 1988 where Doran Morris and Edward Cline journeyed to the ‘great brick house’ in Cambridge, Massachusetts and touched the pole for the first time.

Through relatively successful negotiations with the Peabody Museum, the paperwork for the sacred pole to be returned to the Omaha nation was processed in 1988, welcomed back as a “returning elder” in their annual powwow on July 20, 1989, and was finally touched by Doran Morris – Yellow Smoke’s great-great-grandson through Omaha kinship (Ridington and Hastings 1992:3).

In Doran Morris’ April 29, 1991 letter to Richard West (Director of the National Museum of the American Indian) informing him of the Omaha Tribe’s interest to “reclaim what is rightfully ours” (Ridington and Hastings 1997:229) was based on their
knowledge that “there is to be policy development for the repatriation of Indian tribal artifacts…will probably occur over a period of three to four years…[and that] The Omaha tribe does not want to wait that long” (emphasis added, Ridington and Hastings 1997:229). Doran Morris knew that NAGPRA provisions were starting to be implemented and why he emphasized that the Omaha were successful in the repatriation of their Sacred Pole and how they now have an “arrangement with the University of Nebraska Museum for safekeeping our national heritage items until we complete construction of our own museum” (emphasis added, Ridington and Hastings 1997:229).

So since August 12, 1990, the sacred pole has been “in the care of the University of Nebraska at Lincoln” (Fine-Dare 2002:103). The Omaha decided to leave the sacred pole in the curatorship of the Nebraska State Historical Society in Lincoln, Nebraska on the premise that they would be able to take it back into their community and manage it according to the Omaha ‘old ways’ once they have established their own museum.

According to Omaha customary law and ontology, the Sacred Pole is a physical and spiritual being, and must be venerated and cared for as such; that is why it seems vague that ethnographies (Fletcher and La Flesche 1992) would state that the entire Omaha nation mutually decided that it be kept and cared for by the Nebraska Historical Society and not by the Omaha themselves. An alternative explanation may be that the Omaha had to diminish their sovereignty and power to protect and preserve the sacred pole according to their customary laws, because of the prevalence of provisioned federal laws to protect and preserve sacred properties (i.e. NAGPRA). Interviews with Omaha elders on the reasons why Omaha tribal authorities at the time opted to have $Umo^{ho^xti}$ left in the curatorship of the NSHS located in the University of Nebraska Lincoln campus
(where it is in fact housed), despite having had it already repatriated from another museum will be discussed in the findings/data analyses portion of this study.

- Customary Law - The Ifugao and the Sacred Ifugao Bulul

Ifugao is one provincial region of the various ethno-linguistic and indigenous groups that reside within the Cordillera Administrative Region or CAR (see Figure 1.3).

Lourdes S. Dulawan has written a profile of the Ifugao as a province of the Cordillera Region, its separating territories, its eleven municipalities, major ethno-linguistic groups, and having a land area of 2,525 kilometers\(^2\) with a population of 149,598 (1994 census) (Dulawan 2001:1) to 180,711 as of August 2007 (NCSB 2012). She explains how the Ifugaos may have migrated to their current settlement on two separate theories: Roy F. Barton’s belief that the people went to the mountains as their choice to pursue a voyage because being Malay descendants, living in the mountains and building rice terraces had been practiced in their previous settlement; while H. Otley Beyer and Fr. Francis Lambrecht believed in simply Malay migration. Conversely, Ifugao people trace their origins as being descendants of the daughter of the God of the Sky world, Wigan, although some Ifugaos consider the god of the Sky world to be Lumawig and some Cabunian/Kabunyan. The Ifugao people call themselves Ipugo (“from the hills”) but changed it to Ifugaw when the Spaniards arrived, and then to Ifugao during American occupation (Dulawan 2001:4). The Ifugao social structure is based on a kinship system where lines of consanguinity are followed to the fourth generation (Dulawan 2001:63). The descent system follows both male and female lines, but the influence of a post-colonized predominantly Catholic Philippines has accounted for a patrilineal last name
for most Filipino families. The social norms followed were taught through the oral histories of ancestors since kinship systems depend on their teachings for practicing rituals and inheritance of property; which can include rice fields, forests, house lots, and heirlooms. The most important and renowned skill of the Ifugao was the creation of rice terraces. Rice cultivation among the Ifugao is believed to be a skill taught by the gods (Medina 2002) and is deemed most important in the Ifugao lifestyle – justified by their various rituals and ceremonies that pertain to just rice cultivation. Their ritual for the rice agricultural cycle is explained by Dulawan (2001) in nine stages, wherein the eighth stage *Ahi bakle* involves making rice cakes as thanksgiving for the harvest. In this stage, the bulul (see Figure 1.2) is brought out from the granary to witness these rites and bathed in rice wine and rice cake dough or *binakle*. Hapao in Hungduan municipality, are where the inhabitants are skilled in stone-walled terraces as well as the ancient art of wood-carving and metal-smelting; and may possibly be the origin of the Ifugao bulul (Dulawan 2001:63).

Dulawan (2001) notes that trained geologist turned ethnologist American, Henry Otley Beyer, dubbed the “father of Philippine anthropology,” greatly influenced the Ifugao as the first American teacher in Banaue, Ifugao. He studied the Banaue dialect and customs which had Beyer involved in handling bululs. It is important to note that through the American influence on the importance of a “proper” education, some Ifugaos migrated out of Ifugao because of the promise of capital by obtaining a job after earning a degree or diploma through the established “western” education. This may have been the same reason woodcarvers moved from Ifugao to Asin in Baguio City to sell woodcarvings such as the bululs, since many American schools were being established in
Baguio City (CAR capital) by American “educators” from Christian missionaries. As more Ifugaos became converted to Christianity and educated by the missionaries, they were prohibited from performing rituals that did not go in-line with Christianity like *imbangdo* (betrothal), *uyauy* (wedding feast), *hagabi* (prestige feast), *bakle* (thanksgiving rice cake making, where the bulul is used), and others.

Nowadays, there are hardly any traditional one-room Ifugao houses but more Western-style houses, complete with electricity and a water supply. Traditional clothing is now usually only worn during special feasts, as costumes, or during dinners held by political figures in the government. That is why many Ifugao as well as other Filipinos have migrated to other parts of the Philippines or abroad to earn a living. The rice terraces are constantly attracting tourists but the lack of maintenance and tourist pollution is currently deteriorating them (Calderon, et al. 2009). John Calugay, et.al.’s (1981-1982) Bachelor of Arts thesis entitled “A Research Paper on the Woodcarving Industry Banaue Ifugao (1900-1979)” from the University of the Philippines College of Baguio discusses the migration of Ifugao woodcarvers and retail making of the Ifugao bulul for tourism purposes. He explained that the skill of woodcarving originated in Hapao, Hungduan, having the highest ratio of woodcarvers to the total barangay population. Before being assumed commercial value, woodcarving was done for making tools, household items and idols (the Bulul) for daily life and rituals. When the Americans recruited residents of Hapao to help cut the mountains to build Kennon Road, these Americans saw the skill of the Ifugao in woodcarving (which the Ifugao did during their leisure time). Americans started to pay Ifugao woodcarvers to make them things like vases and aesthetic decorations. Even the Japanese ordered pipes during the Japanese occupation. When the
Ifugao saw that their skills could create capital they migrated to Baguio because of the American base and foreign tourists that usually bought their items in bulk, by order, and taught them that there were more things to carve other than utensils and idols (Calugay, et al 1981-1982:17-18). This is important to note because the influence of Americans colonizing the Cordilleras is the catalyst for the idea of woodcarving for the Ifugaos as a capital-based incentive.

William Henry Scott expresses his amazement of the Ifugao’s skill in woodcarving as he states “…[the] Ifugao’s real ornament was its woodcarving, especially in Banaue, Hapao, and Ahin – male and female figures with cowrie shell eyes and weapons ready, some squatting, others standing with bowls or basins in their outstretched hands…”(Scott 1974:2; Calugay, et al. 1981-1982:12). The oldest woodcarver in Baguio City resided in Camp 6, Kennon Road at the time when Calugay, et al made this paper. By 1930 he notes that there were only three gift shops in the Baguio Market (Buenaventura’s Store, Epang’s Store, and Gimang’s Store) that sold woodcarvings, and now almost all the stalls have woodcarvings. It became a booming industry as more carvers created firms (or joined with fellow carvers under the establishment of an American to carve per order) and was earning 4 – 6 pesos a day (at that time the minimum wage was 2.50 pesos a day) (Calugay, et al 1981-1982:21-23). Ifugao woodcarving reached Manila when an American asked an Ifugao woodcarver in Baguio City to create several carvings and deliver them to Manila, and was paid in advance. Along the way the woodcarver thought of putting up a woodcarving shop along Naguillian and inviting fellow carvers to join him as they were paid per piece sold. They eventually moved to Camp 7, Kennon Road because of the lack of good wood along
Naguillan with the establishment name of Alipio’s Pioneer Curio Shop in 1951. The business grew until they were able to buy vehicles to deliver out of town orders and machines that would chop, sand, and polish for them. The woodcarving industry spread to every part of Baguio, the spread of Ifugao culture like the Bulul carvings, and the immigration of the Ifugao to seek profits.

Ifugao bululs’ significance to Ifugao culture is that it is central to their subsistence – agriculture, because it is a rice granary guardian. Its usage in rituals can be in seeking a bountiful harvest, revenge, or healing the sick (Atieneza 1994:296). The significance of the bulul is first seen in its material – narra (wood), which symbolizes wealth, happiness, and well-being. If it is bathed in pig’s blood it is assumed to have new powers and will grant the owner wealth and prosperity. In some rituals, it is usually placed alongside offerings of wine and ritual boxes next to the newly harvested rice bundles (Atieneza 1994:297). In the Hi ‘gnup sacrifice, the bulul is referred to as the Buni’ ad La ‘gud – this term connotes the type of good deity inhabiting it and where this deity is from. A sacrifice is offered to the deity (or deities) residing in and through the bulul to conserve the rice and protect it from other evil deities or rats. This sacrifice is done by one shaman or mumbaki while performing the harvest sacrifice or Boto’ Sacrifice. In this sacrifice, chickens or pigs are offered to the bulul that dwells in a wooden statue and is put in the granary to guard the rice as sacrifice (Lambrecht 1932:148). The Ifugao believe that deities dwell within the bulul statue, making it a sacred object. The Ifugao museum (2006) in Kiangan, Ifugao describe the bulul as used in rituals of protection and increase of harvest; which come in pairs of male and female, either standing or seated. The postures of the figures suggest the place where they are made. Not only in rituals but also
in the *Abuwab Tales* compiled by Carlos Medina (2002:47-49;57-62) in *Toward Understanding Bu'gan Ya Wi'gan Ad Chu-Li'gan*, namely in Abuwab Tale 4, 7 and 8, the Bulul of *lagud* is the main deity that helps the son (*Wigan*) and daughter (*Bugan*) of *Lumawig* (God of the Skyworld) in getting chickens or pigs to perform rituals and sacrifices to guard their rice or to make their harvests multiply. This is important in noting for it justifies the importance of the bulul even among the ancestors for it was told and taught as oral tradition to the next generations.

The bululs I will be referring to in my research are protecting and preserving the sacred Ifugao bulul which is being used by the Ifugao for religious practices (past and present). The authentication of such bululs can only be done by bonafide Ifugao *mumbaki* or shaman (which uses the bulul in rituals he or she performs), *munhapud* (the person who distinguishes which spirit has captured a person to make them sick and chooses which tree to cut to make the bulul), and *munpaot* (the designated woodcarver of the bulul)\(^9\). Chapter 4 will describe the authentication process of sacred Ifugao bululs based on the interviews with Ifugao mumbaki.

**Critical and Indigenous Research Methodologies applied to protection and preservation of traditional knowledge**

There are over 300 million indigenous peoples (IPs) that inhabit the earth - with over 5,000 IPs who reside in 70 countries (Battiste 2008: 499). IPs’ knowledge systems or epistemologies are “holistic ideographic systems, which act as partial knowledge meant to interact with oral traditions...through the oral tradition and appropriate rituals,

\(^9\) The descriptions of those who are part of the “making” of a bulul are from interviews with the *mumbaki* from Ifugao province in 2006. These are further elaborated in Chapter 4 of this study.
traditions, ceremonies, and socialization” each generation transmits this collective knowledge of heritage to the next generation (Battiste 2008:499). Tangible and intangible forms of indigenous knowledge does not exist in a vacuum; it is in a state of “constant flux and dependent on the social and cultural flexibility and sustainability of each nation” (Battiste 2008: 499). But according to indigenous or customary laws, accessing indigenous knowledge regarding sacred properties is “restricted to particular individuals and organizations within indigenous communities” (Battiste 2008: 505), usually men or women who have ascribed rites and/or achieved a spiritual role in the community. These descriptions on the ontological and epistemological foundations of indigenous knowledge is how I frame my research within a critical and indigenous research methodology.

The pursuit of ICCs around the world to protect and preserve their their indigenous knowledge (which involve tangible forms, i.e. cultural properties) have been happening for decades but are still being met with challenges, constraints, and highly contentious issues. In the 1980s, the idea of heritage being both tangible and intangible, as well as a group property that “must be returned to its place of origin” was pursued through the repatriation of excavated physical remains of Aboriginal Australians and Native Americans which were being used by museums and laboratories (Brown 2003:3). There are current studies by both Native and non-Native scholars which promote the critical and indigenous research methodology (Smith 1999; Battiste and Henderson 2000; Brown 2003; LaDuke 2005; Stewart-Harawira 2005; Battiste 2008). They propose and provide evidences from personal experience and interviews on the current efforts for negotiation between native elders, museums curators, archivists, and cultural resource managers to promote “more balanced relationships” (Brown 2003: 10,230,252) not to
own sacred properties, but to uphold heritage. I will be elaborating these alternative solutions to the management of sacred properties by changing the discourse from protecting the individual right of ownership to protecting indigenous heritage in Chapter 5: Conclusions and Recommendations. But some examples of critical and indigenous research methodologies are Battiste’ (2008: 498) protocol entry process which utilizes and implements customary laws to protect and preserve sacred properties, while simultaneously having the community be aware of the protective actions of federal and international institutions that may be hindering or impelling their actions.

Another form of critical and indigenous research methodologies in the study of reclamation and repatriation discourse for social justice is emphasized by Graham and Wiessner (2011). They emphasize the right to effective consultation with indigenous peoples (free prior informed consent) for anything to work between the state’s federal agencies, museums, universities, etc. since this method is (supposed to be) upheld in international norms and declarations. This principle and right of IPs to be informed and relay their consent before anything is done to their traditional knowledge (in its tangible and intangible forms) must be upheld and is ESSENTIAL to administer when truly trying to effectively apply, implement, or reclaim the right to self-determination and autonomy (Graham and Wiessner 2011:413). This can be done through respectful (culturally-sensitive/appropriate) dialogue between cultures, consulting work of international human rights bodies for guidance on these matters to find a proper balance between indigenous collective practices and individual human rights norms (Graham and Wiessner 2011:411), create internal processes of decision making within groups of IPs which would increase the role of IPs within the government of the nation-state which they reside
(if they so choose) and to give rise to shared-governance (Article 5, UN-DRIP 2006; Graham and Wiessner 2011:412).

There are also Counter-Discursive Strategies by indigenous scholars and political theorists regarding the “reclaiming, rearticulating, and validation of indigenous ways of knowing and being as the foundation for the development of a range of structures and institutions that reflect indigenous aspirations for self-determination and self-governance” (Stewart-Harawira 2005:115). The promotion of indigenous customary laws and indigenous knowledge systems as viable forms of epistemologies and ontologies within international legal norms (Stewart-Harawira 2005:116), as not only counter-discourses “to resist the imposition of Eurocentric agendas” (Stewart-Harawira 2005:116), but also provide an alternative strategy to the “development of new international legal mechanisms for IPs involving ongoing mediation of competing ideologies and aspirations of states and IPs” (Stewart-Harawira 2005:133). The challenge in studying sacred cultural property and IPs’ rights to manage, protect, and preserve their cultural properties for future generations is that it is an exercise that provokes the legitimacy and predominance of state sovereignty, by articulating aboriginal or indigenous sovereignty. It is not a question on who gets to own and manage properties, but why and how we need to preserve and protect indigenous heritage for future generations.

This study utilizes critical and indigenous research methodologies because it is dealing with specifically with indigenous/traditional knowledge – especially, since the aim is to protect and preserve indigenous heritage. The use of a critical and indigenous research methodology or framework emphasizes the importance of traditional/indigenous knowledge for all people and its capacity to “solve contemporary problems and address
Eurocentric biases” (Battiste 2008:498) by outlining how traditional knowledge has been misused and misappropriated; thereby, further endangering the lives of IPs as an integral and blatant human security issue. The major discord between the three legal systems outlined in legal pluralism is that western jurisprudence is based on the promotion of individual human rights of ownership while simultaneously allowing precedence of sovereign rights of states to own and manage properties within the state’s territory. This is in complete clash with customary laws of IPs to protect and preserve cultural properties which are based on collective rights of ICCs – a collective right as a specific indigenous community to protect and preserve heritage, and not claim rights to individually own sacred properties.
Conceptual and Theoretical Framework

As stated earlier, the use of a critical and indigenous research methodology or framework emphasizes the importance of traditional/indigenous knowledge for all people in its capacity to “solve contemporary problems and address Eurocentric biases” (Battiste 2008: 498). Specifically, this study emphasizes the perspectives, knowledge, and experiences of indigenous elders and outlines the contentious issues on how indigenous/traditional knowledge (i.e. sacred properties) has been misused and misappropriated and the complexities that surround the pursuit to protect, preserve, and pass on traditional knowledge to the next generations. Legal pluralism explains the phenomenon of protection and preservation of sacred properties by indigenous communities and their customary laws that guide the management of these sacred properties, amidst the federal laws which also provision the same objectives. The interplay between these multiple sets of jurisprudence and the contemporary political, cultural, and socio-economic complexities that indigenous communities are facing are endangering the attainment of IPs’ human rights that are stipulated in international declarations and covenants (see Figure 3.2).

This research is organized by a critical and indigenous theoretical framework (see Figure 3.1) and a conceptual framework (see Figure 3.2) which consolidates this phenomenon in legal pluralism. Legal pluralism is used as the social phenomenon that regulates the protection and preservation of sacred cultural properties of ICCs (the independent variable) which will be discussed through the dependent variables – the
sacred Omaha (medicine) bundle and sacred Ifugao bulul. The perceptions, knowledge and experiences of Omaha and Ifugao elders on securing their rights to protect and preserve their sacred bundle and bulul are the intervening variables. The critical and indigenous methodology aims to decolonize and highlight the indigenous world view on current jurisprudence regarding their sacred cultural properties; through the use of tribal authorities’ perceptions on protecting and preserving their sacred properties vis-à-vis federal laws on protection and preservation and international laws on indigenous peoples’ collective and human rights.

![Theoretical Framework and Methodology](image)

**Figure 3.1.** Theoretical Framework of study with independent, dependent, and intervening variables. The red arrows signify the results of the study. (Created by author)

The critical and indigenous theoretical framework allows for an analyses which discuss the reality and contentious issues that surround legal pluralism’s implications to
indigenous peoples’ collective and human rights. I use a critical and indigenous methodology through critical discourse analyses which highlights the Omaha and Ifugao views, experiences, and knowledge whose ICCs created these sacred properties; and by doing so, illuminate the contradictions of customary, federal, and international jurisprudence that aim to protect and preserving sacred properties. The data obtained from the perspectives, knowledge, and experiences of Omaha and Ifugao elders will be used to answer why IPs’ rights to self-determination, autonomy and cultural integrity (i.e. human rights declared in international jurisprudence) to protect and preserve their sacred properties are unattained. The results of this research prove that IP rights are unattained because of the lack of addressing current political, cultural, and socio-economic issues that ICCs face in lieu of revitalizing their cultural heritage.

Specifically, the reality of legal pluralism - the conflict and competition within the realms of international, federal, and customary laws which govern the management of sacred cultural properties – is specified as the independent variable in this study. Figure 3.2 displays how legal pluralism is conceptually established in this study – the diverse bodies of law originate from mutually distinct political actors that implement alternative provisions of social norms expressed in the official/state law, indigenous/customary law, and legal rules and postulates/ international law. Conflict between these different legal systems arises from their competition for adherence by the inhabitants of the same socio-political space (i.e. those with sacred Omaha medicine bundles and Ifugao bululs) that “choose” which body of law they follow to protect and preserve their sacred cultural property. The nature and reality of legal pluralism relays the major discord between the state legislation and customary laws in that western/federal jurisprudence is based on the
promotion of individual human rights of ownership while simultaneously allowing precedence of sovereign rights of states to own and manage properties within the state’s territory. This directly clashes with customary laws of IPs to protect and preserve cultural properties which are based on collective rights of ICCs.

Critical theory will be utilized through critical discourse analyses of legal pluralism as a social phenomenon – describing ethnographic data, written federal laws, and international laws that specifically cater to protecting and preserving sacred properties. The red arrows in Figure 3.1 signify that through the combination of critical and indigenous methodologies, this study provides a treatise to the contentious issues and perspectives surrounding the protection and preservation of sacred properties and how this affects the actual attainment of indigenous peoples’ (IPs) collective and human rights.
The sources of data of this study are mainly written laws (federal - NAGPRA 1990 and PD 374, and international - UN-DRIP and ICESCR), ethnographic data on the Omaha sacred (medicine) bundle and Ifugao sacred bulul, and interviews with Omaha and Ifugao elders/community members (see Table 3.1) regarding the management of these sacred properties. This information/discourse will be collected and analyzed following a critical and indigenous research methodology that operationalizes the variables discussed (Figure 3.1) in three major themes. First, the political complexities are discussed - the concept of these ICCs’ sovereign rights is contested due to the pre-
emptive nature of federal laws to predominate and force adherence of the citizens within its territory. Secondly, the cultural complexities are described – an analyses of how federal and international laws disregards the continuous struggle of IPs’ to utilize customary laws when protecting and preserving their sacred cultural properties (i.e. international and federal laws are not always culturally-appropriate and sensitive to the experiences and diversity of ICCs). Lastly, the socio-economic complexities of this study advocates for the need to address and re-solve pertinent socio-economic issues that ICCs forbear whilst persevering to protect and preserve indigenous knowledge in its tangible and intangible forms.

Authorities from the National Museum of the Philippines and Repatriation Coordinator of the National Museum of the American Indian (under the Smithsonian Institute) who implement or adhere to federal/state laws were also interviewed regarding their interpretation and process of implementing federal law (see Table 3.1). Data is presented in the context of legal pluralism’s political, cultural, and socio-economic complexities and implications on the pursuit to protect and preserve the sacred Omaha (medicine) bundle and Ifugao bulul through the experiences of tribal elders/authorities’ experiences, knowledge, and perspectives. Results of the study prove the lack of an existing comprehensive legal mechanism to protect and preserve the Omaha sacred (medicine) bundle and sacred Ifugao bulul because all forms of jurisprudence do not address these complexities, nor the individual-pursuits of indigenous peoples on a community level. This implication directly reflects reasons indigenous people’s rights to self-determination, autonomy, and cultural integrity continues to be unattained.
<table>
<thead>
<tr>
<th>Name of Informant</th>
<th>Role of Informant</th>
<th>Date of Interview</th>
<th>Place of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bautista, Giovanni</td>
<td>Head of the Research Section of the Cultural Properties Division - National Museum of the Philippines</td>
<td>September 18, 2006</td>
<td>National Museum of the Philippines – Manila, Philippines</td>
</tr>
<tr>
<td>Dong-I Nakake, Joseph</td>
<td>Munpaot/Wood Carver</td>
<td>Sept. 3-4, 2006</td>
<td>Hapao, Ifugao</td>
</tr>
<tr>
<td>Dulnuan, Kalingayan</td>
<td>Mumbaki/ Ifugao Shaman</td>
<td>August 6-7, 2006</td>
<td>Kiangan, Ifugao</td>
</tr>
<tr>
<td>Gano, Teofilo</td>
<td>Mumbaki/ Ifugao Shaman</td>
<td>Sept. 3-4, 2006</td>
<td>Hapao, Ifugao</td>
</tr>
<tr>
<td>Habiling, Junior</td>
<td>Munpaot/Wood Carver</td>
<td>Sept. 3-4, 2006</td>
<td>Hapao, Ifugao</td>
</tr>
<tr>
<td>Inuguidan, Jose</td>
<td>Mumbaki/ Ifugao Shaman</td>
<td>August 6-7, 2006</td>
<td>Tuplac- Kiangan, Ifugao</td>
</tr>
<tr>
<td>Lovejoy, Wilford</td>
<td>Ordained minister in Native American Church for 40 years; Omaha elder</td>
<td>February 26, 2012</td>
<td>Omaha Reservation – Macy, Nebraska</td>
</tr>
<tr>
<td>Palatik, Indopyah</td>
<td>Mumbaki/ Ifugao Shaman</td>
<td>August 6-7, 2006</td>
<td>Kiangan, Ifugao</td>
</tr>
<tr>
<td>Parker, Mitchell “Chiefie”</td>
<td>Grandson of Charlie Parker (last medicine man on Omaha Reservation); ordained minister in Native American Church; former Omaha Tribal Council Chairman</td>
<td>February 26, 2012</td>
<td>Omaha Reservation – Macy, Nebraska</td>
</tr>
<tr>
<td>White, Rufus and Maxine</td>
<td>Both considered Omaha elders; Mr. White is an Ordained minister in Native American Church</td>
<td>February 26, 2012</td>
<td>Omaha Reservation – Macy, Nebraska</td>
</tr>
<tr>
<td>Wolfe Jr., Clifford</td>
<td>Ordained minister in Native American Church; previously on Omaha Tribal Council</td>
<td>October 23, 2011</td>
<td>Omaha Reservation – Macy, Nebraska</td>
</tr>
</tbody>
</table>
Operationalization of the Critical and Indigenous Research Methodology

There is no singular archetype to systematically conduct critical and indigenous research, unlike other social science theories and paradigms. Liberalism, institutionalization, and realist perspectives which are inherent in western jurisprudence (i.e. international and federal law) does not utilize critical and indigenous research methodologies. But since we are dealing with anything that pertains to indigenous/traditional knowledge whose aim is to protect and preserve indigenous heritage, there is an apparent need to utilize indigenous ontology and epistemology to ‘localize’ theoretical approaches by describing indigenous knowledge systems and contemporary issues by indigenous peoples themselves. This is “the modality through which the emancipatory goal of critical theory in a specific historical, political and social context is practiced” (Smith 1999:186). In this research, each indigenous ontological and epistemological worldview that is elaborated by the treatises of the Omaha and Ifugao elders differs from their own experiences, knowledge and perspectives regarding sacred properties; as well as those that implement federal and international jurisprudence.

Following Smith’s description of critical and indigenous research (1999), the goal of this research is to describe the local indigenous community’s historical, political and social issues by indigenous peoples themselves as a form of engagement in emancipatory struggles (Smith 1999:186) to protect and preserve their cultural heritage. The importance of traditional/indigenous knowledge for all people is that it outlines how traditional knowledge has been misused and misappropriated; and that the knowledge, views, and experiences of IPs provides for a ‘local theoretical positioning’ (Smith 1999:186). The narratives of Omaha and Ifugao elders will guide the discussion of the data and critically
analyze the discourse surrounding the protection and preservation of sacred cultural properties in the next chapter.
CHAPTER 4: DATA PRESENTATION AND ANALYSES

As stated in the previous chapter, the data will be presented and analyzed by following three major themes within a critical and indigenous research methodology. First, the political complexities are discussed - the concept of these ICCs’ sovereign rights is contested due to the pre-emptive nature of federal laws to predominate and force adherence of the citizens within its territory. Secondly, the cultural complexities are described – an analyses of how federal and international laws disregards the continuous struggle of IPs’ to utilize customary laws when protecting and preserving their sacred cultural properties (i.e. international and federal laws are not always culturally-appropriate and sensitive to the knowledge, experiences, and diversity of ICCs). Lastly, the socio-economic complexities of this study advocates for the need to address and resolve pertinent community issues like lack of employment, health, cultural stigma to indigenous “old ways,” etc. that ICCs forbear while persevering to protect and preserve indigenous knowledge in its tangible and intangible forms.

Within each theme, the knowledge, perspectives, and experiences of Ifugao and Omaha elders/tribal authorities will be discussed. Their narratives will be supplemented with the perspectives of authorities from the National Museum of the Philippines and Repatriation Coordinator of the National Museum of the American Indian or NMAI (under the Smithsonian Institute) who implement federal/state laws. Results of the study prove the lack of an existing comprehensive legal mechanism to protect and preserve the Omaha sacred (medicine) bundle and sacred Ifugao bulul because all forms of jurisprudence do not address these complexities, nor the individual-pursuits of indigenous
peoples on a community level. This implication directly reflects reasons indigenous people’s rights to self-determination, autonomy, and cultural integrity continues to be unattained; but that proactive pursuits of individuals in ICCs are dynamically changing this seemingly “static” legal pluralism situation.

- **POLITICAL COMPLEXITIES:** Legal pluralism applied in the contested concept of ICCs’ sovereign rights due to the preeminence of state sovereignty

The suggestions and insights of the Ifugao *mumbaki* or shaman were asked in terms of national and international laws that cater to the preservation and protection of Ifugao cultural properties like the sacred Ifugao bulul. They admitted that as *mumbaki*, they cannot control what people may or may not do to deteriorate, bastardize, protect, or preserve their culture. They inform and remind people in their community who do sell bululs which have gone through rituals (which I will refer to as ritual bululs) or are planning to, that there are consequences that may happen - bad luck will come to you and you will be ostracized by the community. Those who sell bululs that were carved to be sold in the woodcarving industry (or retail bululs) are permitted to by those in the community because they are not selling the “real” bulul (those that have gone through *baki*). These retail bululs are just *tag-tagu* or human figures and is neither good nor bad. Other *mumbaki* believe that it is useless to sell retail bululs in the woodcarving industry as souvenirs; stating that these retailers carve bululs which are not for their true purpose which is to undergo *baki* in order to heal a sick person, ward off enemies, or protect the rice granary. Those who create bululs for money is in total discord with Ifugao customary laws.
According to the *mumbaki* interviewed, the passing on of heritage to the next generation is what is important in their customary laws; and that the Ifugao themselves do not expect that the federal laws will be created to effectively uphold their rights or protect their heritage. Indopyah Palatik suggests that the importance of pursuing a legitimate course of action in protecting Ifugao culture is to start within ourselves and understand the importance of our heritage –

…There are no solutions because there are no crises. People will always come back to where they came from and what they believe in. We cannot depend on the laws to help us. We will understand soon enough that what is truly important is our heritage [whether or not the laws uphold that].

(Indopyah Palatik, personal communication 2006)

Interviews were conducted with museum members of the panel of experts from the National Museum of the Philippines, namely Engr. Orlando Abinion (October 2006) - Curator I of the Conservation and Laboratory Division, and Giovanni G. Bautista (September 2006) - Head of the Research Section of the Cultural Properties Division. Questions were centered on exploring the possibility of the sacred Ifugao bulul being categorized as a ‘national cultural treasure’ and not as an ‘important cultural property’ (which it is currently registered as). The informants stated that the bulul is easily replicable and not considered a ‘national cultural treasure’ because of the “easiness” in acquiring it. They implied that the amount of people who own retail and ritual bululs are immeasurable simply because the bulul is “a generic item.” They deemed it useless to protect the sacred Ifugao bulul as a ‘national cultural treasure’ because it is already being protected as an ‘important cultural property.’ They emphasize that ‘national cultural treasures’ are unique in the sense that they cannot be replicated easily or at all; and the
bulul can. Some examples of ‘national cultural treasures’ that are deemed unique under this law because of the inability to replicate them are the Hungduan rice terraces (see Figure 4.1), the Tabon Cave Complex (see Figure 4.2), and the Roman Catholic Churches of Paoay and Bacarra in Ilocos Norte (see Figure 4.2), etc. The fact that the Ifugao bulul can be created and re-created either through baki or for commercial purposes does not deem it unique and cannot be protected as a ‘national cultural treasure’ under this law, according to the National Museum informants.

Figure 4.2 (Above) The Tabon Cave Complex of Lipuun Point, Quezon in Palawan Province (Philippines) and (Below) the Bacarra Roman Catholic Church with ‘acrobatic bell tower.’ Both are considered ‘national cultural treasures’ (Source: Palawan Council for Sustainable Development Photo Gallery, http://www.pcsd.ph/photo_gallery/wonders/Tabon, accessed April 9, 2012; Museo Ilocos Norte ‘Bacarra,’ http://www.museoilocosnorte.com/index, accessed April 9, 2012).

If someone hypothetically applies for the ritual bulul’s protection under this law as a national cultural treasure, the respondents from the National Museum very much doubted that the panel of experts would allow the title of a national cultural treasure be given to the Ifugao bulul on the simple grounds that it is NOT “one-of-a-kind” and can easily be acquired. The dilemma lies in the fact that while the Ifugao bulul is being replicated for retail sake or ritual bululs are being sold to antique dealers and foreign museums, NO LAWS are controlling this allocation. Unlike NAGPRA in the US, the PD 374 is not a law provisioning repatriation - it simply delineates the standards of protection and preservation among cultural objects deemed ‘important cultural properties’ as opposed to ‘national cultural treasures.’ The value of the Ifugao bulul will be left to the scrutiny of the National Museum’s panel of experts and therefore implies that the provisions of this law does not protect and preserve the sacred Ifugao bulul because it is not a ‘national cultural treasure.’

Instead, the respondents from the National Museum suggested that the sacred Ifugao bulul has been registered under individual possession as a cultural property. A
cultural property is any material culture that has been authenticated by the curators of the National Museum and registers that individual who has applied for their bulul to be a acknowledged as a cultural property as the legal owner under this law. The problem with defining cultural property this way is that it can only be registered piece-by-piece in order for the curators to authenticate it as being a true cultural property (by a fee paid by the registrant to have it authenticated). The Ifugao bululs that have been registered and given the title of a cultural property only represent the rights of that individual who registered to have it authenticated, and does not grant these rights to the Ifugao people as the true owners of the Ifugao bulul collectively (i.e. collective rights of IPs to self-determination, autonomy and cultural integrity). This law does not account for the collective rights of the Ifugao as an ICC to represent the “ownership” of bululs; nor are applicants registering bululs required to “prove” their cultural affiliation (i.e. Ifugao identity). Since the Ifugao bulul has been replicated and sold as an antique, souvenir, or aesthetic, under PD 37, the authentication of bululs lies solely on the decisions and scrutiny of National Museum (of the Philippines) divisions. Engr. Orlando Abinion describes his authentication process of Ifugao bululs (since he has previously authenticated bululs to those who have filed for registration under the National Museum) as dealing with:

a) Sourcing: knowing where the bulul came from by contacting the source and if the design applies to the historically designated area that specializes in that distinct design;

b) Physical analysis of/ on wood: start with a comparative analysis on bululs, conduct a tree ring dating, contact College of Forestry in Los Banos that identifies the wood used; and

c) Craftsmanship: bululs are usually rough in design and not smoothed or polished, one can also delineate that it should not have gone through modern machinery.
The paradox I analyze is that the Cultural Properties Act does not deem the Ifugao bulul as a national cultural treasure because of its replication and commercialization; yet it does not wish to protect it as a national cultural treasure even if it can be registered by the same law as a cultural property. The only reason there is a need to authenticate Ifugao bululs is because they are being commercialized and this is exactly what the Cultural Properties Law should be dealing with; NOT how to subjectively define which is more important of a law to protect - a national cultural treasure or a cultural property. The respondents of the National Museum admitted that the Cultural Properties Law is lax in protecting historically valuable cultural items because there are no specific implementing rules or procedures (they are presently very general). Leaving the decision of the “value” of a cultural material to the Panel of Experts is highly subjective and does not account for the collaboration and authenticating knowledge of the ICCs it derived from. These museum experts would be measuring the immeasurable intrinsic value of a physical item which is highly subjective and did not take into account what this sacred property symbolizes and functions as in the ICC it had derived from.

As stated earlier in this section with the *mumbaki* treatises, the community that created the piece (i.e. the Ifugao created the bulul) felt that value in why it needed to be created – it was never created to be sold nor placed in museums. Furthermore, there are no specific procedures spelled out in the law (P.D. 374) on how the panels of experts were to decide if an item can be protected as a national cultural treasure (only a mention that it would be in the “scrutiny” of these experts). There is a general lack of awareness of most Filipino people on what it exactly means to preserve or protect our culture and why it is so important. That’s why the suggestion of the respondents of the National
Museum is that awareness is the first solution to proper implementation of the preservation and protection of our culture by incorporating these topics in education systems – especially on how we should preserve our cultural heritage. The museum informants emphasized that this cultural awareness should start in primary education (i.e. elementary school) and requiring that all teachers are properly trained in the subject of cultural heritage. Museum authorities expressed that only after a proper education on the importance of cultural heritage can our laws lay down effective implementing rules and guidelines.

Based on the interviews conducted on October 2011 on the Omaha reservation (Macy, Nebraska) with Mr. Clifford Wolfe Jr. - an Omaha elder, ordained minister at the Native American Church/’Road Man,’ and past Omaha Tribal Councilman- he states that most Native Americans ask and feel that they should not have to adhere to the provisions set by NAGPRA because it is their indigenous sacred cultural property. Native American self-governance and cultural identity, like other indigenous peoples, predate the concept of citizenship and state legislation which has been historically undermined due to colonization, subjugation, and basically that ‘hidden portion’ of 19th and 20th century US history where Native Americans were forced to sign treaties that sold their land to the US government for settler populations (i.e. Doctrine of Discovery), obliged to move to reservations, became dependent on government rations for basic services, coerced to send their children to boarding schools, and basically compelled to assimilate to the US settler/colonizer’s lifestyle. Since then, the reality on the reservation is that Native
Americans live within the US state territory and are considered US citizens, and as citizens they have *rights which are provisioned by US federal laws.*

Native Americans must *prove* their tribal affiliation to the standards set by US federal agencies in order to be issued a tribal affiliation identification card, which they present in order to be eligible for specific government “benefits.” Mr. Wolfe, Jr. showed me his tribal ID card and asked if the Ifugao in the Philippines needed to prove their tribal identity in the same way (i.e. blood quantum). I told him they/we did not. We do not have federal laws like the US Indian Blood Laws in the Philippines that require IPs within the state to *prove* they are of indigenous descent. I told him that I personally felt that following federal provisions to prove your indigeneity is a prime example of the preeminence of state sovereignty over tribal sovereignty and totally disregards the collective rights of IPs to self-determination, autonomy, and cultural integrity (as stipulated in the UN-DRIP and ICESCR). I reflected the question back to him and asked – “how do you feel about having to prove you are Native in this way?” He chuckled and said, “if this is the way I gotta show that I’m Indian so that I can go to the hospital [i.e. get services from the tribal clinics], then that’s it.”

Similar to the proving of cultural affiliation among Native Americans (NAs) through federal provisions are the standards set by NAGPRA which are both enabling and limiting Native Americans to have their sacred items or ancestor’s remains identified and returned to their community from federal agencies. It *enables* Native Americans to reclaim their sacred properties which has been controlled and managed by federal

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10 Blood Quantum Laws or Indian Blood Laws in the US are a means to define Native American membership in a tribe based on the degree of ancestry from a specific tribe. Under these laws, an Omaha must prove to be at least $\frac{1}{4}$ or more of tribal descent in order to be eligible for financial, health, sales of land, or other benefits under the Omaha tribe (Spruhan 2006).
agencies (which should not have had it in the first place) to have it returned to their community. But conversely, it limits the ways Native Americans could do this by setting up procedures, provisions, and consultation mechanisms that NA’s must adhere to before reclaiming their sacred items. In this process, NAGPRA requires federal agencies and museums to provide inventories, descriptions, and possible cultural affiliations of their holdings and to send these out to the tribes from which it may have originated. The NAGPRA Review Committee does not travel to each federal agency to “check” their inventory. “Instead, representatives of tribes must travel often great distances to look at the collections of an institution that is preparing an inventory…so they can see the condition of the possible remains of their ancestor and make more detailed identification of the associated objects” (Fine-Dare 2002:121).

It is along these complex issues of the repatriation process that I interviewed Mr. Terry Snowball at the NMAI in Washington DC on March 26, 2012. Mr. Snowball is the repatriation coordinator at the National Museum of the American Indian’s (NMAI) Cultural Resources Center (under the Smithsonian Institute in Suitland, Maryland). As a Potawatomi and Wisconsin Ho-Chunk and employee of the Smithsonian since 1996, he works with tribes from North and South America to return human remains and sacred objects from the museum’s collection. I asked him about the nature of his job – the challenges and inconsistencies of the policies and federal institutions, and how he incorporates his own Native upbringing and sensitivities when working with ICCs in repatriation. He states that since he grew up on the reservation and continues to practice the traditions he was taught, he understands that the nature of his job (i.e. dealing with human remains and sacred objects) is basically “taboo.” But he, as a Native repatriation
coordinator for the NMAI, expressed that his intention is to be a steward of culture; and
to give back the items to communities who have a clear, personal, cultural, spiritual, etc.
reason(s) for having their ancestor remains and/or sacred objects returned. He stated how
his own family did not originally accept the “conditions” of his job, but that they
eventually realized that his sincere intention was to help Native communities be reunited
with their deceased ancestors and sacred heirlooms.

Mr. Snowball is currently working on two cases of repatriation, one of which is
with the Makah Tribe of Neah Bay (Olympic Peninsula, Washington state). This case
includes 34 sacred objects originally acquired between 1920-1921 which a one Mr. T. T.
Waterman had sold to [the] Heye [collection] which had over 800,000 objects from North
and South America, including the Caribbean. Over the years the Heye collection was
eventually handed over to the state of New York (NY). In the 1970s, there were efforts to
increase the revenues of NY museums which lead to the sale of some “real” objects in the
museum shops. Mr. Snowball said these were “the stories during that time” and that
“there are poor records of the exact transactions that were conducted.” Often, his office
would receive a call from other agencies (which receive items from private or state
collections that someone is looking to auction) and they would recognize the
classification indentations on these objects or remains from a particular collection’s
inventory system. In the case of the Heye collection, number indentations in the objects
contained a prefix (two numbers in the front that signify an accession period) and suffix
(the four numbers in the end identifying the item number in that inventory system). His
office researches the ledgers of the collector (i.e. Heye archives) in order to trace the
history of the object and “objectively make a determination based on the information and
the evidence.” This information comes mainly from ethnographic reports, archaeological reports, etc. while simultaneously contacting and consulting with the Native community/communities to validate the data on the object(s) in question.

He states that “collaboration with Native communities is one of strongest emphasis of our curatorial review committee and our board [NMAI under the Smithsonian Institute]…because sometimes that information [from the Native communities] is not regarded as much as the academic [sources].” He emphasizes that though the NMAI is subject to the NAGPRA law, the NMAI Act which guides the repatriation process precedes NAGPRA law by one year (1989). In 1996, the NMAI Act was amended and adopted the categories in NAGPRA 1990 that were not originally in it; “but we cited that we would only use those categories and not necessarily embrace all those types of articles that accompanied it.” This statement implies that even when implementing the federal law, federal museums like the NMAI selectively follow its provisions and do not adhere to all the tenets of NAGPRA in its entirety. Mr. Snowball emphasizes that “we [NMAI] have separate policies [in the NMAI Act] for the same legislation [of NAGPRA].” This is an example of legal pluralism from within the federal laws by federal agencies who create their own policies within their institutions, and “adapt” to the federal law almost preferentially - as long as adhering to federal laws suits the policies the institution had already pre-established (not the other way around). Mr. Snowball says that the NMAI uses NAGPRA “to our discretion…when they are appropriate” and that the NMAI act standards are much more “relaxed” than NAGPRA.

He describes that NAGPRA highlights the “preponderance of evidence…and sometimes, I think in that respect, depending on the position of an institution or their
feelings about the type of information, they will argue or uphold those standards [which]
may be much too high to where a tribe is not able to demonstrate.” I agreed with Mr.
Snowball’s statement and we both cited the standards created in NAGPRA for a tribe to
prove cultural affiliation towards an object or remains; specifically, the process of
“proving” affiliation is culturally inappropriate for most tribes to adhere to. This is
because “proving” to be a “keeper” of a sacred object in a tribe was never dictated by
paper documents, but instead collectively acknowledged and a life-long commitment. Mr.
Snowball expanded this notion by expressing “in that sense, the older a remain is, the
more likely there is of more ascendants, and if you’re only consulting with one as
opposed to maybe a more collective [group]” then you might not be capturing all the data
needed to identify that object or remain. He says that tribes are now creating coalitions
and working groups to address those issues for themselves “saying that we have a shared
group identity or common cultural affiliation.” These coalitions approach institutions
who potentially have their ancestors’ remains (termed as culturally unidentified remains
in NAGPRA) and associated sacred objects. With this example we can see how Native
Americans (NAs) themselves are proactively utilizing their customary laws (i.e. oral
history, clanship, etc.); but more importantly they are asserting their collective/group
rights within the repatriation process provisioned by NAGPRA.

The emphasis here is the pursuit of NA coalitions who collectively act as
claimants to specific remains or objects through the NMAI act or through NAGPRA. As
stated in the previous sections, NAs spend their own time, money, and other resources in
order to process these claims for repatriation with federal agencies; but by acting as a
coalition, their case is reviewed by federal agencies much more strongly. Therefore, NAs
are constrained by the standards and procedures stipulated in federal laws, but are enabled to act and assert their collective rights to their cultural heritage items in order for these to be returned to the ICC. I asked Mr. Snowball that the existence of an established coalition in NA communities are an ideal when claiming to repatriate items, but what if these were not or have not yet been established? Mr. Snowball affirmed that there are some claimants who file repatriation cases individually, and also, there is the issue of tribes who are not yet “federally recognized” but would like to reclaim an object. NAGPRA only caters to federally recognized tribes; and that is where the NMAI act is different. He states that when an object is in question of being repatriated, his office starts consultation “in the forefront or from the beginning and give them disclosure” with as many tribes as possible, federally recognized or not, to validate data and have them be potential stakeholders in the repatriation of these objects and remains.

Usually, it is this process of implementing federal laws in regard to protection and preservation of cultural heritage that is met with resistance by many Native Americans (NAs). They assert that this federal law did not take into account IPs’ consent or incorporation of IPs’ customary laws and collective rights through their shared group identity in the management and implementation process. This is evident especially in NAGPRA and a clear example of the disregard of tribal sovereignty and the preeminence of state sovereignty. Native Americans must process repatriation claims of sacred properties through provisions and standards set by NAGPRA (i.e. must be a federally recognized tribe, the stipulations of legitimacy are outlined in federal law as well), which Mr. Terry Snowball reiterated were often standards much too high to be met by NA tribes. Furthermore, NAs have no say in the management of sacred properties by federal
agencies unless the NA tribes can prove their cultural affiliation with the sacred property or ancestral remains. The “proof” these NAs must provide are not essentially those that are in line with their customary laws and collective group identity rights, i.e. paper documentation of ancestral relationships and blood quantum requirements are bureaucratic processes of the state. Albeit in Omaha customary laws, you may have multiple kinship lines that are not solely based on blood-relations.

- CULTURAL COMPLEXITIES: Who is the “proper” authority to authenticate, protect, and preserve the Omaha bundles and Ifugao bululs?

The mumbaki or shamans and munpaot or woodcarvers interviewed in Kiangan and Hapao of Ifugao Province from August to September of 2006 justified the discourse regarding the authentication, protection, and preservation of the sacred Ifugao bulul. The mumbaki of Kiangan and Hapao have all described the importance of the bulul based on its use in Ifugao culture namely:

- They are sacred, they are used to heal sickness, attain a good harvest, and ward off enemies [Teofilo Gano, Hapao]

- Bulul is needed if someone is sick because the bulul’s presence with certain baki (or ritual) creates the power of the bulul to transfer the “bad” spirit from the sick person to the figure; therefore the significance of the bulul is that it has a binding power because the process of acquiring one requires the members of the family, the munhapud (the one that distinguishes what spirit is possessing the sick person), the munpaot (the woodcarver of the bulul), and other members of the community. The bulul
then becomes a guardian for that person and the family. [Jose Inuguidan, Kiangan]

- Bululs used in ceremonies like Kulpi (harvest or ani), for sickness, to guard the granary and terraces. The bugol is the spirit of the ancestors which is linawa or a good soul. Bululs are important in order to make a ritual successful. [Kalingayan Dulnuan, Kiangan]

- Bululs are used in sickness (upon knowing which spirit has “bitten” the sick person and if this spirit requires a bulul in order for that person to be healed), in special cases like harvest and botok (binding of rice stalk); without the bulul people would be sick, they would have a bad harvest, and they would have many natural and supernatural enemies; therefore it is essential especially to the kadangyan (wealthy class). [Indopyah Palatik, Kiangan]

According to these descriptions, the main use of the bulul is based on the customary laws (i.e. beliefs, mores, rituals, practices, etc.) to protect the rice granary, to heal a sick person, and to be a guardian from pests and enemies. Most importantly, the bulul “binds” the keeper to the community through the help of the mumbaki, munpaot, and munhapud. The various mumbaki I had interviewed each pointed out that the bulul is important because the process of attaining a bulul is long, tedious, “expensive,” and requires the assistance of the mumbaki, munpaot, and munhapud in the community. Therefore, the bulul itself is a product of these efforts culminating in how the community wishes to protect one another as the bulul does (the bulul being a guardian of the granary and/or rice terraces as well as a guardian of bad spirits that can make one sick).
As stated in the previous sections, according to Ifugao customary laws, a bulul can only be “real” or “sacred” if it has undergone the process of baki or rituals. Jose Inuguidan and Kalingayan Dulnuan stated that through performing certain rituals by the mumbaki, the bulul has the power to transfer the spirit or bugol from the sick person to the carved wooden figure’s good spirit or linawa. Bululs are integral to a successful ritual, such as in the botok or binding of the rice stalk. In this ritual, mumbaki Indopyah Palatik described that the bulul is needed to ensure a healthy harvest of rice and protects the people consuming the harvest from natural and supernatural enemies. Since extensive rituals are required to have a bulul, it is usually the wealthy class or kadangyan who rely on the bulul to protect their harvest because their harvest is also their wealth in the community. They (the kadangyan or wealthy class) must adhere to the requirements of the baki or rituals such as the sacrificing of animals and community feasts which may last for days. Failure to abide to these baki requirements would yield an unsuccessful “creation” of a bulul and its powers to address the request of healing the sick, bountiful harvest, and/or guarding the rice granary.

The physical characteristics to authenticate a ritual bulul from a retail bulul is that it is usually made of Narra or Udyaw wood, adhered by Ifugao woodcarvers or munpaot as the strongest type of wood because it does not easily decompose. It is also believed that Narra came directly from Kabunyan or God of the Sky. Bululs are only about two to three feet tall and are usually not finely polished. Other than that, the only way to know if a bulul is authentic or not is by tracing the history of keeper(s) of the bulul. The “keepers” are acknowledged by the community since they had witnessed the rituals revolving around its creation and use. The mumbaki interviewed emphasized that if those
who had a bulul were healed or did not have a bad harvest, the community then acknowledged the legitimacy of their bulul. Another characteristic is that the bulul has traces of *Ni dilo-dilo* or chicken blood because the *bugol* or bulul spirit (in the form of a deity or ancestral spirit) is created and/or re-energized by rituals bathing it in chicken blood. The *mumbaki* or shaman interviewed described that the powers of the bulul cannot be changed because every bulul has a name, according to which *bugol* or spirit is inside it (i.e., *Bulul an Tinaynanad Dayya An Pumihil, Bulul mid Lagud An Natul-ung, Bulul mid Binuyyok, etc.*) which reflects which place it came from.

Therefore, according to Ifugao customary laws, the keepers of a bulul are those who had sought the assistance of *mumbaki, munpaot,* and *munhapud* from the community while the whole community bears witness to the “creation” of the bululs during *baki* or rituals. In a way, everyone in the community legitimizes and attests who are bulul keepers because they were part of the process of its “creation.” This communal nature of adhering to Ifugao customary laws is a direct reflection of the collective aspect of “rights” within the Ifugao community.

The interviews with Omaha elders also brought out an interesting aspect of security in upholding customary laws when wanting to protect and preserve sacred properties like the sacred (medicine) bundle. Mr. Clifford Wolfe Jr. referenced the sacred pole as an example of an Omaha sacred object but is in the curatorship of the Nebraska State Historical Society (NSHS) and not with the Omaha community. Mr. Wolfe Jr. elaborated on the reasons for the pole’s placement and condition was due to a lack of anyone in the community who knows how to protect and preserve it according to Omaha
customs (customary law or “old ways”). All Omaha elders (Mr. Clifford Wolfe Jr., Mr. Mitchell Parker, Mr. Wilford Lovejoy, and Mr. Rufus White) emphasized that they were brought up with the mores that only medicine men who were keepers of sacred (medicine) bundles (used in rituals only they could perform) were the designated members in the community whose life-long responsibility was to protect, preserve, and pass the knowledge of these sacred properties to those who would be their successors.

All the Omaha elders I talked to told me that to be a medicine man meant that you would be willing to take on this life-long responsibility and role in the community by strictly following the “old ways.” This involved not only knowing the proper rituals it would be used in, but also making sure it was cared and stored properly (i.e. sacred bundles are hung above or near the fireplace hearth and cannot be ‘disturbed’ by having small children run around or making loud noise around it). They reiterated that as a bundle keeper, you were living the “life” ascribed to a medicine man. This meant that the community expected you to not have any vices or a bad reputation, and to have knowledge of the customs according to how the ancestors would have administered them. Failure to comply with these mores (which provisioned the role of a medicine man and those that non-medicine men community members should not do) or improper care and/or use of sacred objects would lead to ‘bad consequences’ that would not only harm you, but would affect your family and entire community. Mr. Clifford Wolfe Jr. emphasized that sacred objects like the sacred pole not being with the Omaha was foretelling of a bad consequence for the entire Omaha people. This is because according to Omaha customs, the pole represents the Omaha collective identity and is a living being that is supposed to bind the Omaha together. Interestingly, Mr. Wolfe Jr. stated that it is
the lack of anyone in the community being able to fulfill the role, responsibility, and life of a medicine man/bundle keeper that the tribal council has not reclaimed the pole from the NSHS. In other words, there are currently no living medicine men in the Omaha community/reservation which the Omaha would be secured and assured in knowing was protecting and preserving it ‘properly’ (i.e. according to Omaha customary law).

The Omaha elders expressed that the last living medicine man on the reservation, Charlie Parker, was not able to pass on the indigenous knowledge to an apprentice before he died in the late 1980s. This is because no one during that time was willing to take up that life-long responsibility to be a medicine man. Mr. Wolfe Jr., Mr. Mitchell Parker (who is a grandson of Mr. Charlie Parker), Mr. Wilford Lovejoy, and Mr. Rufus White relented that before Charlie Parker died, he built a cinder block infrastructure on his property to hold sacred properties that he has (including medicine bundles) and invited people from the community to place their sacred properties they received from their relatives but could not ‘properly’ care for, be placed in that infrastructure. The reason and mentality behind these actions was that these items would at least be placed and locked away from anyone who would try to steal or misuse them.

I spoke with Mrs. Maxine White (Mr. Rufus White’s wife) on February 26, 2011 at the Omaha Reservation and she told me that she personally had one sacred pack as an heirloom from her father stored in Charlie Parker’s residence. She was tasked to care for their family’s pack since none of her brothers had adhered to the responsibility to do so.\(^{11}\) Mrs. White consulted with Emily Parker (Charlie Parker’s daughter) about storing her

\(^{11}\) According to Omaha mores, it is the males in the family that must care for sacred heirloom objects. But from this example, these customs are dynamically changing to having female kin care for sacred objects. More and more Omaha families have female “caretakers” of sacred family heirlooms, or basically anyone may be chosen to care for these items, if they prove responsible and committed to this task.
father’s pack on Charlie Parker’s residence (which Emily was managing after her father had passed). Mrs. White adhered to the proper rituals (i.e. she brought groceries/meat, tobacco, etc. to Emily) and the two women unloaded the pack with all its sacred contents, prayed over it, and told Wakonda/the Creator what their intentions were with the pack (i.e. leave it in Charlie Parker’s cinderblock infrastructure), closed the pack, and left it with Emily. When Emily had died, it was her nephews who conducted her memorial – not her own children. Later, the community found out that Emily’s son and son-in-law had dug out the cinderblock storage facility with all the families’ sacred items and buried it underground. Mrs. Maxine White emphasized with tears in her eyes that they did this without the consent of the tribe/community on the reservation. “Many people were hurt [by what they did],” stated Mrs. White. The lack of community consent on the management of these sacred items on the Parker residence is a highly sensitive issue for people like Mrs. White who understood her responsibility to her family to care for the heirloom sacred objects. Since Charlie Parker has passed away, no one lives on his property and the items buried underground remain unprotected.

Mr. Mitchell Parker, a ‘Road Man’ and former Omaha Tribal Council Chairman in 2007, told me how he was raised by his grandmother who strictly enforced upon him to not go near the residence of Charlie Parker (his grandfather); because playing around it or tampering with these sacred properties would lead to “very bad consequences.” He emphasized that he grew up even being a little scared of Charlie Parker because of his role as a medicine man in the community. Mr. Mitchell Parker was brought up to respect and not question his elders, especially in regard to anything that dealt with sacred things. His elders stressed that this knowledge was only for the ‘medicine men.’ Conversely, Mr.
Rufus White, also a ‘Road Man,’ was encouraged by his sister to use and care for their family’s sacred items. His own uncles and relatives asked him to help them by conducting ceremonies with the sacred objects he had inherited from his father. He was also raised by his grandmother and learned some of the “old ways” from her.

According to Mr. White, learning the language was the most important aspect of Omaha culture he wants to pass on to the next generations. He stated that when he was growing up, the elders would make sure you were singing the ceremonial songs correctly (i.e. during powwow if you were not singing the songs correctly, the elders would take the drum from you). “But now,” he expressed, “no one in the community is here to correct young people…it needs meaning.” He emphasized how he understood this life-long responsibility because “with modern ways coming in, we still gotta hang on to our traditions…[and even if] you only got what you remember your grandparents teaching you [the old ways], you gotta use it the best way you can.” He and his wife know they have a responsibility as elders in the community since “people will come to you…during birthdays, deaths, [concerns about] relatives…and you gotta help each other during times of hardship.” He reiterated how all the medicine men are now “gone” and “now we have to take care of those community things…we need someone to sit down and teach the kids…[even if its] making moccasins, but no one knows how to do that…to teach that..We need young men to carry [this] on since we are getting old.” The knowledge, perspectives and experiences of Mr. Rufus and Maxine White relay how now, it is up to an individual to proactively engage themselves in learning “Omaha ways.” As they stated in the previous sections, these Omaha elders expressed that no one in the community will go up to you and expect you to help the community with your skills – you must seek this
knowledge yourself, and use what you learned to dedicate, share, and help your community.

Mr. Wilford Lovejoy, also a ‘Road Man’ talked to me on February 26, 2012 in his home on the Omaha Reservation. He relayed how he was previously married (his first wife had died, now he is re-married) to a Native woman, Emily Dick Lovejoy, whose parents (George Dick and Alice Grant Dick) had a sacred (medicine) bundle or pack from Oklahoma, as well as sacred “instruments” and “medicine” used by Emily’s father during his days as a ‘road man.’ He said that his late wife Emily told him that many of their relatives would come to her parents and “only her mother and father were authorized to use that medicine…to touch it and what not…but it’s still there, the medicine is still there...it’s in like an old trunk that they put it in.” He still goes back to that site where that “medicine” is placed in order to “protect it” with the instruments he uses from the Native American church. He conducts the Sweat Lodge ceremonies and “clears out the yard” or land of the sacred site (i.e. pulling weeds out, etc.). So even when experienced heart problems and had to manage his diabetes, Emily’s brother (who is also authorized to manage the sacred properties) would “clear the fields and carry the big rocks.”

Mr. Lovejoy continued to share his own experiences and stories from his elder relatives. His elders had consulted with medicine men and were cured by traditional medicines that ‘Western’ medicine could not heal. These ‘Western’ medical doctors could not explain how the medicine used by “Indian Doctors” had cured the sick individuals. Mr. Lovejoy described the types of rituals that were conducted by Emily’s parents - when “they would take out that medicine…from God..used because they earned it..[they] had to prove it.” He stated that Emily’s parents were the only ones who knew
“how to fix up that medicine” and would pray to God “and say that everything comes from Him…that he gifted our people.” But today, Mr. Lovejoy says that people like Emily’s parents “are gone…and they took it with them…but I’ll say it’s still here. It’s up to us. We could be like them if we want to. We can help a lot of people with it…cure sicknesses.” He stated that this summer, “maybe sometime in August,” he plans to go back to the sacred site of where the medicine of his late wife is kept and try to “renovate the place…clean the yard up…even planning to put a teepee, have a prayer service…and fix up the roof.” When asked why he has committed to this responsibility he stated - “I try to respect that and same time try to care for it…like that medicine…what God gave to our people..I try to protect it.”

The state of Omaha sacred properties on the reservation is a complex and sensitive topic among the Omaha because, as the elders I interviewed stated, it is not in their ‘authority’ as Omaha elders and ‘Road Men’ (ordained ministers of the Native American church) to manage those properties (i.e. sacred bundles). But since there are no more living medicine men on the reservation, the mores behind proper authorities of sacred objects like the bundles/packs may reflect a lack of initiative of the people to learn, protect and preserve their own sacred objects because they know they cannot promise to fulfill that life-long responsibility of managing these properties according to customary laws. Also, even if someone was willing to learn, there are no longer any living medicine men to teach them about it. But with the treatises like Mr. Wilford Lovejoy and Mr. Rufus White (blood cousins), they emphasize that the pursuit to learn about how to protect sacred items in the community must start within the individual.
People who seek this knowledge must only use it to help the community, even if that pursuit means not strictly adhering to all the mores of the “old ways.”

Therefore, some of the Omaha elders told me that the reason the sacred pole stays in the curatorship of the Nebraska State Historical Society and why Charlie Parker’s sacred (medicine) bundles remains unprotected and buried underground is because no one knows how to properly take care, use, manage, protect and preserve it; since that traditional knowledge was never passed on. But other Omaha elders also stated that an individual in the community can, in their “own” ways seek to understand the “old ways.” This could be in the form of learning the Omaha language and “cleaning the yard” of sacred sites; and are simple ways to share, respect, and revitalize “what God gave our people” (as Mr. Lovejoy stated).

- SOCIO-ECONOMIC COMPLEXITIES: Addressing employment, health, cultural stigmas, etc. whilst persevering to revitalize cultural heritage

Differentiating a ritual bulul from a retail bulul was answered with mixed expressions from the mumbaki interviewed in this study. First of all, they explained that bululs are never created for the sole purpose of selling it. The reason people own a bulul is because the mumbaki and munpaot distinguishes the bugol spirit or deity to which a bulul can either trap or inhabit for a specific occasion/reason. The mumbaki interviewed views the carving and selling souvenir bululs as fake; emphasizing that a bulul has to go through baki or rituals involving the community to be “real” – carving a human figure from Narra wood is not enough. The mumbaki were empathic to those who carve and/or sell retail bululs (that did not go through baki) for profit in order to make a living by woodcarving. But on the other hand, the mumbaki interviewed stated that those with
original bululs or bululs which have gone through *baki* (rituals) or are heirlooms and sell them as antiques should be ashamed. They state that those Ifugao who sell ritual bululs as retail objects are treating their heritage “like garbage;” since the bulul has helped them and their kin get better during sickness, have a bountiful harvest, and/or warded off enemies.

Despite this, the *mumbaki* expressed the realistic notion that culture will inevitably be shared, and when it does there is a possibility that those you share your culture with may distort its meaning. The *mumbaki* relayed how it is impossible to preserve the bulul for only the Ifugao people because “foreigners” may just be curious or appreciate its aesthetic value even if they do not know its true significance. Also, the local church may even ban people from using the bulul, which is actually happening. Presently, people in the community are left with the option to use their customs or adhere to “western solutions.” The *mumbaki* emphasized that there have been instances when western and foreign medicine and prayer do not work, and the Ifugao people return to their traditions and use the bulul.

The *mumbaki* I spoke with also expressed the socio-economic plight of the Ifugao, as many of the younger generations seek labor in the bigger cities and move out of the village or *ili*. The *mumbaki* understand these individuals’ purpose of lowland migration in order to financially provide for their families. But they also reiterated how if this continues, eventually no one will be left in the *ili* to care for the land (i.e. tend to the rice crops), and the knowledge, importance, and use of things like the bulul will be lost. Also, there is a cultural stigma among the youth to not want to willingly learn about the “old ways” since they do not deem it useful in their plans to find a job elsewhere. The
mumbaki told me how they became apprentices to elder mumbaki when they were young (usually from the male mumbaki from their clan). They were chosen because of the skills they had shown when they were only children. But now, the mumbaki say that hardly any young men form their own clans are seeking to be mumbaki when they grow up (i.e. hardly any mumbaki apprentices). These elders were worried that one day, all the mumbaki would pass, and no one in the community would serve that spiritual role – leaving the indigenous knowledge systems of the Ifugao in a state of insecurity since there is no one who wants to learn this in order to pass it on (i.e. lack of cultural revitalization).

Furthermore, Junior Habiling and Joseph Dong-I Nakake from Hapao, Ifugao were the munpaot or woodcarvers I conversed with who emphasized the financial constraints of adhering to state laws in order to register their Ifugao woodcarvings. Junior Habiling even broke down the costs – the fare from Hapao to Manila (where the National Museum is) would be about 1,500 Phillipine Pesos (or about US$33). Also, they would need a place to stay and food to eat while in Manila, which could amount to another 1,000 pesos (about US$22). Then they would need to pay for the registration fees under PD 374 which could amount to another 500 pesos (about $10) which total the costs to authenticate and register their woodcarvings to about 3,000 pesos (or US$67) - about half of their month’s salary. When Junior Habiling described the budgetary costs to adhere to PD 374 in protecting and preserving the woodcarved bululs, he stated that he would much rather use this money to help pay for food, clothing, and schooling for his family.
On October 23, 2011 and February 26, 2012, Mr. Clifford Wolfe Jr. and Mr. Rufus White, also emphasized the socio-economic constraints and cultural stigma among the youth to learn the “old ways” while trying to survive and live on the reservation. Mr. Clifford Wolfe Jr. stated that the reason the tribal council might not be compelled to carry on the task of reclaiming Omaha scared items from museums is that these types of concerns fall sub-standard to more pressing critical issues they face. These tribal council concerns may include creating revenue for the tribe by developing the local businesses within the reservation, finding sustainable employment, addressing alcoholism, crime, and the health of/for people in the community. Mr. Wolfe Jr. states that as a previous Omaha tribal councilman, he had to address these issues every day, and that the community expected him to solve it. The concern to repatriate sacred items to the tribe, Mr. Wolfe Jr. expresses, is within the jurisdiction and should be spearheaded by the tribal council. But the reality is that the council cannot stop people from selling their heirloom sacred objects to private collectors or businesses like local pawn shops in order to “make ends meet.” With the socio-economic issues that the community brings to the council to resolve, the revitalization of culture through creating coalitions for repatriation does not fall within the radar of the council’s agendas.

Mr. Wolfe Jr. has also observed that most of the younger generations living on the reservation and have families do not consider the importance of learning about their Native culture. He states that they have grown dependent on government aid to pay for rent and basic necessities, therefore they do not proactively seek to “better their situation” by getting a job. Mr. Wolfe Jr. notes that there is a cultural stigma among Omaha who live on the reservation and those who move out to find better employment. Those who
leave are somewhat ostracized by the community as “entering the White man’s world” or simply leaving their indigenous roots to “live like a White man.” He emphasizes that these types of constricted worldviews of what it is to be Indian, is the same thing that is “pulling the community down,” when “we are supposed to be helping each other out.”

Mr. Rufus White stated that his own grandson was teased by those living within the reservation for “singing Indian songs and drumming.” Because he was ostracized, he decided to quit one day and as his grandfather, Mr. White told his grandson that he “[should] think about using and learning [the meaning, importance, and power] of sacred things.” Mr. and Mrs. White have started an after school program to teach Omaha language to interested youth and adults. He expressed how he has been trying to explain to the younger generation the importance of learning your language as the first step to understanding your culture and where you come from, but usually the young do not listen. Mrs. White stated that these kids grew up in a household where their own parents do not know the language, since their parents grew up in the boarding school generations where they were punished for speaking in their Native language. Mrs. White discussed that these parents may be carrying over the mentality that their kids will be punished (or teased) if they speak in their Native tongue. With the after school program that Mr. and Mrs. White conduct on the reservation, it is their hope that the youth learn Omaha language, songs, and about sacred things; since they were raised and encouraged by their own parents “to carry it on one day.”

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As Erica Irene Daes, former special rapporteur and chairperson of the Working Group on Indigenous Populations stated, “indigenous peoples cannot survive or exercise their fundamental human rights as distinct nations, societies, and peoples without the ability to conserve, revive, develop, and teach the wisdom they have inherited from their ancestors” (Battiste 2008: 500). The ability of the Omaha and Ifugao to protect and preserve their sacred bundle and bulul (respectively) is a security issue that it rooted within complex and conflicting aspects discussed in this study. These include the supremacy and pre-emptive nature of state legislation over customary laws, as well as barriers set within the mores that guide Omaha and Ifugao customs on the proper authority to manage these sacred items. Another crucial aspect to this equation is that the pursuit to revitalize one’s culture is faced amidst other pertinent political, cultural and socio-economic issues.

Specifically, NAGPRA and PD 374 federal agencies appointed by this law provision the management of Native Americans’ (NAs’) and Indigenous Filipinos’ (IFs’) sacred properties; not by NAs and IFs who have their own customary laws that guide the use and control of their properties. The predominance and forced adherence of ICCs to federal legislation in terms of protecting and preserving indigenous sacred properties delimits the ability of ICCs to assert their internationally recognized indigenous sovereignty – IPs’ rights to self-governance, autonomy, and cultural integrity. But these political, cultural and socio-economic complexities are not just within the realm of federal and international laws - it is deeply rooted within the ICCs themselves. This insecure status of Omaha and Ifugao (peoples) to protect and preserve their sacred properties within their community is now a matter of survival for ICCs – how will they be able to pass on the
knowledge or “wisdom they have inherited from their ancestors” if IPs are not able to “conserve, revive, develop, and teach” it to future generations (as Erica Irene Daes stated)? Individual efforts of ICC community members within Ifugao villages and the Omaha reservation such as teaching the Native language to youth, “weeding” and cleaning sacred sites in the community, and engaging the Native youth to be part of public ceremonies through singing, drumming, and/or preparing meals, etc. are significant ways indigenous customary laws are evolving to accommodate an individual pursuit to revitalize culture in communal ways.
CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

The Omaha and Ifugao treatises enlighten the reality of legal pluralism - international declarations that claim to acknowledge the sovereign rights of indigenous peoples (as distinct from state sovereignty) is in complete discord when implemented on the national levels because of the failure to address the political, cultural, and socio-economic complexities that ICCs face while trying to revitalize their cultural heritage and pass on indigenous knowledge to the next generations. This has created not only the insecure status of ICCs to protect and preserve their sacred properties that are with federal agencies and museums, but also legitimizes the insecure status of attaining and asserting indigenous peoples’ rights and sovereignty (i.e. rights to self-determination, autonomy, and cultural integrity).

By reviewing the IP collective rights to self-determination, autonomy, and cultural heritage stated in the UN-DRIP and ICESCR, it is apparent that international declarations acknowledge and promote that signatory states (which the US and Philippines are) apply these provisions and uphold the internationally recognized sovereign rights of indigenous peoples. But just because there are existing declarations of indigenous sovereignty, it does not ensure that these are securing indigenous peoples within nation-states. The fact that international organizations like the UN and its member states uphold these declarations simultaneously also implies that they uphold and acknowledge state sovereignty. This leaves the status of IPs’ collective rights as contested, limited, and unattained. The pre-emptive nature and predominance of state legislation, specifically the US’ NAGPRA and Philippines’ PD 374 laws, are standards enforced upon indigenous communities as inhabitants of
its territory, even if ICCs have their own customary laws that guide the management of sacred properties. The fact remains that, UN declarations are not legally binding alone; or in other words, it is a set of recommendations without a legally binding character. This leads scholars to question, what would make the UNDRIP a legally binding instrument of international law? Does the ratification of the ICESCR, as a UN covenant, have more ‘teeth’ than ‘mere’ declarations? How so? Reviewing literature on this topic may lead to more questions than answers, but this study has aimed to resolve at least some of these inhibitions by going to ICCs (i.e. Omaha reservation and Ifugao province) in order to describe the views of the tribal elders on this topic – if only to showcase the reasons these international declarations’ aims are still not attained on a community level.

The pre-emptive nature of NAGPRA and PD 374 to set the provisions on repatriating and classifying sacred properties threatens Native Americans’ and Indigenous Filipinos’ human security because heritage and culture become ownable property which is “defined and directed by law” (Brown 2003: 8). That is, Western-rooted law which views ownership in terms of individual rights or individual ownership. But since we are dealing with indigenous sacred and cultural property, one must take into account that the cultural properties of IPs are meant to be managed through collective protection by ICCs (i.e. through customary law), and never through individual ownership. Museums and federal agencies charge fees to the public to view these cultural properties, and thereby “have commodified the very productions of indigenous knowledge without indigenous peoples’ collective consent or without adequate compensation or consideration of the impact on the collective
who have developed this knowledge” (Battiste 2008: 502). IPs’ sovereignty is contested because they cannot assert their right to manage their own cultural heritage (in the form of sacred properties). And worse, the state allows for the commodification of ICCs’ sacred properties because of the legitimized predominance of state sovereignty over indigenous sovereignty that is championed in today’s liberal democratic government.

By describing NAGPRA and PD 374 specifically within the context of legal pluralism and reclamation efforts of Native Americans and Ifugao, law becomes a cultural and legal product. “The law has opened new dialogues concerning the maintenance and further creation of just practices, attitudes, and laws vis-à-vis …cultural property and knowledge” (Fine-Dare 2002:140). This notion of NAGPRA and PD 374 as a legal and cultural product reinstates that the legal pluralism framework not only describes what the law is, but the actions the law administers. This changes the discourse surrounding the ownership of sacred property in order to protect and preserve it by questioning if this is secured by state sovereignty or indigenous sovereignty. This notion provokes one to ask who has the legitimate right to ownership or management of the “sacred” - museums or native communities? Answering this question entails the acknowledgement of the epistemological discord in these concepts of owning sacred items.

Explaining the process of legitimating who has the authority to provision the management of ICCs’ sacred properties also reflects who has the legitimate power to secure ICCs’ heritage and identity. As seen in the treatises of Omaha and Ifugao elders, the “proper authority” are still individuals who prove to be committed to the
life-long responsibility to protect and care for sacred objects and share indigenous knowledge – even if that is through conducting after school programs to teach the Native language to youth, “clearing up the yard” where sacred items have been placed, and/or proactively engaging oneself in pursuing the knowledge of one’s ancestors.

More state/government authoritative bodies or institutional arrangements have been created to manage the provisions and implement this national law such as “joint-use committees, review panels, and repatriation offices… that have redefined relationships between museums and indigenous communities” (Brown 2003:247). The narratives of Mr. Terry Snowball (repatriation coordinator for the NMAI) prove that NA communities are creating coalitions to claim the repatriation of their sacred objects and ancestor remains. Museums like the NMAI make it their emphasized goal to collaborate with Native communities and corroborate their concerns as stakeholders to these sacred items. These ‘re-defined’ relationships are often due to negotiations with IPs and museums that extend beyond the main tenets of NAGPRA which deals with the process of control, possession, and/or use of cultural properties, but more about the “management of sensitive cultural information” (Brown 2003:247).

Conversely, in analyzing the Cultural Properties Protection and Preservation Act of the Philippines (PD 374), it is hard to understand why the sacred Ifugao bulul has not yet been included in the protection of this act as a ‘national cultural treasure,’ and they are instead classified as ‘important cultural properties.’ The difference between an ‘important cultural property’ and a ‘national cultural treasure’ lies in how the law
describes the latter - a unique object found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to this country and nation (National Committee on Monuments and Sites 1988:47). How ‘important cultural properties’ are defined in this act is important to emphasize because they have exceptional historical and cultural significance to the Philippines; even if they are not classified as ‘national cultural treasures.’ Bululs can be considered as an antique because the skill or art of carving this granary guardian for sacred rituals is one hundred years or more in age, since most bululs were inherited as heirlooms. The “unique” quality of the bulul is highly subjective, but under the categories stipulated by this law, its demand in the culture industry (i.e. commercial art, woodcarving industry, antiques, etc.) prompts the need for P.D. 374 to prevent its misuse and misrepresentation and truly protect and preserve its intrinsic cultural value.

The process of authenticating, protecting, and preserving an important cultural property requires the owner of such a property to pay for the registration and authentication processes of the national museum before they can have their cultural property protected as such. This is a standard process that most munpaot or woodcarvers literally cannot afford to adhere to. Whereas ‘national cultural treasures,’ which can be in the form of an antique and artifact, is deliberated to be deemed such by a panel of experts who are appointed and authorized by the director of the museum. Once these ‘experts’ decide an antique or artifact is a ‘national cultural treasure,’ government funds are allocated to protect and preserve it. This financial investment of the state is not done for ‘important cultural properties,’ which this law distinguishes sacred Ifugao bululs as.
The state of protecting and preserving the Omaha sacred (medicine) bundle and Ifugao sacred bulul is reflective of the ICC it derives from – since these are forms of indigenous knowledge and reflective of an ICC’s identity. If the ICC is enduring critical community issues such as high suicide rates, high diabetes rates, low employment rates, high poverty rates, growing cultural “stigma” of practicing the “old ways” etc. – it is highly probable that the state of sacred properties are in a similar insecure condition. There is an apparent need to address and re-solve the political, cultural, and socio-economic complexities that are intrinsically linked to the pursuit of protecting and preserving sacred properties. It is a matter of cultural survival.

Following critical and indigenous research methodologies, since sacred properties are a physical manifestation of indigenous knowledge, IPs regard “traditional knowledge as living knowledge…an expression of life itself, and the connection between all living things…regarded as having come from the Creator; hence knowledge is also understood as sacred” (Stewart-Harawira 2005:35). Conversely, Western jurisprudence (i.e. federal laws and international declarations) on ownership and management of property is based on the Lockean views and theory of civil government which predicates principles of civil rights and property ownership on an equal basis - by separating the public and private spheres (Stewart-Harawira 2005: 62). Locke’s ideologies are influenced by the ideologies of Rene Descartes, the father of modern philosophy, which separates Nature into two independent realms – the mind (res cogitas) and that of matter (res extensa). In their philosophy, all “things,” tangible (matter/ res extensa) and intangible (mind/ res cogitas), are knowable through the use of reason. Therefore, the management of properties according to Western epistemology is based on the separation of the tangible from the
intangible, and able to be owned as property because this is a civil liberty and an integral aspect of civil government. But indigenous epistemology is based on knowledge that is not separated from the tangible and intangible realms. Instead, it is collectively held because it has derived from the Creator, passed on by ancestors/relatives, and “involves consciousness of both inner and outer realities of existence… [An] inseparable nature of the relationship between the world of matter and the world of spirit” (emphasis added, Stewart-Harawira 2005:36-37). These two conflicting epistemologies on the concept of property and ownership management relay how the discord between Omaha and Ifugao customary law regarding the protection and preservation of the sacred bundle and bulul are in complete discord with NAGPRA and PD 374 respectively.

“The integrity of what is sacred to Native Americans will be determined by the government that has been responsible for doing everything in its power to destroy Native American cultures” (La Duke 2005:11). This powerful statement is the prevalent cry of most indigenous scholars who identify the discord of Western and Indigenous paradigms. Specifically, the federal and international laws that arbiter rights to IPs are epistemologically based on an idea of ownership and rights that are in complete contrast to what indigenous peoples believe and live by. Historically, the process by which museums and federal agencies had collected indigenous sacred properties which they now house in their institutions, were unethical and illegal within indigenous/customary law (since these objects were to stay with the community and managed by specific community members). These state practices are considered legal in the federal and international laws (i.e. entrepreneurship, intellectual ownership as individual, etc.). “A
decade after the passage of NAGPRA, only 10% of an estimated 20,000 remains in public collections has been inventoried, according to federal records” (La Duke 2005:80).

No customary, state, or international laws are controlling the allocation of retail or ritual Ifugao bulul; yet the objectives and methodologies of these laws are to authenticate, protect, and preserve cultural and intellectual property. The P.D. 374 or Cultural Properties Protection and Preservation Act can only protect national cultural treasures, and Ifugao bululs are viewed as “mere” cultural properties. P.D. 374 should be dealing with how to stop the commercialization of cultural property to truly promote preservation and protection of the intrinsic cultural value of properties; and not how to subjectively define which is more important for a law to protect - ‘a national cultural treasure’ or an ‘important cultural property’. The Ifugao mumbaki expressed that bululs being carved and sold as souvenirs are viewed as “fake” bululs since they did not go through baki or ritual. The mumbaki interviewed proclaim that we cannot blame those who sell retail bululs for profit to make a living by woodcarving. These woodcarvers make and sell human figures that look like bululs but are not real, so it would be permissible to have them sell these retail bululs. The mumbaki informants stated that they cannot control what people may or may not do to deteriorate, bastardize, protect, or preserve their culture.

This statement is implicative of the current issues revolving around indigenous peoples’ rights to self-determination as they undergo cultural misrepresentation from the globalized culture industry that they may be earning a living from. The mumbaki interviewed have a very realistic notion of culture inevitably being shared, and the possibility that the meaning of your culture will be distorted by those who you have shared it with. There is a growing stigma among Filipinos to normalize the reality of
ineffective state laws; but as the Ifugao mumbaki expressed, the true protection and preservation of culture is by living out your heritage even in the absence of laws prompting you to do so. The acclamation of IPs’ rights through proper cultural representation of their sacred cultural properties by being able to self-determine their use-value should be prevalent in state laws that cater to authenticating, protecting, and preserving cultural and intellectual property.

If the objective of these federal laws is to manage the repatriation and protection of indigenous sacred properties and remains, then a policy review and reformulation of NAGPRA and PD 374 must take place to have more items repatriated back to these indigenous communities through protocols and processes that are conducive, culturally-appropriate, and inclusive of indigenous peoples knowledge and consent. The re-evaluation of NAGPRA and PD 374 though the narratives and experiences of Native Americans (NAs) and Indigenous Filipinos (IFs) who wish to protect and preserve their sacred properties is just one way in which anthropology, human security, and human rights scholars can provide concrete evidence and create collaborative strategies with communities who are directly affected by state legislation and the predominance of state sovereignty. It also compels scholars to think of alternative methods in incorporating the views, experiences, and knowledge that indigenous communities could provide to create more collaborative, culturally-appropriate, and inclusive human rights strategies – one that shares the rights of sovereignty to uphold social justice and discontinue to uphold the monopolized power of the state and its political elites.
International declarations such as UN-DRIP and ICESCR acknowledge the rights of IPs to self-determination, autonomy, and cultural integrity – albeit, through non-enforceable/non-binding documents. Even so, signatory states such as the US and Philippines must uphold these international provisions within their federal laws to, at the very least, provide inclusionary avenues within its jurisprudence that affects indigenous communities directly. NAGPRA and PD 374 enables tribes or individuals to file claims to have their sacred properties repatriated and classified, but limits the claimants’ actions to do so by forced adherence to the standards of filing claims. These standard processes, such as proving cultural affiliation to the remains or objects through documents, should include customary laws and provisions that ICCs utilize (i.e. indigenous ancestry is proven and passed on as oral tradition and knowledge which is seldom ever written down). Furthermore, tribal representatives such as the munpaot, Ifugao woodcarvers, or NA coalitions must often travel long distances to view the remains or sacred objects in the museums - the fare and lodging expenses comes from their own pocket. The perseverance to pursue the protection and preservation of indigenous knowledge is in itself a life-long responsibility, crucial even more so nowadays when no one in the community is willing to learn because no one is alive to teach them.

The Omaha do not have access to managing sacred bundles because there are no living community members to teach them how to (i.e. medicine men). Even when some medicine men were alive (i.e. Charlie Parker), no one opted to take over that life-long responsibility and role in the community because of the nature of the commitment. In Ifugao province, the decreasing number of mumbaki apprentices is due to the rapid upland-lowland migration of Ifugao youth to seek jobs in the metropolis. Many of these
individuals need to financially support their families and taking on the life-long role of a *mumbaki* is perceived as not conducive in today’s cash economy world. The scope of protecting and preserving the sacred bundle in the Omaha Reservation and Ifugao sacred bulul is no longer within the scope of NAGPRA, PD 374, and international declarations acknowledging the rights of indigenous peoples – the capacity to protect and preserve these items must come from the Omaha and Ifugao community. It is their sovereign and collective right to do so, but more importantly, the cultural survival of their ancestral heritage depends on this commitment. This notion emphasizes that the attainment of security and human rights should not depend solely on the acknowledgement, provisioning, and “granting” of IPs’ rights by an external body (i.e. state or international institutions); but an assertion of IPs to their rights and security as a collective entity, distinct from the state.

The Omaha and Ifugao are limited in their endeavor to reclaim their sacred properties that are controlled and used by federal agencies and museums because they must abide to the provisions set by NAGPRA, even if it is their sacred property. So this study emphasizes that state laws and international declarations should not de-limit or prevent IPs to assert their right to protect and preserve their heritage. As this study has pointed out, the current reality is that state sovereignty and state laws are held pre-dominantly over any other IPs group’s sovereignty and customary laws (and rights). The reason for this is that Western jurisprudence and legislation is epistemologically founded on ideologies that separate the tangible from the intangible, and therefore the ‘sacredness’ of a property is disregarded because it is just another tangible resource that can be managed through a set of laws that promotes individual ownership. Indigenous sacred
properties are founded on indigenous epistemologies that uphold the ‘sacredness’ of a physical object by not individually owning it, but managed by specific people for the community. Indigenous customs or traditions, unlike Western rule of law, are interrelated with identity, heritage, relationship to the land, environment, biodiversity, ancestors, and the Creator – as “holistic ideographic systems” (Battiste 2008: 499-500). That is why in this study, I have critically analyzed Western jurisprudence through the epistemological and ontological implications of indigenous knowledge systems by bringing the “indigenous” voice or Omaha and Ifugao treatises into the academic discourse of legal pluralism and human rights.

Recommendations

As noted by the Omaha and Ifugao elders, as well as the museum authorities, the pursuit to protect and preserve indigenous sacred cultural properties is dynamically evolving to become an individual life-long commitment. Since there are no more ‘medicine men’ on the Omaha reservation, and the decreasing number of mumbaki apprentices, individuals from both the ICC and non-Native communities must educate themselves on the importance of indigenous knowledge - how it can contribute and benefit a community, understand and respect the mores and restrictions to the accessing of knowledge, and collectively act (i.e. create coalitions and mobilize) with Native and non-Native individuals in order to uphold these principles of protection and preservation. This pursuit is not done to solely empower Native communities by revitalizing cultural heritage; but also for the purpose of passing on this knowledge and responsibility to the next generation.
Other indigenous scholars have been utilizing a critical and indigenous research framework in confronting issues and discourse surrounding indigenous peoples. Graham and Wiessner (2011) suggest that in the pursuit to reclaim indigenous sovereignty, the need for respectful and culturally-appropriate collaboration between cultures is emphasized. This can be done by “consult workings of international human rights bodies for guidance on these matters to find a proper balance between indigenous collective practices and individual human rights norms,” “internally democratic processes of decision making within groups of IPs,” and “increasing the role of IPs within the government of nation-state which they reside to give rise to shared-governance” (reflected in Art. 5 of the UNDRIP) (Graham and Wiessner 2011:411-412). In Mekere Stewart-Harawira’s ‘The New Imperial Order’ (2005), the author utilizes an indigenous ontology to promote epistemologies that study the process of globalization and emerging global order and how this affects indigenous populations. She does this by discussing the resistance movements of IPs to the structures of neo-imperialism by utilizing her own world-historical narrative as a Maori. Similarly, my study would like to call for a “new political ontology of global order informed by indigenous world views and values” (Stewart-Harawira 2005:xi). Taking off from Stewart-Harawira’s advocacy, I would also like to promote an indigenous global ontology focusing on the nature of knowledge, existence, and relationships that relay the contentious issues that revolve around the protection and preservation of sacred properties. I suggest that anthropology, human rights, and museum studies scholars do this by highlighting the views, knowledge, and experiences of ICCs as viable evidence and applicable ideas on resolving the
complexities involved in pursuing to protect and preserve sacred properties as a manifestation of social justice.

Winona LaDuke is an Ojibwe enrolled member of the Mississippi Band of the Anishinaabeg who has written about the contentious issues that revolve around the management of IPs’ knowledge that are sacred in its tangible and intangible forms. In her book ‘Recovering the Sacred: The Power of Naming and Claiming’ (LaDuke 2005), she notes that the “practice of collecting buried bodies and cultural properties finds its origins in the paradigms of imperialism, science, racism, and the bounty of war” (LaDuke 2005:75). She traces this notion by discussing the historical origins of collection and desecration of Native American objects and remains because of the seemingly immense spiritual void of colonizers and their need to classify all that is exotic to mainstream society. She briefly discusses NAGPRA law and reiterates the competing worldviews between Western/federal jurisprudence which allows for a notion of ownership regarding human remains and sacred objects, to that of a custodianship or stewardship of these sacred properties (LaDuke 2005:80). It is in her discussion that my study affirms and recommends to incorporate in other human rights, anthropological, and cultural heritage management studies and practices the need to address the competing worldviews that can be explored with legal pluralism. Specifically, the ontological and epistemological implementation of customary, federal and international jurisprudence surrounding the protection and preservation of indigenous sacred cultural properties is a framework that can be re-utilized by these scholars in order to provide a more balanced and holistic perspective.
In Linda Tuhiwai Smith’s ‘Decolonizing Methodologies: Research and Indigenous Peoples’ (1999), she discusses from the perspective of a Maori woman, that the 18th and 19th centuries constituted an era of highly competitive ‘collecting’ which many IPs considered theft. This has lead to the contemporary need for IP reclamation efforts to have federal agencies repatriate their ancestors’ remains and cultural items. She notes that indigenous perspectives showed the following stages of progression towards the reclamation of their cultural identity: (1) contact and invasion, (2) genocide and destruction, (3) resistance and survival, and (4) recovery as indigenous peoples (Smith 1999:88). I utilize her discussion to emphasize that as a Native scholar myself, there is a “failure of research and of the academic community to address the real social issues” of IPs. If there is one thing I would like to passionately advocate for in the academe is the need to incorporate the lived experiences, knowledge, and perspectives of Native elders as viable sources of knowledge that can contribute to the discourse of human rights and cultural heritage management.

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This study recommends that to protect and preserve the Omaha sacred bundle and Ifugao sacred bulul, the initiative must first come from within the Omaha and Ifugao community. It is indeed their sacred cultural property which they have a collective and sovereign right to manage as a community. The initiative to protect and preserve it will not come from an international declaration which stipulates what rights they have as a peoples; nor will it come from federal legislation like NAGPRA or PD 374 which standardizes the ways and means the Omaha and Ifugao can have their items repatriated
and/or protected. The responsibility to protect and preserve indigenous sacred properties is based on customary laws of the peoples this object derived. Simply put, the community must have initiative to dynamically learn and adapt to their cultural mores; as well as have access to this knowledge in order to protect and preserve it according to their customs. This recommendation is closely linked to the human rights discourse and human security studies in that it is integral and essential to include the indigenous epistemologies, customary laws, and IPs’ perceptions/narratives when discussing the implications and consequences of state sovereignty and pre-dominance of state legislation. The political, cultural and socio-economic complexities faced by ICCs must be addressed if IPs are to truly attain their collective rights and assert their indigenous sovereignty stipulated in international declarations/charters.

A recommendation for further study is that there needs to be a proliferation of awareness and education on heritage since this is the key to proper protection and preservation of culture. Heritage can be in tangible forms, like the sacred Ifugao bulul and Omaha sacred bundle, and can be protected by intangibles such as education and law. Ethnographic study is needed to enhance the protection of heritage through education and law. Ethnography can be a leeway or middle ground to promote the importance of IPs’ cultural representation and self-determination by critically addressing the political, cultural, and socio-economic complexities faced by ICCs. Policy makers are national and international socio-political actors that create laws regarding cultural property, but often disregard the need to incorporate and explore congruence with the customary law or indigenous political systems of those who are actively upholding that heritage (e.g. specific indigenous cultural communities).
Nevertheless, there exists many avenues for ICCs to collaborate with other institutions, universities, organizations, museums, and federal agencies to create culturally-appropriate programs for indigenous knowledge centers. This is an initiative many other indigenous communities and scholars around the world are currently pursuing. But this can only happen if there is initiative within the community to access and reclaim their traditional knowledge. This is not an opportunity that federal laws or international declarations will provide, but certainly should be enabling. Indigenous communities can learn from the reclamation efforts of other indigenous groups and scholars to take initiative and find avenues to access their traditional knowledge. By proactively seeking out their own ways of achieving security, they detach themselves from depending on the preeminence of state and international jurisprudence.

Battiste’s (2008:498) protocol entry process provides an alternative utilization to the legal pluralism discourse – one that can uphold customary laws to protect and preserve sacred properties administered and founded by indigenous communities, while simultaneously having the community be aware of the protective actions of federal and international institutions that may be hindering or impelling their actions. Indigenous centers of learning can and are being created within universities and involves local indigenous communities. One such institution is the University of Alaska Fairbanks which has a cross-cultural master’s level program that discusses indigenous knowledge and “develops awareness of indigenous peoples’ cultural and intellectual property rights” by establishing protocol and practices of indigenous community members into their program (Battiste 2008: 505).
The access and attainment of indigenous knowledge can come from within and outside the community, even if most ICCs’ sacred properties are not within the control or managed according to customary law. This study suggests that collaborative partnerships between ICC members, universities, and museums be established in order for IPs’ to have access to the knowledge of their peoples/heritage which are in the control and use of universities, museums and federal agencies. “Indigenous peoples must control their own knowledge and retain a custodial ownership that prescribes from the customs, rules, and practices of each group. This control can only be realized if the groups that hold these custodial relationships are involved in the research” (Battiste 2008: 506). The control of indigenous knowledge must be an initiative and provisioned by the indigenous group it derived. This is a collective right of IPs to be upheld communally and which must be simultaneously addressed and implemented in Western jurisprudence (i.e. federal laws like NAGPRA and PD 374, as well as international declarations like UN-DRIP, ICESCR, and ILO 169). Brown (2003) and Mr. Terry Snowball states that these efforts can be and are currently being pursued through negotiations between native elders, museums curators, archivists, and cultural resource managers to promote “more balanced relationships” (Brown 2003:10,230,252). The objective of these partnerships is not to own sacred properties, but to uphold heritage. Initiatives such as these changes the security and human rights discourse from protecting the right to ownership of property, to protecting heritage - the latter being the more integral in truly preserving and passing on indigenous knowledge to the next generation.

The protection and preservation of indigenous sacred properties is no longer an issue of security, human rights, and sovereignty - the reclamation of indigenous peoples’
right to protect and preserve their sacred property is about saving an identity, ancestry, and heritage from extinction. This pursuit and life-long commitment must start within ourselves.
APPENDIX

List 1. Interview questions conducted by researcher for the Omaha and Ifugao elders, and museum authorities. This was the main set of questions I had in mind when I interviewed them, but based on the trajectory of the conversation, all these questions adapted to what the informants wanted to emphasize. The transcriptions of the interviews will be provided upon request and with authorization of Omaha and Ifugao elders before dissemination.

Informant Background:

Please state your name, tribal affiliation, and role/position in the community.

How would you identify your role/position in the community\textsuperscript{12}? How long have you had this role in the community? What responsibilities or tasks does your role/position entail?

Sacred (Medicine) Bundle and/or Sacred Ifugao Bulul

According to your tribe and own understanding, what is the sacred (medicine) bundle and/or Ifugao bulul? What is its use in the community and to the person who keeps and/or uses it? Would you describe it as a Native American’s and/or Ifugao’s cultural property? Why or why not?

Have you ever handled a sacred (medicine) bundle or the sacred Ifugao bulul? If so, please describe the nature of how you handled the authentication, protection, and preservation of this sacred object. If not, please describe how you understand a keeper and/or user of the sacred bundle or bulul handles the authentication, protection, and preservation of this sacred object.

How did you or your community come to acquire this sacred property? How does it kept, controlled and/or used (i.e. how often and when it is displayed to the public, how it is displayed to the public, for what reasons it is displayed and/or not displayed, etc.)?

Federal Laws

What measures do the keeper and/or user of the sacred bundle or bulul do to ensure that it is being handled, displayed, and/or transferred to another individual within the customary laws of the tribe? Why? If an individual does not adhere to these customary laws in

\textsuperscript{12} To promote cultural sensitivity, the investigator understands that some “medicine men” from Native American communities (those who use the sacred medicine bundle in rituals) do not want to be called “medicine men;” and is therefore allowing the interviewee to describe how they would like their role to be identified.
handling the sacred bundle or bulul, what types of punishments, if any must they undergo? Why?

Describe your opinions on federal laws such as the Native American Graves Protection and Repatriation Act or NAGPRA and the PD 374 which protect Native Americans’ sacred objects such as the (medicine) bundle and sacred bulul, respectively? Does your community have the same views as you? Why or why not?

How do federal laws like NAGPRA and PD 374 affect or do not affect the customary laws of your community in regard to Native American or Ifugao sacred objects which you or your community controls and/or uses/displays?

Reclamation Efforts for Repatriation

Have you encountered or been part of any reclamation efforts of Native Americans or Indigenous Filipinos filing repatriation or registration of this sacred object to their community? If so, how did you and your community handle this situation? If not, how do you think you and your community institution would handle this situation if it occurs?

What is your opinion on the status of federal laws and customary laws (i.e. tribal authorities’ legal protocols) in authenticating, protecting, and preserving the sacred (medicine) bundle and bulul?

What is your opinion on the status of federal laws and customary laws (i.e. tribal authorities’ legal protocols) in regard to Native Americans’ and Indigenous Filipinos’ reclamation efforts to control and/or use their sacred (medicine) bundles and bulul?

What do you think are the implications of this situation (i.e. multiple legal systems and institutions are authenticating, protecting, and preserving the sacred bundle and bulul to control and/or use these sacred objects) to Native American’s and Indigenous Filipinos’ cultural and economic human rights over their sacred cultural property?

Conclusions and Recommendations

What do you propose should be done about the repatriation, protection and preservation of Native American’s and Indigenous Filipinos’ sacred objects which museums/historical societies and other institutions currently possess, control and/or use?

What, in your opinion, is the stand of your community in regard to reclamation efforts of Native Americans and Ifugao to assert their cultural and economic human right over their sacred cultural property?
What are you or what is your community/tribe doing now to authenticate, protect, and preserve sacred (medicine) bundles and bulul that you or your community controls and uses?
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