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The Legal Pluralism Phenomenon: Emerging Issues on Protecting and Preserving the Sacred Ifugao Bulul

Mayo Buenafe

Abstract: Legal Pluralism is a pervasive social phenomenon encompassing issues relevant to the protection and preservation of indigenous peoples' intellectual and cultural properties. This study focuses on the sacred Ifugao bulul or Ifugao rice granary guardian spirit, which is being sold and traded as antiques, cultural properties, and tourist souvenirs. The sacred Ifugao bulul is studied as an intellectual and cultural property and explores how it can be authenticated, preserved, and protected within three legal systems: Customary Law (Ifugao rituals, beliefs, and practices), State Law (Cultural Properties Protection and Preservation Act or P.D. 374), and International Law (Intellectual Property Code of the Philippines or R.A. 8293 in patenting industrial designs derived from the international laws on intellectual property). The scope of preserving and protecting the sacred Ifugao bulul under these laws is described through the legal pluralism phenomenon. Data was gathered from interviews with Ifugao mumbaki or shamans and woodcarvers who implement the customary laws; as well as authorities of the Intellectual Property Office and National Museum of the Philippines who implement the state laws. Data is presented in the context of legal pluralism's implications on the sacred Ifugao bulul as sacred objects of the Ifugao, cultural properties, and intellectual property. Results of the study prove the lack of an existing comprehensive legal mechanism to authenticate, protect, and preserve the sacred Ifugao bulul. This is reflective of issues regarding indigenous people's rights to self-determination and cultural representation.

Introduction

Globalizing industrialization as a product and process of development is immensely impacting the current condition of the world – socially, economically, politically, and culturally. Studies on indigenous populations' transition, adaptation, and mitigation of globalized development within the structures and superstructures of trans-national globalization have shown how the process has impacted their beliefs, traditions, practices, and lives. In the Philippines, the Cordillera Administrative Region (CAR) has a vast indigenous population of different ethno-linguistic groups. Many indigenous people residing in CAR use their traditional knowledge for survival in this globalized industry. Their indigenous knowledge is expressed in cultural properties which are made and/or sold to tourists, antique dealers, collectors, etc. This situation has caused the upland-lowland migration of most indigenous people for wage labor; even if this means using the skills of their cultural heritage to earn a means to live. Many Ifugao (people) use their skill of woodcarving to create different objects such as the Ifugao hut, weapons, and most popularly the bulul, to earn capital. The 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). 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. The bulul is a guardian spirit which is originally created through sacred ritual and deemed a sacred symbol for the Ifugao. It is created by multiple members of the community and undergoes rituals to be considered sacred which is witnessed and justified by the entire community. It is not supposed to be created for profit, but is now currently being sold and distributed around the world as an antique, artistic piece, or as a souvenir.

Descriptions of the sacred Ifugao and the customary laws revolving around it were obtained from interviews conducted from August – September 2006 with the *mumbaki* or shaman of Ifugao - Kalingayan Dulnuan (Kiangnan, Ifugao), Teofilo Gano (Hapao, Ifugao), Jose Inuguidan (Tuplac-Kiangnan, Ifugao), and Indopyah Palatik (Kiangnan, Ifugao); and *munpaot* or wood carvers of Ifugao – Joseph Dong-I Nakake (Hapao, Ifugao) and Junior Habiling (Hapao, Ifugao).

Today, some Ifugao bululs are still used in rituals involving the rice granary and/or are passed on as heirlooms to kin as guardians; despite a lot of them being sold and replicated. The sacred Ifugao bulul is a cultural property

that is a physical manifestation of indigenous knowledge which is being misused and misrepresented as retail objects and not as ritual objects in the culture industry. What is being done about it? Before any attempts are proposed to provide recommendations and strategies to this matter, it is pertinent to first explore how cultural properties are authenticated (certified or confirmed to be established as genuine or real), protected (to guard from harm such as misuse or misrepresentation), and preserved (to maintain and care for the object, protecting it from physical decomposition and cultural extinction). This study focuses on the sacred Ifugao bulul by identifying and exploring the issues revolving around how existing legal systems can authenticate, protect, and preserve it as a cultural and intellectual property in customary laws, the Cultural Properties Protection and Preservation Act or Presidential Decree 374 (National Committee on Monuments and Sites 1988), and the Intellectual Property Code or Republic Act 8293 (National Bookstore Incorporated Editorial Staff [NBSI] 2000). The legal pluralism phenomenon becomes the over-arching paradigm used to describe the existing interplay of these three sets of legal systems and the corresponding three sets of socio-political actors that implement these laws; all of which compete for the “loyalty of the group subjugated” (Prill-Brett 1994:687) to these laws. This research provides data from interviews conducted from September-October 2006 with those in charge of implementing the Cultural Properties Protection and Preservation Act – National Museum of the Philippines authorities such as Atty. Orland Abinon (Curator I of the Conservation and Laboratory Division) and Giovanni Bautista (Head of the Research Section of the Cultural Properties Division); and those in charge of implementing the Intellectual Property Code of the Philippines – Intellectual Property Officials such as Atty. Joseph Adamos (Lawyer to the Director of Legal Affairs), Dr. Epifanio Evasco (Director of the Bureau of Patents), Rosa Fernandez (Intellectual Property Rights Specialist III) and Abel Ambata (Intellectual Property Rights Specialist II).

The data is presented as an exemplar of the legal pluralism phenomenon. I use Chiba’s definition of legal pluralism in this study:

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 conglomerated as a whole by the choice of [the] socio-legal entity [Chiba 1998:242; Melissaris 2009:27].

This basically 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 socio-legal entity that must abide to it. In this study, the specific customary (Ifugao customs, beliefs and traditions), national (Cultural Properties Protection and Preservation Act) and international laws (Intellectual Property Code modeled after the international intellectual property rights regimes) all authenticate, protect and preserve cultural and intellectual property. This study explores the scope of these three sets of laws in authenticating, protecting, and preserving the sacred Ifugao bulul. The legal pluralism phenomenon makes the emerging issues that result from the competition and conflict of legal systems implicative of indigenous people's rights to self-determination and cultural representation through their cultural and intellectual properties.

Legal Pluralism on Philippine Indigenous Cultural and Intellectual Properties

Legal pluralism is defined as a social phenomenon because it is the acknowledged, justified, and a practiced idea as a social fact (Durkheim 1982:50-59) that exists in a well defined social organization determined by the group's social experience (see figure 1). 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 loyalty of a group of people subject to them (Prill-Brett 1994:687). Figure 1 displays the conceptual and theoretical framework of this study - the different bodies of law originate from different political actors that implement different social facts 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 Ifugao bululs) that choose which body of law they follow to authenticate, protect, and preserve the Ifugao bulul as a retail or ritual object. The legal system must then recursively encompass ways to authenticate, protect, and preserve cultural and intellectual properties among retail and ritual objects.

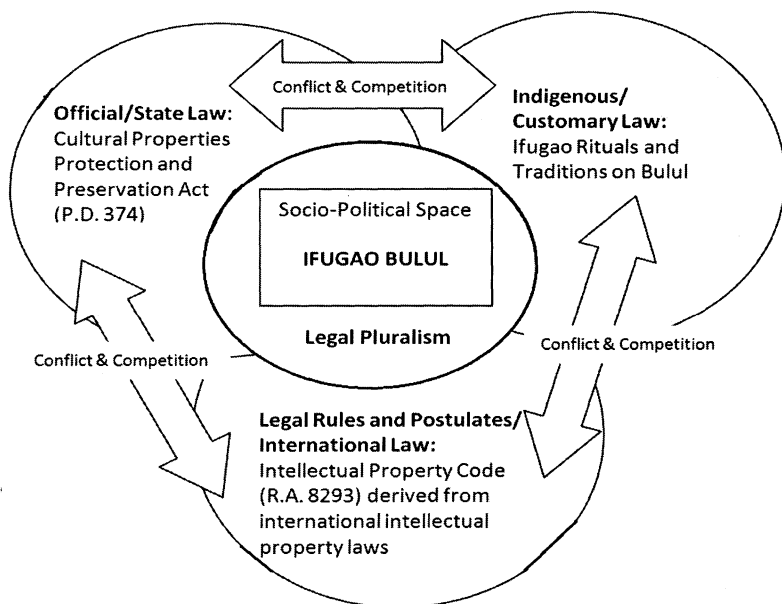


Figure 1. Conceptual and theoretical framework of study.

Legal Pluralism in the Philippines

As a colonial or postcolonial state, the Philippines has legal systems that are imported from dominant cultures and are forced on indigenous populations (Kidder 1979:289; Prill-Brett 1994:687). Most studies that use the legal pluralism phenomenon to explain the situation of indigenous people of the Philippines 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 bilateral consanguine 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 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. In the realm of cultural and intellectual property, the Intellectual Property Code in the Philippines or Republic Act No. 8293 (NBSI editorial staff 2000) is modeled from international intellectual property regimes such as the World Intellectual Property

Organization (WIPO) under the United Nations and the Trade-Related Aspects of Intellectual Property Rights (TRIPs agreement) under the World Trade Organization. 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 Ifugao bulul it is the *mumbaki* or shaman who has authority in customary laws; while for cultural properties is the National Museum of the Philippines – Cultural Properties Division; and the Intellectual Property Office who is in charge of intellectual property. This study focuses on how the sacred Ifugao bulul, as an indigenous cultural and intellectual property, is protected under customary, state and international legal systems modeled after a Western paradigm which clash in its implementation for proper authentication, protection and preservation of retail and ritual objects. The emerging issues of legal pluralism are implicative of indigenous cultural communities' attainment for cultural representation and self-determination.

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 2).

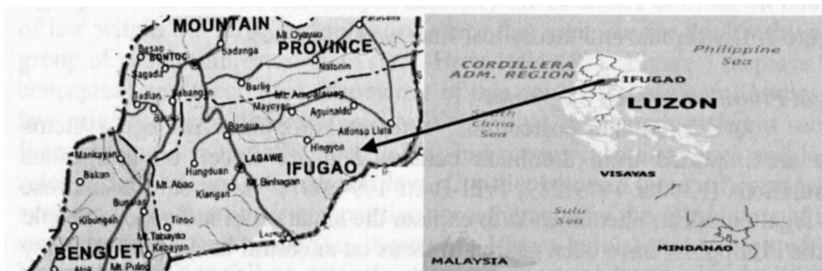


Figure 2. Map of Ifugao, Cordillera Administrative Region, Northern Luzon, Philippines (Image Shack Corporation 2010; Webster's Online Dictionary 2005).

Ifugaos 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 3) 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, where the ancients who are skilled in stone-walled terraces as well as the ancient art of wood-carving and metal-smelting resided, may possibly be the origin of the Ifugao bulul (Dulawan 2001:63).

Dulawan (2001) notes that American scholar turned ethnologist 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).



Figure 3. Sacred Ifugao Bululs (Kortmann 2009).

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* which notes the type of good deity inhabiting it and where it this deity from' to which 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 (Lambrech 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.

Mumbaki and Munpaot: Tribal Authorities on Customary Law regarding the sacred Ifugao Bulul

The *mumbaki* or shamans and *munpaot* or woodcarvers interviewed in Kiangnan 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 acquiring and creation of a bulul involves the presence of the entire community - the members of the family, the *mumbaki* or shaman who decides if a bulul is needed for a specific occasion, the *munhapud* who distinguishes what spirit or deity is in a tree which the bulul should be carved from, the *munpaot* or the woodcarver of the bulul, and members of the community who stand witness to the rituals performed to create the bulul piece. The *mumbaki* stated that the bululs are sacred because they have undergone *baki* or rituals, and are only created if a need arises such as healing sickness, attaining a good harvest, and warding off enemies. The bulul is needed specifically if someone is sick because 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* (Jose Inuguidan and Kalingayan Dulnuan, personal communication 2006). Bululs are important in order to make a ritual successful; such as in the *botok* or binding of the rice stalk. In this ritual, the bulul is needed to ensure a healthy harvest of rice as the bulul 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 (Indopyah Palatik, personal communication 2006).

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 *Cabunian* 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 owner(s) of the bulul to which the community could attest to since they had witnessed the rituals revolving around its creation and use. If those who had a bulul were healed or did not have a bad harvest, then the community acknowledged the legitimacy of their bulul. Those who have or had bululs are usually

kadangyan or of the wealthy class because of the extensive *baki* or ritual it requires to make one (e.g., provide chickens and pigs to be sacrificed in the rituals). 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 stated that the powers of the bulul cannot be changed because every bulul has a name, according to which *bugol* is inside it (i.e., *Bulul an Tinaynanad Dayya An Pumihol*, *Bulul mid Lagud An Natul-ung*, *Bulul mid Binuyyok*, etc.) and whose name refers to which place it came from.

Differentiating a ritual bulul (has gone through *baki* or ritual) 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. An authentic bulul must go through *baki* or rituals which may last for days; and requires the presence and participation of people in the community. 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. 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. 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 when the bulul has helped them and their kin get better during sickness, have a bountiful harvest, and/or warded off enemies. Despite this though, 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 the meaning of your culture. 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. The local church may even ban people from using the bulul, which is actually happening. People are left with the option to use their customs or adhere to the western or foreign solutions. Currently, 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 suggestions and insights of the *mumbaki* 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 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 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; and instead create bululs for money. According to the *mumbaki* interviewed, heritage is what is important 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].

The Ifugao Bulul in the Culture Industry of the Legal Pluralism Phenomenon

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

In 1975, Presidential Decree No. 374 or P.D. 374 amended the Republic Act No. 4346 (the country’s 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* 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 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* 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* representing past eras or periods (National Committee on Monuments and Sites 1988:47). 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 "safeguard" its intrinsic cultural value. Furthermore, the bulul can also be classified as an artifact 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. 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 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.'

Interviews were conducted with members of the panel of experts from the national museum of the Philippines, namely Engr. Orlando Abinon (personal communication, October 2006) - Curator I of the Conservation and Laboratory Division, and Giovanni G. Bautista (personal communication, September 2006) - Head of the Research Section of the Cultural Properties Division. Questions centered on exploring the possibility of the sacred Ifugao bulul to be categorized as a 'national cultural treasure' and not as an 'important cultural property'. 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, the Tabon Cave Complex, and the Roman Catholic Churches of Paoay and Bacarra in Ilocos Norte, 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 informants.

Intellectual Property Code in the Philippines (Republic Act No. 8293)

The National Book Store Incorporated or NBSI Editorial Staff compiled and edited the ‘Intellectual Property Code (Republic Act No. 8293) With Implementing Rules and Regulations’ by recording the tenth congress second regular session which prescribed the act on July 22, 1996 (NBSI editorial staff 2000:1). The outcome of this session established the Intellectual Property Code to be implemented by the Intellectual Property Office in the Philippines. The purpose of this act is seen in part 1, section 2: “the state recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfers of technologies, attracts foreign investments, and ensures market access for our products (NBSI 2000:1).” With this in mind, it is evident that this law caters to the development plan of the government to bring profit to the nation through innovations. This code is modeled after international intellectual property rights regimes (IPRs) such as the Trade-Related Aspects of Intellectual Property Rights or TRIPs agreement under the World Trade Organization. In section 4 of this law, it states that intellectual property consists of copyrights and related rights, trademarks and service marks, geographic indications, industrial designs, patents, layout designs (topographies) of integrated circuits, and protection of undisclosed information (NBSI editorial staff 2000:2).

In the context of this study, the sacred Ifugao bulul is premised as both a cultural and intellectual property of the Ifugao and the intellectual property code is explored in its scope of preserving and protecting cultural property as intellectual property of indigenous people. More specifically, this study sought to understand the applicability of protecting the sacred Ifugao bulul through patenting it as an industrial design since it is being used in the woodcarving industry.

An industrial design is defined in chapter 8, section 112 as “any composition of lines or colors or any three-dimensional form...Such composition or form gives a special appearance to and serves as a pattern for an industrial product or handicraft” (NBSI editorial staff 2000:42). Section

113.1-113.2 states that in order for an industrial product to be protected it must be new or original, and designs that are dictated essentially by technical or functional considerations to obtain a technical result shall not be protected. Officials of the intellectual property office officials were interviewed regarding this matter, namely –Atty. Joseph Adamos- Lawyer of Director Estrelita Abelardo, the Director of Legal Affairs; Director Epifanio Evasco, Ph.D. - Director of Bureau of Patents; Rosa Fernandez- IPRs Specialist III; and Abel Ambata -IPRs Specialist II (personal communication October 2006). These informants stated that although a bulul is an industrial design by the aforementioned definition of industrial designs, it is still not deemed to be patentable because it is not new. Nevertheless, the sacred Ifugao bulul is original in terms of how it was created, acquired, and its use-value to the Ifugao culture, but in order to protect an industrial design through a patent *a single individual* must apply and pay for the application. Section 32 of this law describes that the rules to patent are the same for copyrights and trademarks such as it belongs to the inventor or the first to file for the patent and fulfills the requirements for the application; after which this application for a patent must pass the jurisdiction of the intellectual property office courts (section 117). The emerging problem with this section of the law is how one individual of Ifugao descent could represent an entire indigenous cultural community's bulul as a form of intellectual property rooting from indigenous knowledge. Furthermore, like P.D. 374, the intellectual property code stipulates that the decision of patentability is left to the discretion of the officials of the intellectual property office, according to what these officials believe is most in congruence with the definitions of the requirements (section 117).

Chapter 8, section 115 of this law states that the individual applying for a patent must include a specimen or sample in the registration as well as payment of the prescribed fee. No amount was indicated in intellectual property code. Even if hypothetically, an individual from the Ifugao community was justified by the community to represent those who make bululs, the process of travelling and paying for a patent application was insensible for the *munpaot* or woodcarvers interviewed (Joseph Dong- I Nakake and Junior Habiling, personal communication September 2006). These informants explained that they would rather use the money to feed their families than for fare to go to the intellectual property office in Manila from Ifugao and application fee for a patent. The woodcarvers interviewed stated that the travel time and cost alone would take them away from their livelihood and significantly decrease their capital. Another conflict within the legal entities of the intellectual property code and customary laws of the

Ifugao regarding the authentication, protection and preservation of the bulul is that intellectual property is premised as being created and owned by a single individual who can exclude others from using this object. Furthermore, the intellectual property code allows the inventor or holder of the patent to profit or gain royalties from those they permit to use such a property. The Ifugao customary law is the exact opposite of the intellectual property notion because cultural properties like the sacred Ifugao bulul are communal property – it was “created” for a specific use such as guarding the rice granary, warding off enemies, healing the sick, etc.; it was created by specific people such as the *mumbaki*, *munpaot*, *munhapud*; it involves the whole community to partake in the rituals and sacrifices to create the bulul or use the bulul; and is passed on as a family heirloom. It is a community’s cultural representation of their beliefs and cultures as expressed in a single cultural and intellectual property. This does not mean that these cultural properties are open-access properties to which undergo the ‘tragedy of the commons’ (Hardin 1968). There is definitely a concept of cultural property ownership among the Ifugao in regard to the sacred Ifugao bulul that are stipulated in their customary laws from oral traditions. The intellectual property code does not adhere to the customary laws of the Ifugao that cultural properties are owned because its creation, authentication, protection, and preservation are shared within the community. Therefore the intellectual property code cannot protect the retail and ritual Ifugao bulul as patentable under an industrial design since it is not considered new, innovative, a technical solution to a technical problem, an inventive step, nor industrially applicable; which intellectual properties should be in order to be protected under this law.

Conclusions and Recommendations

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 Intellectual Property Code or R.A. 8293 does not consider indigenous

knowledge patentable and protectable under this law since Ifugao bululs are not new, unique, nor can be represented by singular ownership. R.A. 8293 should be protecting indigenous knowledge under its mandate especially with the advent of biopiracy on herbal medicines, folk crop varieties, textiles, and the allocation of artifacts and antiques. But under the sections of this law, cultural properties as intellectual properties are left unprotected because they do not adhere to the tenets of intellectual property rights regimes which promote private ownership, new and technological innovations, profitability through royalties, rights vested to exclude others from usage, etc.

The Ifugao informants view bululs being carved and sold as souvenirs “fake” bululs since they did not go through *baki* or ritual. The *mumbaki* or shaman interviewed states 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 *mumbakis* or shamans interviewed have a very realistic notion of culture inevitably being shared, and when it does, there is a possibility that those you share your culture with may distort the meaning of your culture. There is a growing stigma among Filipinos and 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 indigenous peoples rights through proper cultural representation of their cultural and intellectual properties through their 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.

A recommendation for further study is that there needs to be a proliferation of awareness and education on heritage for it is key to proper protection and preservation of culture – whether or not there are laws that tell you to do so or how to go about it. Heritage can be in tangible forms, like the sacred Ifugao bulul, 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 for ethnography can be that leeway or middle ground to promote the importance of indigenous peoples’ cultural representation and self-determination within the realistic contexts of

indigenous cultural communities. Policy makers are national and international socio-political actors that create laws regarding cultural and intellectual 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).

Globalized industrialization in the attainment of progress through ‘development’ takes its toll on even the most “trivial” things, like ideas and expressions. The sacred Ifugao bulul as a cultural and intellectual property that is now equated to a retail and ritual item in today’s culture industry is an example of this idea-expression dichotomy within the anomalies existing in the legal pluralism phenomenon. Even if there are laws that protect the cultural and intellectual properties, it does *not* consequently lead to the reality that *all* material culture *can and is being protected*. The customary laws of the Ifugao, the Cultural Properties Preservation and Protection Act, and the Intellectual Property Code *cannot* authenticate, protect and preserve cultural and intellectual property *congruently*, and it is precisely because there is conflict and competition for the adherence of each. This is exactly what the legal pluralism phenomenon predicts and emphasizes. The sacred Ifugao bulul is an idea that is expressed as a cultural and intellectual property, connoting both the individual and communal ownership of that expressed idea. Within the state and international laws on ownership of cultural and intellectual property makes it legally binding to exclude others from its use in order to protect, preserve, or authenticate it. These types of laws have become a barrier to indigenous peoples’ attainment for proper cultural representation and self-determination by categorizing, valuating, and excluding their ideas and expressions from protection and preservation.

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