Public Lives/OPINIONS

Indigenous peoples

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MANILA, Philippines—In 1917, the Provincial Board of Mindoro passed a resolution requiring all "non-Christians" belonging to the Mangyan tribes to live in a permanent settlement near Lake Naujan. They were to immediately abandon the vast forests in which they lived, and settle down in a reservation designated for their exclusive use. Failure to comply with the order made a Mangyan liable for imprisonment of not more than 60 days.

One such Mangyan, named Rubi, together with some of his relatives, failed to comply. He was promptly arrested and charged. Two lawyers, the American D.R. Williams and the Filipino Filemon Sotto, took up his case, went to the Supreme Court and filed for habeas corpus on behalf of Rubi.

Rubi's lawyers described the Mindoro law thus: "In limpid English, and in words as plain and unequivocal as language can express, it provides for the segregation of 'non-Christians' and none other … (and) constitutes an attempt by the Legislature to discriminate between individuals because of their religious beliefs, and is, consequently, unconstitutional."

In 1919, the high court handed down a long, erudite and controversial decision. It was penned by Justice George Malcolm, the founder of the University of the Philippines College of Law. Justice Malcolm agreed that the petition for habeas corpus could indeed be invoked under the circumstances, but he rejected the claim of religious discrimination. The term "non-Christian," he said, was intended not as a religious category, but as a cultural one indicating a level of civilization.

Malcolm wrote: "The Mangyan are very low in culture. They have considerable Negrito blood and have not advanced beyond the Negritos in civilization. They are a peaceful, timid, primitive, semi-nomadic people." He likened their situation to that of the North American Indians, who were, he said, in a "state of pupilage." The Mangyan reservation was for their own good, he declared. It is far from being unconstitutional.

It must have been very difficult for a libertarian like Justice Malcolm to arrive at a ruling like this. He referred to the Jones Law of 1916 several times, particularly one provision: "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." This line was practically lifted from the 14th Amendment of the US Constitution.

Justice Malcolm affirmed the inviolability of this principle, but he did not believe it was applicable to Rubi's case. "Theoretically, one may assert that all men are created free and equal. Practically, we know that the axiom is not precisely accurate. The Manguianes, for instance, are not free, as civilized men are free, and they are not the equals of their more fortunate brothers. True, indeed, they are citizens, with many, but not all the rights which citizenship implies."

I chanced upon this decision (G.R. No. L-14078) recently, while researching a paper on the origins of the first colleges of the University of the Philippines. It is an astonishing document. Every page in it manifests an incisive and analytical mind at work. But it was clearly a document of its time—it

reflected the vision and the blind spots, the good intentions and the ill-concealed condescension, that marked the consciousness of the period.

The prejudices and misconceptions inherent in the descriptions of the non-Christian peoples were so prevalent (and still are today) that I probably would not have known how wrong they were had I not gone to the northern province of Kalinga in the late 1970s. The people of the Cordillera at that time were up in arms against the series of hydro-electric dams that were to be put up by the Marcos government at different points of the powerful Chico River. Their protest found a voice in Macli-ing Dulag, a quiet and handsome man in his early 40s from the village of Bugnay. Macli-ing, who worked as a street-sweeper, did not finish grade school but he was a man of great wisdom and leadership.

I was with a group of academics, activists and journalists who had joined the late senators Lorenzo Tañada and Jose Diokno on this trip. The goal was to meet Macli-ing and to persuade him to bring the case against the Chico Dam before the Supreme Court. Outside Macli-ing's hut, the two venerable statesmen, both brilliant lawyers, squatted on the ground with the Kalinga leader. "There is a lot of jurisprudence that we can cite," said Diokno in Filipino, "to make the court recognize the primacy of your rights to your ancestral lands."

"Let us help you bring your struggle to the courts in Manila," chimed the old man Tañada.

After they spoke, Macli-ing looked at them kindly and told them in his language: "I thank you kind sirs for coming to our parts offering your generous assistance. Your presence has made us stronger. But I cannot accept what you're proposing. If we submit our beliefs to your court in Manila, it would mean we don't hold them deeply. Our lands and our mountains are older than your courts. Your courts speak a different language we cannot understand. And they too will not understand us. We are not claiming ownership over this land. We do not own the land, the land owns us."

Macli-ing was murdered a few years later. He was just too bright, a trait that was perceived to be dangerous and totally inconsistent with the figure of the native. The Chico Dam project was eventually abandoned. But the tragedy of the indigenous peoples continues.

P.S.

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