A Concise Legal History of East Timor

JEAN A. BERLIE

Introduction

Long before the arrival of the Portuguese and the Dutch, Timor was a part of a trading system that included Java, Sulawesi, China (confirmed by the Veritable Records of the Ming dynasty) and India. Writing of Timor, Geoffrey Gunn has stressed the importance of viewing "the indigenous political system as integral with traditional beliefs and practices." Since traditional laws always played an important role in this context of trade, before considering the history of the local Portuguese legal system, one must study customary law (adat in Malay) in order to understand the legal system of Timor. For such a study documents are available only in Portuguese, Indonesia, Holland, and secondarily in the Timor collection of Northern Territory University, Darwin. As the Dili archives were destroyed at least four times in 1779, 1890, 1975, and 1999, it is not easy to locate these sources of information in East Timor. The following legal history of Timor attempts to be non-eurocentric. It draws considerably on the pioneering work of Luis Gonçalves and Jocinto José do Nascimento Moura, who tried to define the different forms of law in Timor, where each former kingdom had its own particularism rooted in ethnic characteristics.

This short study of the legal system of Timor is intended to help the people of Timor Lorosae to understand better their past and to build a legal structure for their independent country after studying and adapting the customary laws bequeathed by their ancestors.

Customary Laws

Timor is a racial melting-pot of Negritos, Melanesians, Malays, Mestigos, and Portuguese. This fact influences the nature and implementation of traditional laws as well as Portuguese laws. Other groups have also existed, such as Africans, Arabs, Chinese, and Indians (mainly from Goa), and nowadays the main minorities are Chinese, Europeans, and Muslims. Up to the beginning of the twentieth century, traditional Timorese society was made up of rulers, liurai (chiefs independent in their own kingdom), the nobility, dato (this class includes suco chiefs), commoners, and slaves (atan). In the more populous countryside, the knowledge accumulated by the chiefs and the dato ilalik (the local priests), was the only method of public record keeping in East Timor.

F.J. Ormeling has demonstrated that the origin and development of suco life are by no means clear. The rule of the radja or liurai in each kingdom Timor was coupled with an extraordinary display of authority. These monarchs were addressed as Macomak-om 'Son of God', and a passive and non-commital attitude towards them was characteristic of the masses. Despite the more educated being logically critical of the liurai's authority, the majority accepted his power and predominance, for violation of traditional usages or adat threatened the community with sickness, crop failure and famine.

A Timorese myth, recounted by the Dutch anthropologist P. Middelkoop, divided the island of Timor into three kingdoms: Belo (southwest coastal plain), Sonbai (west of Timor), and Sui (south center of the island). The Portuguese considered that Sonbai (Sonabai), was a part of Belo (Bela), and they divided Timor into two parts, namely Belo and Servia. There were 62 petty kingdoms: 46 in Belo, and 16 in Servia. A substantial migration dating from the early fourteenth century had brought the three initial kingdoms into one principality called the Baiklo (Bai-lo) kingdom. In the extreme eastern part of the island, the Macanai, Macaire and Fataku, much older residents than the Belunean, spoke Papuan languages related to that of the Bunak people of the central-southern region. From 1515 to the present, in seeking to understand Timorese society, even in Dili, the concept of 'chieftain' is central. In the year 2000, there are parties

2 This Australian collection opened in 1993; the author would like to thank the Librarian and all the staff for their help.
3 Gonçalves and Moura 1957:475.
4 Pomal or pomali is the place where are deposited the relics of the ancestors, totems and sacred objects (ilalik), Wallace 2000:150.

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1 Also written zauko. The old spelling xauko will be used in this article instead of the more modern form zauku.
2 Oermeling 1957:76, 78-79.
4 Taylor 1999:2.
5 Bodeley 1994:149-152. Marshall Sahlins (Social Stratification in Polynesia 1958) noted that the 'chief' is the 'agent' of society-wide distribution of goods, whose generosity gives him prestige and direct control over social processes. Elman Service (Origins of the State and Civilizations... 1975, and previous works in 1962) popularized the term chiefdom to refer to a hierarchy of villages and districts with a paramount chief. Chiefdom is qualitatively distinct from small-scale tribes, and is an evolutionary stage on
and a provisional government in East Timor, but it is still not possible to communicate effectively with the people without going through the chefe de suco, who have the customary right to govern the people at the village level, which is fundamental in a rural subsistence society heavily dependent on agriculture. Chiefs are normally born in office, their rank being based on primogeniture, and they are succeeded by their descendants. Although there has been since 1975 a tendency to modernize the traditional political system, the majority of villagers continue to rely on the advice of their traditional chiefs and on themselves. At the village level, mutual assistance is customary for the planting of crops and the construction of houses.

**What is adat?**

_Adat_ is a Malay concept meaning tradition, manners and customs; the Tetum equivalent of the term is _lisan_. In East Timor all the basic elements ensuring the continuation of the indigenous society are still firmly in place — kinship systems, ideologies legitimizing traditional rules, a self-sustaining subsistence economy, and a culture based on reciprocity and exchange. East Timorese society is still a segmented society with its own logic. Language, religion, family, and marriage are significant elements maintaining the traditional order.

**Law and order: Timorese traditional laws**

Customary laws may solve many legal problems, but they must not be in opposition to moral ethics and public order, for order and discipline are crucial matters in East Timor. After spending four months in Dili and Balibo (Balibó?) in 1861, the naturalist Alfred Wallace reported insurrections. The incidence of warfare is a complex social phenomenon, which explains the recurring tendency towards insurrection. This was the case during some 500 years of Portuguese colonization, a period of many rebellions, none of which were anti-colonial before 1911. Gunn argues that at the beginning of the twentieth century, governor Filomeno da Cunha established a new social order to restore public security. His reform featured the creation of smaller administrative units. The result was a more direct type of colonialism; for the first time in history many liurais reacted against it, for instance the Timorese aristocratic leader and hero Dom Hovventura. The great distance between Portugal and Timor, the exceptionally small number of malae, foreign administrators and military, and the rich ethnic traditions of the Timorese helped them to resist colonial integration.

An anthropologist, H. O. Forbes, who visited the Portuguese colony in 1882, reported on the independence of the liurais in their own domains. Portuguese history also illustrates the difficulties of the administration and describes military postos (posts) in the interior of the island. In studying this question of law and order it seems useful to compare Timor and Malaysia to understand why customary laws are necessary. Local customs such as the habit of carrying arms, — _kris_ (or Malay-style daggers), spears (symbolic Timorese weapons), or _katana_ (machetes) — was a reason for the high frequency of affrays, common in both colonies during the nineteenth century. What was said of British Malaysia held good for Portuguese Timor: "It is no uncommon thing for the inhabitants of one village to make a raid on the dwellers in another who are weaker and to carry off their herds." One latter-day instance of the same cattle-raiding custom occurred in 1970 in Oecussi-Ambeno, where a suco chief lost his post over a raid into West Timor in response to a previous raid on his own cattle. The Portuguese district administrator sent him into custody in Dili. Later his eldest son succeeded him and became suco chief after completing his military service in Dili. In the year 2000 this same son still rules the same suco, having displayed his diplomatic and political skills in managing his own people, the Indonesians (1975–1999), the former colonial Portuguese, and the present CNRT leaders.

**Oaths**

When, in the course of public trials, evidence was challenged, the usual method of testing veracity was ordeal by oath. Traditional oaths were sworn on God (Maromak), the national flag (previously the Portuguese flag), or totems (ulu), sacred things or animals such as the deeply-revered crocodile. Nowadays the Timorese swear their oaths on a crucifix or the Bible.

**Family Law and Succession**

Family law also plays a significant role in the traditional Timorese legal system. The exchange of gifts in return for access to means of production (land) and reproduction (the creation of new family units) was also expressed in the rites accompanying birth, marriage and death, all of which were combined in a value system relating the tribe and the cosmos. In death rites, for example, the dead person's progeny acted as an intermediary between...
wife-givers and takers, coordinating exchanges between them, and making "death payments" to the deceased person's matrilineal kin. Primogeniture is the rule, and this is especially so among the chiefs. Consanguinity and affinity, as mentioned by Goncalves, are key elements of these rigorous rules. Adoption was a common custom; polygyny was the rule among chiefs, marriage was exogamic, a practice which has disappeared in modern Timor. A report from the Portuguese governor in 1882 confirmed the complexity and abundance of marital exchanges and kin relationships.

The right of succession for the transmission of property did not discriminate between the children of different wives. Daughters had an equal right to the property of their deceased parents.

Barlake

Barlake (from the Malay berlaki) is the term for a common-law marriage in Timor. The complex rules of marriage are part of a clan system very difficult to reconstruct. However, concerning the marriage itself we know that in Baucau three to 38 buffaloes were commonly given as the ritual bride price. Near Baucau, during World War II, the family of the eldest daughter of Francisco Belo Ximenes, a civil servant compelled by the Japanese to be an interpreter, received four buffaloes from the bridegroom as barlake. Horses and other cattle could additionally be given to the father of the bride, the main receiver of gifts. Buffaloes (karau in Tetum or aracao in Makasai) remain the most symbolic gift. The traditional matrimonial regime is based on the separation of possessions between husband and wife. In cases of cancellation of a marriage, or divorce, return of the barlake gifts is the rule.

Traditional Penal Laws

For the implementation of penal laws, there were traditional local police stations which were not under Portuguese control. Taking the example of Liquiã, west of Dili, Moura found the following customary penal cases and the corresponding sentences:

- Robbery is a serious offence and if the offender cannot reimburse the victim or if the object unlawfully taken is not given back, this is a penalty of death or slavery.
- Fraud and abuse of confidence are punishable by a fine.
- Crime is also punishable by the payment of a fine to the family of the victim, with the additional payment of a buffalo.
- Infanticide is also punishable by a fine and the symbolic gift of a buffalo may also be imposed on the sentenced person.
- Insults are also punishable by fines.
- Corporal offences are punishable by a fine.
- Rapes are punishable by different types of fines.
- To save face for the husband, adultery is similarly punishable by a fine. A lurai or a colonel (Timorese chiefs faithful to Portugal were given military titles) has the right to kill his adulterous wife and her accomplice.
- Offences against lurai and their family are always more serious than those against ordinary subjects.

Traditional Society and Slavery up to the Nineteenth Century

In the nineteenth century, Portuguese Timor consisted of local Timorese, a few Europeans (mainly Portuguese), Mestíços called Topasses (a Tamil word meaning 'intermediary'), Macanese, Indians (mainly from Goa), Africans, and Muslims, the dominant group being from Hinduism throughout the kingdom of Saba, Sourcer. In 1850 the population of East Timor was close to 700,000. The Portuguese were few so that Pelissier, following Alberes Antonio Metello, called Timor a "ghost colony." The troops and Portuguese Navy fighting the rebellions (almost one every year during the period 1847-1913) were only some 2,000 Portuguese, assisted by more than 100,000 Timorese 'auxiliaries' to maintain law and order.

In the traditional Timorese adat (lei tradicional) in Tetum there was one general term for 'slave', atan, throughout most of Timor, but among the

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16 In modern times, the koloas (class-mates in Tetum) have a quasi-familial type of relationship.
17 Taylor 1999:11.
18 Goncalves and Moura 1937:487.
19 An example of clan tabu is the leaves of a black dye plant, taum in Tetum, tuam in Meto (spoken in Oecussi), which are a masculine tabu. Touching them give impotence to men. This plant was probably the symbol of an ancient clan.
20 BGC X/106, April 1934, 37-52. In the year 2000, incredible bride prices were asked of Malab staff of the United Nations wanting to marry Timorese girls; the equivalent price in dollars was 50 or 70 buffaloes.
22 Ibid. p. 483.
23 This concept of compensation to the victim's family is also important in Korsican and Indonesian customary laws.
24 Furthermore, as in the Corsican and Sicilian vendetta, any member of the dead person's family has the moral right to kill the criminal.
25 Social status has economic and political consequences, allocates respect to the chiefs, and codifies respect to them.
26 Considering that the profit from sandalwood went mainly to the lurai, it would be interesting to look at the East Timorese adat to see if, as in West Timor, it was a punishable offence to damage a sandalwood tree. Osmundt 1957:173 (note 35).
28 Pelissier 1996:312. The death toll between 1847 and 1913, which gives an indirect view on the state of disorder, was 51 Portuguese and 496 Timorese "auxiliaries"; we do not know how many men of the Timorese resistance were killed during this period. In 1942-1945, more than 15,000 Japanese troops were stationed in East Timor. During the period 1973-1999, the Indonesian forces included 20,000 men. How then could the currently planned 3,000 Palauan troops maintain order and peace?
Fataluku speakers of the extreme east, there were, for example, three different classes of slaves. These three classes were called rato (the highest status), patcha, and atan (the lowest status).

The slave trade was one of the main reasons for S. de Rosily's advocating a French take-over of Timor. He tried to convince the French navy, but after a French expedition to the neighborhood of Baucau in 1772, his suggestion was not acted upon. In the early nineteenth century, slaves were numerous in Portuguese Timor, for "both Dutch and Portuguese carried on a flourishing slave trade from Timor." To diminish the local deficit and perhaps for ethical and humanitarian reasons, on August 28, 1858 a tax was imposed on slaves in East Timor. The main reason for servitude was capture in war. Furthermore, in customary law, which provided for capital punishment, slavery could be opted for as an opportunity to escape death when the death penalty was ordered.

In theory slavery was abolished in all the Portuguese possessions in 1827, and in 1860 in the Dutch East Indies. However, "it was a long time before the slave trade finally disappeared," and debt bondage remained a tradition in Timor up to the twentieth century. Later attas took on its current meaning of servant, and slaves could be members of large households. In 1934, a regulation concerning indigenous labour was promulgated under Law 16.169. A League of Nations report on the abolition of slavery in the Portuguese colonies was finally issued in 1938. Because the colonization of East Timor was indirect, even after the reforms of the twentieth century, using adat in the implementation of the 'law' often posed problems for the Portuguese and their European judicial system.

The Portuguese Period (1515–1975)

Chronology

The Portuguese period is rich in historical documents (though the great majority have not been translated into other languages). In the course of colonization, the Timorese had learned many of the customs of the Portuguese; a 500-year intercultural exchange was in progress, and both colonized and colonizers adopted a part of each other's legal system in order to live in harmony. However, this did not prevent rebellions.

1515–1665

Implanted from Flores and Solor, the Portuguese settlement in Timor, first in the Southern Pacific region, was under the military, legal, and economic control of Dominican friars who made their base in Lifau, in the present enclave of the Ambeno enclave, around 1515. However, a capitão-mor (captain major) was in command of the ships and had also a judiciary power. Timor was initially called Lampaqua by the Portuguese, but its name Timor, meaning 'eastern' in Malay, came to prevail as the usual name of this far-away island.

1665–1769

Parallel with the ecclesiastical authority was the power of the capitão-mor, who had control over the fleet and the military up to the end of the seventeenth century, but the main rulers were the Dominicans. Antonio Mesquita Pimentel, in 1696, and André Coelho Vieira, in 1698, were the last capitães-mores. According to James Dunn, this period saw the establishment of the first real colonial government in Timor itself. Antonio Coelho Guerreiro was the first governor (1701–1705), succeeding a long line of capitães-mores. Although other navy officers were appointed governors, the governor of Timor was a generally captain, a major, or sometimes a colonel.

The pattern of indirect administration and justice set by André Coelho Vieira lasted some 200 years, and had strong links with the local adat. On orders of King Dom João V, there was, for the first time in the Portuguese colony of Oceania, a clear separation of the temporal and spiritual power which controlled the judicial system. Timor had its own laws in the sixteenth and seventeenth centuries. In 1711, possibly on the initiative of governor D. Manuel de Souza, military ranks began to be bestowed on local chiefs. These ranks, intended to foster a high degree of loyalty to Portugal from the local chiefs, were colonel, lieutenant colonel, major, captain, lieutenant, and junior lieutenant. To maintain order, these military ranks and privileges were offered to the local chiefs, who often had higher honofric ranks than the governor. However, governors had a strong judiciary, administrative, and military power, and used the chiefs to impose their indirect colonial rule.

18 Dunn 1996:14, quoting the late Charles Boxer.
19 Felgas 1956:233-234. More than 200 years later, at the Conference of Governors in Lisbon on June 1, 1933, Major Raul Manso Preto, the governor of Timor under the rule of Salazar, recognized that government instability, and thus legal instability, had been the rule in the most distant colony of Portugal since the nomination of the first governor in 1701.
20 Felgas 1956:234. For example, the grandfather of the present traditional suco chief in Ainaro, Artur Araulo Corte Real, since 1943, was captain Baris Letobere, also suco chief.

Los Palos and Lautem are two cities where Dagada people are numerous.
12 Louis de Freycinet, who landed in Dili, in his travels, believed that he saw 300,000 people in Dili in 1825 (Taylor 1999-9) according to D.H. Koff, Voyages through the Southern and Little Known Parts of the Moluccan Archipelago... London: Earl, Madden and Co, 1840.
15 Gonçalves et Moua 1937:482.
16 The Timorese fight continually among themselves and take the opportunity of kidnapping unprotected people of other tribes for slaves" (Wallace 2000:150-151).
17 "Timor provides good-natured slaves for household purposes" and was one of Indonesia's slave reservoirs (Oermeling 1957:180).
18 Gonçalves and Moua 1937:455. See also Glenn Francis, 1960. As a comparison, slavery was totally abolished in Nepal in 1950.

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According to Faria de Morais, in the eighteenth century the Portuguese legal system was characterized by the “supremacy of the central power”. The governor, due to the isolation of the island, was very powerful at this extremity of the Portuguese colonial empire. A notable exception to this pattern was in 1722, when lay judicial rule was challenged by the bishop, Dom Frei Manuel, who managed to become interim governor.

1769–1900

In 1769 Dili replaced Lilau as capital of the colony. This period was marked by a Portuguese-Dutch territorial contest which divided the island into two sectors. In 1799 most of the archives were destroyed by a fire in Dili, probably by order of the governor himself. The nineteenth century was characterized by languor, though some significant changes took place: for example, in 1880 many Chinese came to Timor. The middle of the nineteenth century was saw an increasing number of rebellions which disturbed the legal order of the colony. From 1844 to 1896, Macao ruled the executive and judicial systems of Timor with local courts in particular in Dili. During these fifty years the governor of Timor suffered a reduction of his power because of their subordination to Macao as a centre of surveillance and inspection. This indirect rule, in the context of an already indirect colonial system, was of little advantage to Timor, which received in general only one ship from Macao per year.

Many local chiefs rebelled against this regime. Governor José Celestino da Silva (1894–1908) was largely responsible for the pacification of Timor, which had some beneficial effects in the operation of the legal system. Nevertheless, the cost in human suffering was enormous. The Chinese were in general a law-abiding community, but the reforms of the period imposed on them enforced residence in certain fiscal posts: Dili, Lufipik, Alen, Maubara, Cotubaba, Batugadé, Oecussi, Manatuto, Baucau, Lautem and Viqueque. These reforms partly improved administration and justice, setting up 11 military districts and 46 posts, and giving independence to Timor which in 1896 had its own colonial system no longer linked with Macao, except for maritime liaison. The year 1900 is a turning point in the history of Timor. It marks a change in the Timorese administrative and legal system, a passage from a purely indirect colonial system to a more direct system, which however, kept customary laws.

1900–1942

Up to the end of the nineteenth century, the local native authorities had considerable judicial power. In the following century Portuguese administration and justice became less indirect. The general colonial reforms, inaugurated in 1906 by the General Office of the Colonies in the Ministry of Foreign Affairs and the Navy, included a new plan for the legal and administrative organization of the autonomous district of Timor. Ruled by Goa and Macao at the end of the nineteenth century, Timor was finally granted more autonomy in theory. In practice, naval technological progress drastically diminished the distance between the mother country and the colony of Timor, although the first direct air link between Lisbon and Dili was established only on October 25, 1934.

By 1910, law and order in East Timor was breaking down. According to Luma de Oliveira, Timor's reception of the Republic of October 1910 was enthusiastic. However, considering the number of rebellions during that period, a reassessment of this statement seems necessary. Pélissier and Gunn mention “the confusion of the illusory”. Most of the illusory owed allegiance to the king of Portugal, whom they had come to consider the chief of a greater chiefdom, so the new concept of a republic was strange to them. Moreover, as they began to experience a new colonial system more direct than that of the past, they naturally reacted against it. In Ambeno, for example, the raja Cruz was replaced by the new liliar Hugo Hermenegildo da Costa, who was friendly to the new Portuguese regime which empowered him. Unlike Cruz, who was linked to the kingdom of Portugal, the Costa family had never given its allegiance to the king of Portugal. All these rebellions of the twentieth century are, in fact, a clear signal of an anti-colonial struggle of the Timorese, which succeeded in its objective of alarming the Portuguese. The most serious of these was the so-called Manufahi Rebellion of Dom Boaventura, the liliar of Same.

1942–1945

In February 1942, Japanese forces entered Dili and other coastal districts. The Second World War was a confusing period for Timor because Portugal and Japan were allied; thus Macao remained at peace up to 1945. However, on February 19, 1942 Japan issued a note in French to the Lisbon government, explaining that for its own imperial defence, it was obliged to fight the “Anglo-Dutch” in Timor and that same month Japanese forces entered Dili and other coastal districts. In the Ambeno enclave the Portuguese were prisoners in a detention camp in the main town Oecussi, now Pante Macasar. During that period of military jurisdiction, João Hermenegildo da

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28 Morais 1944:171.
29 Felgas 1956:244-245.
30 Dunn 1996:16.
31 Gonçalves and Moura 1937:482.
32 Felgas 1956:250.
33 Pélissier 1996:19.
Costa, the liaison of Oecussi, escaped to Darwin and stayed there for the rest of the war. Another detention camp was established in Liquiçá.

Portuguese executive and legal authority was restored when two Portuguese warships arrived in Dili on September 27, 1945.

1945–1975

Following the capitulation of Japan, Portuguese law was re-established in the colony. In fact, important legal changes were ushered in with the Colonial Act of 1930 and the Organic Law for Portuguese Overseas Provinces, which was published by the General Agency for the Colonies in 1933 and modified in 1945. The Colonial Act was included in the Portuguese Constitution by Law No 2048 (11.6.1951). A politico-administrative statute for Timor was published in the Organic Law of the Portuguese Overseas (No. 2066), published on June 27, 1953. At that time there were nine administrative districts: Dili, Lautém, Viqueque, Baucau, Manatuto, Suro, Ermera, Bobonaro, and Oecussi. There were 54 administrative posts, divided into sucos and villages which observed customary laws in everyday life. The governor, still very powerful, appointed a council of ministers and a council of government, initially composed of eleven members, three of whom were life members and the rest elected. In 1974, the number of Timorese in the central provincial administration and justice increased to 60 per cent. The number of districts was raised to thirteen, and the number of posts was set at 60. According to James Dunn, who was Australian consul in Dili in the 1960s, the character of the Portuguese laws was not particularly oppressive, but Salazarism was present almost everywhere, for example, the International Police for the Defence of the State (PIDE).

The Carnation Revolution in Portugal toppled the government of Marcelo Caetano on April 25, 1974, and this accelerated the decolonization of East Timor. The years 1974 to 1975 have been dubbed a period of “Portuguese inaction” by José Ramos-Horta. The main pro-independence party, Fretilin (Frente Revolucionária de Timor Leste Independente), was founded in September 1975, and after a counter-coup against UDT (União Democrática Timorense), it ruled alone East Timor until December 7, 1975.

Many new laws appeared in the 1960s and 1970s, but it is difficult to speak of a timorization of laws and justice for this period, given the decrees concerning the political status of the province of Timor (No. 45378, 22.11.1963 and No. 547/72, 22.12.1972). Colonel Lemos Pires was the last Portuguese governor, appointed in Dili on November 25, 1974. Finally, in October 1975, the Portuguese recognized the right of the people of East Timor to independence. One of the last Portuguese policies aimed to build an electoral system for a Constitutional Assembly. This called for a government with an equal representation of UDT, Fretilin, and the Portuguese government during a transitional period of three years before the general elections to be

held in 1976. A consultative assembly was planned to discuss laws on political parties, on elections, and on the distribution of portofolios. The Portuguese government was represented in particular by two majors, Justino Mota, and Jonatas, a former administrator of Ambeno. However, on December 7, 1975, the Indonesian army entered Dili by force. Governor Pires was repatriated to Lisbon via Kupang from the island of Atauro, where he took refuge in August 1975.

Twenty-five years later, a proposed CNRT interim government linked with the United Nations, and the two main political parties, Fretilin and UDT, will determine the legal future of East Timor.

Portuguese Laws

Because of their indirect colonial rule, the Portuguese promulgated very few laws for Timor. The continual influence of traditional law, adat, shows that colonial and indigenous legal and political systems existed in parallel. However, after 1900, there was a certain slow and prudent modification of the Portuguese legal administration. For example, between 1901 and 1904, the Ministry of Navy and Overseas Colonies applied the following instructions in the autonomous district of Timor:

9.5.1901 A charter on property concessions executed according to the rules established on 2.9.1901.
30.10.1902 Instruction on public servitude in “marginal lands”.
27.11.1902 Rules on contracts on land for construction purposes.
21.10.1903 Law on concessions and permits.
26.11.1903 Establishment of taxes and stamps for permits, franchises and grants.
6.8.1904 Deposits for grants of preferential rights on land property.

11 Taylor 1999:39-43, quoting US Foreign Broadcast Information Service, Asia and south Pacific, May 7, 1975. Interestingly, this period and a period of preparation for elections is very similar to the summer of 2000, before and after the CNRT congress which was held between the 20th and the 30th of August.
12 Twenty years later, Mario Lemos Pires judged during an interview that this military attack was a fatal Indonesian mistake. He also tried to justify the Portuguese decolonization, in "Keselahan Fatal Indonesia, Menggunakan Militer" (Using the army was a fatal mistake of Indonesia), Tempo, Jakarta, 3.9.2000, pp. 38-40.
13 BNPAT XXXV/190, 24.7.1890, 236-240: Inspection of the Company of Infantry of Timor, 12.2.1890, arms: Remingtons and ammunition are in general maintained in good condition. However, the number of officers is always in reduction, a limited number of sergeants is noted in the companies. The small number of soldiers cannot satisfy the necessities of the services, so there is a lack of good results. Food is good and in abundance. So, certain parts of East Timor, such as the island of Atauro, were almost totally abandoned until roughly 1947.
14 The Portuguese archives are currently the main source of information because most of the documents were burned in September 1999 in Dili.
15 Moreira 1905:3-4.
The decree of June 17, 1909, modified the administrative and judicial organization of the Portuguese colony. The territory was divided into nine "councils" (concelhos). After World War II, thirteen councils were created, including 60 posts (postos) and a municipality in Dili. Four courts of justice existed in Dili, Baucau, Suai, and Oecussi.

Civil Laws

On August 20, 1889, 60,658 reis were paid to the family of the late Sabino Francisco Pereira, a commissioned infantry officer, a resident of Macao after the auction of his movable property.

On February 15, 1929, a Code of Civil Procedure was made applicable in the colonies, including Timor. This new system established a more centralized control.

Property Laws

In Timor land was the common property of the reino (local kingdom or chiefdom). In customary law, in particular at village level, land could not be sold or bought. After World War II, it seems that a more modern view was accepted, but no land records came to be kept at the village level. In 2000 it is impossible to tell what type of property law will be finally adopted. Indeed this is a crucial legal problem for the new East Timor. After a landowner's death it is generally well accepted that his land is divided among the heirs.

Penal Laws

It is not easy to trace the development of legal matters during the long Portuguese rule. At the end of the nineteenth century, when the maintenance of law and order was an arduous task, one of the rare allusions to Timorese affairs in the Boletim of Macao and Timor was the brief notification of: "Small questions again about public order concerning the chiefship." 60

Mentioned elsewhere were court cases in Dili, for example one on June, 14, 1889, in which soldier No. 98/221 of the 1st Infantry Company was punished with 10 months of corrective imprisonment (with seven months already deductible, done in preventive confinement) for voluntary injury to somebody, the victim being unable to attend to his usual work (Art. 360, No.1 Penal Code). 61

Acts of disobedience were more severely punished. On August 31, 1889, two soldiers, Bernardo and Amisse, were sentenced respectively to two and three years in military prison for "disobedience." On May 17, 1889, the same

Military Tribunal of Dili banished one soldier for eight years to an African colony for a domestic robbery of more than 40,000 reis. The name of the territory of exile was not mentioned. On August 31, 1889, another soldier had the same punishment for robbery and desertion.

A further example of punishment is the sentence given to Francisco Belo Ximenes (1888-1994) by the Military Tribunal of Dili because he was an interpreter for the Japanese forces during World War II in Fatumaca, near Baucau. In 1950, he was put on trial in Dili, judged guilty for helping the Japanese, and alleged to be involved in robbery during the war. He was banished to Atasiro, where 200 other prisoners were interned from October 20, 1950 to April 9, 1951. He received 500 kg of rice, 500 kg of millet, and 25 kg of dry fish per month. He had a small house to live in, a small garden, and a place to rear chickens. After his liberation, he received the position of curator of the cemeteries of Dili Municipality (Santa Cruz and Santa Ana). 62

The normal penal procedure following the four headings: 1) Dispute, 2) Correctional Policy, 3) Procedure of Transgression, and 4) Summary Procedure.

The jurisdiction of the reinos is given to military commander in command post. This type of colonization and jurisdiction established in the twentieth century a more direct system than before.

Electoral Laws and Party Manifestos

In 1889-1890 municipal elections for the local assembly were for the first time organized in Dili under the presidency of Belarmino Lobo, with João Mariano Dias Martins and Antonio Henrique Guterres as secretaries. In these elections the Chinese and the Hadramaut Muslims were represented by their respective community leaders in the Dili Municipality. A colonial act of 1930 set up a Legislative Council. The national referendum of 1933, in modifying the constitution, also affected the status of colonies, including Portuguese Timor. Timor was declared an overseas province (próvincia ultramarina) in November 1963 and its Legislative Council came into existence in 1964 with 11 elected members. Later the Council's membership was extended to 21, ten of whom were elected by a limited direct suffrage. As in Macao, the governor always had a comfortable legislative majority to rule the colony.

The political approach of UDT president Mario Carrascalão and other senior party members, Lopes da Cruz and Domingos d'Oliveira, affords a good

60 Matos 1974:25.
61 Gunn 1999:244.
62 BPTM XXXV/41, 10.10.1889, p. 318.
63 BAGC, VII/68, February 1931, pp. 134-139.
64 Boletim da Província de Macau e Timor, XXXVII/1-52, 1890.
65 BPTM XXXV/52, 8.8.1889, p. 237. Council of War 12.4.1889, Dili. All other cases of punishment were published in the same bulletin.
66 BPTM XXXV/37, 12.8.1889, p. 293.
example of the power of tradition in East Timor. These men were all former representatives of the only party allowed in the Portuguese colony: Acção Nacional Popular. They followed the tradition and kinship system, which had great respect for the liurai, but they added another symbol, the Portuguese flag, which retained its totemic (lulik) status, particularly in the countryside.

The Fretelin party remained faithful to the ideal of an independent Timor. Distancing itself somewhat from the rather generalistic principles of the policies espoused in its earlier phase (when it was called Associação Social Democrata Timorense), Fretelin published at the end of November 1974 a new programme which was detailed and comprehensive. This programme detailed concise proposals for areas such as health, education, justice, and economic reconstruction.

In 1974, the manifesto of Apodeti was signed by the party's secretary, José Fernando Osório Soares, who was killed one year later. This manifesto proposed a framework for a political relationship between East Timor and Indonesia. It strongly supported Catholicism, but without formally excluding other religions, and accepted “a mystique of traditional culture inherited from our ancestors.” Apodeti upheld the primacy of Portuguese culture and committed itself to the continued use of the Portuguese language because of its modernity and its symbiotic relationship with Tetum, the national language. In general it sought to prevent the country from becoming too “indonesianized” as a result of the proposed political union. This document called for autonomy inside an Indonesian framework, with the maintenance of the existing schools. However, it also promoted the teaching of Bahasa Indonesia and proposed free medical care. Apodeti advocated the holding of elections with direct suffrage, to promote respect for the “essential liberties of human persons” without racial discrimination. It also expressed its determination to fight corruption, the fruit of colonialism, according to the manifesto.

Twenty-five years later, after the CNRT conference between August 21 and 30, 2000, seven political parties are legally recognized, namely Fretelin, UDT, Apodeti, PST (Timorese Socialist Party), PDC (Christian Democratic Party), Kilmar Timor Ona Arwain (or KOTA: “Association of Timorese Warriors”), and the Partido Trabalhista (Labour Party). The drawing up of a constitution for the new state of Timor Loroña’s and the establishment of a legal system remain crucial issues.

The task ahead of the East Timorese is to find a new cultural order which takes full and fruitful account their own customary adat laws. The ideal in the effort to find definitive solutions to these legal questions is to eliminate the rule of homo homini lupus and to inaugurate the rule of (as Durkheim’s optimistic motto describes it) homo homini Deus.

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See Enriquez 1983:11, 48-49.


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