

**GITANO LEGAL CODES: SOCIAL CHANGE, NGO'S, AND  
EXTERNAL LEGAL SYSTEMS' INFLUENCE ON  
GOVERNANCE OF SPANISH ROMA COMMUNITIES**

*Jennifer Hu Corriggio\**

*Gitanos are the Roma, otherwise known as Gypsies, of Spain that are predominantly concentrated in the southern province of Andalucía. Although the Roma are Europe's largest transnational minority, very little efforts have been made to understand their legal systems. Additionally, due to their long histories of oppression in Europe and internal legal codes that discourage sharing details of their legal systems with outsiders, their legal systems are particularly difficult to understand and for the most part, remain enigmatic and misunderstood. This Article analyzes the historical factors affecting the development of the Gitano legal system by using a horizontal axis metaphor, and the present-day effects of other legal jurisdictions and social factors on the Gitano legal system through a vertical axis metaphor. Through this analysis, the author offers suggestions as to how Gitanos may gain representation of their legal system without compromising tenets of their legal codes, and hopes that a similar mode of analysis may be applied to both Roma and other stateless communities. Critical analysis is crucial in brainstorming for solutions in dealing with the Roma's dire social situations, often described as "Europe's worst human rights abuse." Spain is in a unique position to lead efforts in this arena because of the relatively more assimilated social situations of Gitanos compared to other Roma. Also, as an established European Union member with the largest population of Roma in Western Europe, Spain also stands in a position to influence European Union policy towards all Roma of European Union states. This is particularly important as Eastern European states with high Roma populations are now slowly entering the European Union.*

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\* Visiting Assistant Professor of Law at Florida Coastal School of Law 2006–2007. The author would like to graciously thank Walter O. Weyrauch and Ian Hancock for their invaluable suggestions about Romani law and culture to the paper, along with many colleagues at FCSL for reading through rough drafts. Special thanks to research assistants Selina Kang Koonar and Masahiro Takeda.

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## INTRODUCTION

Although the Roma<sup>1</sup> people are Europe's largest minority<sup>2</sup>, and have been in Europe for centuries<sup>3</sup>, still relatively little is understood about this ethnic group that disproportionately suffers from human rights and social problems. While there is an increasing amount of literature discussing human rights and sociological studies of the Roma, relatively little has been studied and written about their legal systems.<sup>4</sup> Most of this existing literature focuses on how external laws and factors affect the social situations of Roma communities, but little is written on the internal changes in dynamics coming from within the Roma communities that shape the Romas' overall legal system.<sup>5</sup> Additionally, since Roma communities are so diverse, it is important not to make overarching generalizations applying to all Roma. This Article will examine a limited population of the

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1. The Roma are also known as the "Gypsies". I only use the word Gypsy to refer to the Roma when quoting another source or in an allegorical sense. Note that there are strong sentiments in Romani studies not to use the word Gypsy in describing the group's ethnicity, due to its negative connotations. The word Romani is typically used as an adjective to describe the Roma people. When referring specifically to the Spanish Roma, I always use the word Gitano, which the Gitanos call themselves.

2. The Roma are Europe's largest transcontinental minority group. See Erika Schlager, *The Roma-Europe's largest Minority* (2007), Encyclopedia Britannica Online, available at <http://www.britannica.com/eb/article-9403608/The-Roma-Europes-Largest-Minority> (last visited Nov. 16, 2007). The World Bank's estimate of the European Roma population is between seven and nine million, *World Bank Involvement in Roma Issues*, <http://sitesources.worldbank.org/EXTROMA/Resources/briefing.pdf>. The Unión Romani estimates that the European Roma population is about ten million, *Unión Romani*, [http://www.unionromani.org/pueblo\\_in.htm#situacion](http://www.unionromani.org/pueblo_in.htm#situacion). An accurate number of European Roma is difficult to ascertain because of many Romas' reluctance to register as Roma in censuses out of fear of being stigmatized compounded by the Roma's mobility. More about their origins and background is described in Section II. A. Origins of Roma People.

3. See [http://www.unionromani.org/pueblo\\_in.htm](http://www.unionromani.org/pueblo_in.htm) (noting first Roma arrival in Europe, in Corfu, in 1302)

4. See generally Denis Goulet and Marco Walshok, *Values Among Underdeveloped Marginals: The Case of Spanish Gypsies. Comparative Studies in Society and History* 451-72; Jeff Timmerman, *When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties*, 13 J. TRANSNAT'L L. & POL'Y 475 (2004); See generally OPEN SOC'Y INST. 2002, MONITORING THE EU ACCESSION PROCESS: MINORITY PROTECTION, THE SITUATION OF ROMA IN SPAIN 286 (2002) available at [http://www.eumap.org/reports/2002/eu/international/sections/spain/2002\\_m\\_spain.pdf](http://www.eumap.org/reports/2002/eu/international/sections/spain/2002_m_spain.pdf).

5. See generally SUSAN G. DRUMMOND, MAPPING MARRIAGE LAW IN SPANISH GITANO COMMUNITIES 106 (UBC Press 2006); T.A. ACTON, *A Three-Cornered Choice: Structural Consequences of Value-Priorities in Gypsy Law as a Model for More General Understanding of Variations in the Administration of Justice*, 51 AM. J. COMP. L. 639 (2003); Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the "Gypsies"*, 103 YALE L.J. 323, 367 (1993). (Most scholars do not analyze Gypsy law's legal significance but rather its general cultural significance.)

Roma and focus on a narrow aspect of their society and legal system—governance and dispute resolution processes within Gitano communities in Andalucía. Gitanos<sup>6</sup> are the Roma of Spain, and since approximately half of all Gitanos are concentrated in the southern province in Spain called Andalucía, this Article also further focuses on the region where their impact on Spanish society is the strongest.

The Gitanos have governed themselves for centuries under their unwritten legal codes, but as an “unrecognized minority” group of Spain<sup>7</sup>, there is no official recognition of their legal system. The goals of this Article are to examine the factors affecting the development and current state of the Gitano legal system as well as to propose some suggestions as to how the Gitanos may gain representation of their legal and governance system within the officially recognized legal structures. In pursuing this goal, this Article uses the theoretical frameworks of the horizontal axis of time, by considering historical factors affecting the development of Gitano legal codes, and a vertical axis analysis, by examining the different legal systems that exert influence on Gitano communities today. By deconstructing the different layers of influence on the Gitano legal system, this Article seeks to identify what particular issues, efforts, and solutions can be effectuated at each level and layer of influence. My concluding suggestions are that rather than push for formal recognition of the Gitano legal system, the most promising avenues for Gitanos’ gaining a representative voice of its legal system are to promote NGO (non-governmental organization) activities, to engage in formal state councils of Gitanos within the Spanish government, and to pressure the European Union to provide more exact and strict standards for treatment under the law for all Roma people.

Another consideration this Article explores is how Gitano and non-Gitano interests can be aligned so that Gitano legal and governance systems can be integrated with the other legal systems in which Gitano communities are situated. By focusing my analysis on the Roma population of the European Union (EU) member with the largest Roma population in Western Europe, this Article also considers how Spain can use its position of influence on the European Union’s policies towards the bevy of Eastern European countries with large Roma communities who have either just been recently admitted under strict criteria or are anxiously awaiting entry into the European Union.<sup>8</sup> Since no legal system ever operates in a vacuum, by studying the different layers of laws affect-

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6. Although in Spanish the word Gitano, like all proper nouns representing ethnicity and nationality, is not capitalized, I have capitalized Gitano in this article to represent that it is a proper noun in English.

7. See Section IV.B.1 for discussion of Gitanos’ legal status under the Spanish Constitution.

8. Romania and Bulgaria entered the European Union on January 1, 2007 and Croatia and Macedonia are candidate countries awaiting their accession negotiations next.

ing governance and dispute resolution within a community, the results and methodology can be used as an analytical tool to better understand both other Roma communities as well as other stateless legal organizations operating within multi-tiered legal systems. Finally, by analyzing the layers of influence on governance and dispute resolution of one particular Roma group, this Article also seeks to add to the academic discussion on the various approaches of analyzing Roma law. This Article expands upon Weyrauch and Bell's<sup>9</sup> original examination of private law-making within Gypsy communities by concentrating on the legal codes and governance system of the particular Roma community of Gitanos in the southern Spanish province of Andalucía, but also narrows in on the internal forces of lawmaking within the community and the relationship between internal and external forces that affect governance of Gitano communities.

Section I explains the mixed methodology employed for this Article. Section II explores the horizontal axis<sup>10</sup> analysis of the historical background of the Roma people and Gitanos in Andalucía, Spain and discusses the effects that Spanish laws have had on the trajectory of the community's development. Section III begins the vertical axis analysis and focuses on the internal Gitano governance structure, focusing on how status, power, and authority shape the structures of the dispute resolution processes within communities. This section also compares Gitano to other Roma dispute resolution processes, and discusses how conflicts between the Gitano and outside law are handled. Section IV continues with the vertical axis analysis of influences from other legal systems and external factors that affect the development of Gitano legal systems today. This section takes the approach of examining how local NGO's and transnational extra-legal organizations are shaping governance in Gitano communities. Additionally, as part of the vertical axis analysis, Section IV dissects the legal jurisdictions that form a ring of influence over Gitano communities—local Spanish regional law, Spanish national law, the European Union laws, and United Nations law. Finally, Section V synthesizes the factors discussed in Sections II through IV and considers how they all may interplay to affect the development of Gitano legal codes in the future.

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9. See *infra* Background section for further discussion of Weyrauch & Bell's pivotal work on Gypsy Law.

10. I use the horizontal and vertical axis as metaphors for analyzing the current Gitano legal system. The horizontal axis represents the linear passage of time, and my examination in this section focuses on the factors that have influenced the development of the Gitano legal system through time. The vertical axis metaphor represents looking down at the present-day Gitano legal system from a bird's eye view from above, and examining the influences from the ring of legal systems and social organizations that affect the jurisdiction and development of the Gitano legal system today.

## BACKGROUND

The Roma in Europe suffer from disproportionate amounts of poverty, discrimination, and other social problems, yet the conditions in which they live typically evoke reactions of disdain and distrust rather than a desire to understand the roots of their situation.<sup>11</sup> If efforts are not made to better understand the Roma people, the Roma could continue to spiral into an ethnic underclass in European society that could perpetuate their marginality, potentially leading to deadly conflicts with the majority society. In our post-Cold War and post-911 world, we have witnessed the evolution and increase of major international conflicts revolving around ethnic tensions rather than tensions between nation-states.<sup>12</sup> The ability of fundamentalist Muslims to operate international terrorist organizations based on a system of legal codes that transcends national boundaries is a poignant reminder of the importance in recognizing and understanding legal codes that operate outside of our traditional concepts of nation-state jurisdiction, and the potential dangers when we fail to acknowledge the significance of such legal systems.

The dominance of the nation-state model as the international form of governance often veils the fact that nation-states are relatively modern creations of humankind in organizing societies,<sup>13</sup> whereas people have been organizing themselves around other legal and governmental principles for millennia. Consequently, the voices of those peoples—such as the Roma—whose legal systems do not conform to the nation-state model, are often stifled in the international governance structure.<sup>14</sup> There are also many reasons why integrating the legal systems of the Roma is a more difficult and complicated endeavor than it may first seem. For one, the Roma have traditionally prohibited the exposure of their laws and legal system to outsiders.<sup>15</sup> Moreover, not only do the Roma people not have uniform legal systems, but there is such diversity between populations<sup>16</sup>

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11. See Fred Bertram, *The Particular Problems of the Roma*, 2 U.C. DAVIS J. INT'L L. & POL'Y 173 (1996) (discussing social problems of Roma in Europe); Istvan Pogany, *Minority Rights and the Roma of Central and Eastern Europe*, 6 HUM. RTS. L. REV. 1 (2006).

12. Just a few of the most recent examples include the conflicts in Bosnia, Rwanda, and Iraq.

13. See WALTER C. OPELLO, JR. & STEPHEN J. ROSCOW, *THE NATION-STATE AND GLOBAL ORDER* (Lynne Rienner Publishers 2004).

14. See Leopold Pospisil, *Legal Levels and Multiplicity of Legal Systems in Human Societies*, 11 J. CONFLICT RESOL. 2 (1967) (Providing a legal/anthropological discussion of groups who operate separate political and legal systems within nation-states, and on how such groups do not necessarily follow nation-state models in their organization or are limited by physical territory in their spheres of control).

15. See discussion Part I on Methodology.

16. See generally IAN HANCOCK, *WE ARE THE ROMANI PEOPLE* 68 (Univ. of Hertfordshire Press 2002).

that they often have difficulties relating to each other.<sup>17</sup> Thus a solution that works for one particular Roma community may not necessarily work for another.<sup>18</sup> The regional cultural and policy differences between the nation-states with substantial Roma populations also dramatically affect the status of the different Roma groups. Finally, there is the issue of why we should even acknowledge legal systems of the Roma—after all, if they are living within the borders of other nation-states, then there is the obvious and centuries-old argument that even if there is autonomous private law-making going on within the Roma communities, it is irrelevant because the Roma must submit to the legal jurisdiction of the nation state.

Imagine that you belonged to an ethnic group which had been grounded in a region for centuries, that your ethnic group had contributed substantially to the development of the culture, yet you were not recognized as indigenous or even as one of the peoples of the region although you belonged to no other homeland and had nowhere to which to “return.” This is the situation of the Gitanos, and their non-recognition as one of the official Spanish minority groups undoubtedly impacts the non-recognition of the existence of Gitano legal systems. The development and enforcement of Gitano legal codes continues to exist within the Spanish legal system for over six hundred years without any official protection from the State. Such development has sustained itself through a long history of relations and policies towards the Gitano people that have oscillated from oppression, to persecution, and ambivalent acceptance.<sup>19</sup> This Article explores how Gitano legal codes and society have been influenced by “payo”<sup>20</sup> or outsider laws, both throughout history as well as in

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17. *Id.*

18. Martin Kovats, *Opportunities and Challenges-EU Enlargement and the Roma/Gypsy Diaspora: Monitoring Human Rights and the Rule of Law in Europe*, November 2001, <http://www.eumap.org/journal/features/2001/nov/romadiaspora/> (last visited Mar. 5, 2007).

19. See discussion *infra* Part II.C.2 on Gitanos' Oppressive History.

20. Payo is the word that Gitanos use to refer to the non-Gitano majority white population of Spain, but can also refer to anyone who is not Gitano. I have not capitalized payo in this article since it does not refer to a specific ethnic group, but rather is a general term used to describe all non-Roma people. Payo is called *gadjo*, *gadje*, *gadže*, *gajé*, or *gaje* in other Romani dialects. See Ian Hancock, “A Glossary of Romani Terms”, in *GYPSEY LAW: ROMANI LEGAL TRADITIONS AND CULTURE*, 174 (Walter O. Weyrauch ed., Univ. of Cal. Press 2001); JAN YOORS, *THE GYPSIES* 16 (Simon & Schuster 1967). Although the terms traditionally have had pejorative connotations, they do not necessarily have such connotations depending on spoken intonation, and are here used in the neutral contemporary meaning. Throughout this article, I use the word *payo* to describe non-Roma when specifically discussing it in the context of the Gitano community, and the spelling of *gaje* to describe non-Roma in a more general sense in the world of the Roma where all people are divided into the two categories of Roma and non-Roma.

the modern day. Since Gitanos have been in Spain for centuries,<sup>21</sup> Spanish laws have without a doubt had many direct influences on the development of Gitano culture and legal codes.

However, Spanish laws are certainly not the only laws that have influenced Gitano legal codes as globalization's effects trickle down to influence governance of even local communities. For example, the recent surge in international non-governmental organizations (NGOs) representing Gitano rights has strongly affected governance within Gitano communities.<sup>22</sup> Although NGOs serve as a groundbreaking venue in representing Gitano interests to the outside world, their existence as a mouthpiece for the community may also project distorted views of traditional governance within Gitano communities. International organs such as the European Union and the United Nations are also playing ever-increasingly influential roles for change in Roma communities as well, especially as more international attention is brought to the human rights issues facing Roma communities.

Weyrauch and Bell were largely responsible for inspiring interest and discussion in the field of Romani studies about Gypsy law with their 1993 article, "Autonomous Lawmaking: The Case of the Gypsies."<sup>23</sup> They asserted that the Roma people have developed a legal system under private law-making that allows them to keep peace and stability as well as to help retain their culture within a "host" society that is oblivious to such internal practices.<sup>24</sup> Along with the flurry of discussion that the article triggered also came criticism of Weyrauch and Bell's use of predominantly secondary sources, their lack of a willingness to make judgments (in fact, being too careful in warning the reader not to make judgments), and their lack of discussion of power in their article.<sup>25</sup> In response to criticisms about Weyrauch and Bell's lack of discussion of power and willingness to judge, this Article incorporates an underlying theme of examining power relations throughout the analysis. It would be irresponsible not to judge

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21. BERTHA B. QUINTANA & LOIS GRAY FLOYD, *QUÉ GITANO! GYPSIES OF SOUTHERN SPAIN* 18–22 (Holt, Rinehart and Winston Inc. 1972). See for general description of Spanish legislation involving Gitanos.

22. See *infra* Section IV. A. for discussion of NGO influences on Gitano communities.

23. See Weyrauch & Bell, *supra* note 5, at 103.

24. *Id.* at 326.

25. See Acton, *supra* note 5, at 643. (Acton's response was that the focus of Weyrauch and Bell's work did not consider the structural variation within Romani legal systems); See also W. Michael Reisman, *Autonomy, Interdependence, and Responsibility*, 103 *YALE L.J.* 401, 403 (1993) (Reisman makes three major criticisms of Weyrauch and Bell's work, including: 1) the fact that Weyrauch and Bell "fail to compensate for the special research problems" and methodology of studying the Roma, 2) that they do not examine factors that shape the Romani legal system other than a Historicist view of change in Romani society as "organic and inexorable", and 3) not commenting on how a "host" society should relate to autonomous lawmaking by smaller groups within its borders).

and discuss power relations when an ethnic group that has been in Europe for centuries, is still despised, and treated with a mixture of disdain, indignity, and nonchalance. As the linguist and political commentator Noam Chomsky succinctly stated, “No one gives a damn about the Gypsies.”<sup>26</sup> Hopefully, as more attention is brought to the multifaceted situations of the Roma in Europe, more people will become interested in brainstorming for creative solutions both in theorizing about Roma legal systems as well as improving the social situations of the Roma people.

### I. METHODOLOGY

Any article written on the laws or legal systems of the Roma people will inherently have particular ethical issues. Roma legal codes are particularly difficult to understand because the codes have been purposefully kept secret to outsiders, and disclosing them may risk excommunication from the community for the culprit.<sup>27</sup> The Roma have consistently relied on their invisibility and secrecy in order for their culture and laws to survive.<sup>28</sup> Centuries of persecution and oppression have worked to strengthen the Roma’s identity of insularity and mistrust of the *gaje*.<sup>29</sup> Rather than trying to document or reveal forbidden secret Gitano legal codes, the scope of this Article is limited to just giving an overview of the structure and current state of law and governance within Gitano societies, discussing other external influences on the system, while adding some new perspectives and dialogue to the discussion of the plight of Roma communities worldwide.

I employed a mixed methodology of combination fieldwork, interviews, and secondary sources of scholarship as my background resources for this Article. The formal fieldwork portion of my research was conducted over three intense weeks in Sevilla, Spain<sup>30</sup> under guidance from

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26. David Barsamian, *The Prosperous Few and the Restless Many: Interviews with Noam Chomsky*, 1994, available at <http://www.zmag.org/chomsky/pfrm/pfrm-intro.html> (last visited Mar. 5, 2007) (commenting in reference to the Germans kicking the Gypsies out of its borders to Romania).

27. Interview with Manuel García Rondón, General Secretary, Unión Romani, General Director, Unión Romani Andalucía, in Sevilla, Spain (May 16, 2006).

28. ANGELA P. HARRIS, *GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE* ix (Walter O. Weyrauch ed., Univ. of Cal. Press 2001).

29. See *id.* This is also amplified by the “cultural pressures to remain separate [that] have existed since the exodus out of India” inherited from the Indian caste system. See Hancock, *supra* note 16 at 68.

30. I am gratefully indebted to the Unión Romani Andalucía, who generously agreed to sponsor my research project by letting me use their office facilities and research materials in Spanish unavailable in the U.S., and setting up interviews for me over an intensive three week period in May-June 2006. The Unión Romani Andalucía is the Andalusian branch of the Spanish NGO Unión Romani, an organization that is part of

the NGO Unión Romani Andalucía. Because the goal of my research was not a comprehensive anthropological project about Gitanos and their legal systems, I limit my reliance on the fieldwork portion to confirming insights from other sources or as an expression of the interviewee's opinions.

The ethical issue of revealing such details of the Romani legal system has been acknowledged by many scholars, including Weyrauch in his research on the American Roma.<sup>31</sup> There is also the related issue of whether Roma informant sources are even reliable. Some scholars who have interviewed the Roma about their culture and legal system reported that the Roma had gone to the extent of feigning mental retardation and reporting lies in order to avoid talking about their legal systems.<sup>32</sup> These were all issues that I struggled with when I decided to pursue this particular research project. Because of the delicate nature of wanting to protect the confidences of the Gitanos with whom I consulted and who possibly may suffer negative repercussions from their communities in discussing such prohibited topics with outsiders, I have kept the identities of these people anonymous.<sup>33</sup>

The only interviewees that I list by name are Antonio Torres and Manuel Garcia Rondón, respectively the President and the General Secretary of the Unión Romani Andalucía. I identify them by name because they spoke as leaders of their organization and community and had already made a conscious decision to make their opinions public when speaking to me in formal interviews. The socio-economic classes of the other Gitanos that I interviewed ranged from professional Gitanos who worked for the Unión Romani Andalucía as ethnic mediators between the Gitano and *payo* communities, to other Gitano professionals who worked in some aspect of social work on behalf of the Unión Romani, Gitano flamenco artists, Gitanos with flamenco connections, and impoverished Gitanos who lived in the *chabolas*<sup>34</sup> of Sevilla's notorious *el Vacie*

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the umbrella network of the larger International Romani Union, which has official consultative status to the UN in representing the Roma people.

31. Walter O. Weyrauch, *Oral Legal Traditions of Gypsies and Some American Equivalents*, 45 AM. J. COMP. L. 407, 408 (1997).

32. See ANN SUTHERLAND, *GYPSIES: THE HIDDEN AMERICAS* 21 (Waverland Press, Inc. 1975).

33. Interview notes on file with author.

34. *Chabolas* are slums without either running water or electricity usually located on the outskirts of town amongst garbage. *El Vacie* is a Gitano *chabola* settlement north of the Sevilla city limits where I interviewed several informants. At the time of the interviews there were about 170 "houses" and a total of about 700 persons living in the settlement. The word *vacie* resembles *vacío*, which means "emptiness" or "vacant" in Spanish, and it was likely that the settlement developed its name from the emptiness and desertedness of the lot. There are several other Gitano settlements in Sevilla, *chabola* communities as well as government-subsidized housing projects that were initially created to move the Gitanos outside of town. Some neighborhoods in Sevilla proper are also known as traditional Gi-

settlement.<sup>35</sup> Thus, I chose my methodology based on both practical and ethical considerations based on the purpose and scope of this Article.

## II. HORIZONTAL AXIS ANALYSIS: GITANOS THROUGH PASSAGE OF TIME

### A. *Origins from India, European Diaspora of Roma*

After many centuries of Europeans conjecturing about the origins of the Roma people, and even insisting that they were an invented ethnic group<sup>36</sup>, today it is accepted that the Roma group's origins are from Northwest India. This has been solidified by the discovery that the Romani language is related to Sanskrit, that certain frequencies of blood type indicate their Northwest Indian origins, as well as that characteristics in Gypsy musical forms link the Roma to this region.<sup>37</sup> The reason for these peoples' departure from India is not entirely clear, but is often posited to be linked to Muslim invasions sometime soon after 1000 AD.<sup>38</sup> It is also

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tano neighborhoods, but much of these neighborhoods' composition has changed in the past generation due to increased property value within town, gentrification, and the resulting pressure to move Gitanos to the outskirts of town. An example is the gentrification of the traditional Gitano neighborhood of Triana. Today, this neighborhood is no longer known as a predominantly Gitano neighborhood, although its significance to Gitanos is preserved through the transmission of many flamenco letras sung today.

35. Since I tried to limit my questioning to issues that I sensed my particular interviewees were comfortable with discussing, I acknowledge that the depth of information I received was likely affected by the relationship I had with my interviewees. However, since I promised anonymity along with the additional protection that some interviewees had in using pseudonyms, the interviewees were also much more likely to speak openly with me. The interviewees whom I did not know before had all agreed ahead of time to speak with me through the Unión Romani Andalucía. My interviews ranged from formal sit-down interviews to chatting over issues in a *cervecería*. Another factor that likely made many Gitanos believe that my interest in their culture was sincere was that I had already taken many trips to Sevilla and Spain before for the purpose of studying flamenco dance (over six months total), and during that time had become acquainted with many Gitanos and their culture. Unlike some other researchers into Roma culture, I had very positive experiences in my research project likely due to the support of the Unión Romani Andalucía. To my surprise, the Unión Romani Andalucía was incredibly supportive of my proposed project. I had expected suspicion, but instead the Unión said that no Spaniard had ever showed such interest to even propose such a project studying Gitano legal codes, and they were delighted and willing to help out a foreigner who showed such interest in their culture. This supports my impression that while Gitano distrust of *payos* certainly exists, perhaps *payo* disinterest in the Gitanos may be a greater reason for the gap in communication between the two.

36. See DRUMMOND, *supra* note 5, at 132 (describing some of the Spanish royal *pragmáticas* that banned markers of language, dress, and names of Gitano culture since "Gitano" was just an invented identity and these were just "ordinary Spaniards engaged in banditry and vagrancy.").

37. See QUINTANA & FLOYD, *supra* note 21.

38. See HANCOCK, *supra* note 16, at 7–9 (Univ. of Hertfordshire Press 2002).

debated whether there were different groups of Indian groups that met up and mixed in Persia, and whether the Roma identity was actually formed in Persia before the different Indian groups' progeny moved further westward into Europe.<sup>39</sup> The caste and occupations of these people(s) is also unknown, but through analysis of the Romani language, it has been suggested that these people(s) were not nomadic before they left India and might have had military connections.<sup>40</sup> Likely, a series of other Islamic invasions pushed these Roma people further westward.<sup>41</sup> Ironically, the nomadism that the Roma are so well-known for was likely not a choice; many Gypsies were forced to become nomadic since they were not allowed to settle down as they dispersed into Europe.<sup>42</sup>

Two useful allegorical analogies in understanding the Roma include Hegel's dialectic of "master and slave" and the postmodern Trickster. Hegel's dialectic is a useful analogy because it can be used to describe the Roma's relationship with the *gaje*.<sup>43</sup> The Roma have defined their identity in contrast to the *gaje* and the *gaje* in turn need the existence of the Roma to define themselves. Both groups see each as the "other" to whom they are different and against which they reach recognition of their own self-consciousness. For example, Gitanos have resisted assimilation for hundreds of years in Spain but have also shared a long history with the Spanish payos throughout which payo treatment of Gitanos has ranged from oppression to toleration to persecution.<sup>44</sup> Gitanos also have clearly defined social rules depending on if they are dealing with someone from the Gitano or non-Gitano world.

Like all Roma, Gitanos are a people who have no nation-state to return to, but also no indigenous rights to claim. Thus, other legal systems where a separate formal indigenous legal system is recognized within the nation-state, such as the Native Americans in the United States or aboriginals in other countries, do not serve as solid analogous models for the Gitanos since they are not considered an "indigenous group."<sup>45</sup> Additionally, Gitanos themselves have never strongly advocated officially recognizing their legal system within the Spanish national legal system

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39. *Id.* at 6–7.

40. *Id.* at 10.

41. IAN HANCOCK, *THE PARIAH SYNDROME* 8–10 (Karoma Publishers, Inc. 1987).

42. *See id.* at 20–22.

43. *See* G.W.F. HEGEL, *THE PHENOMENOLOGY OF MIND* (J.B. Baillie trans., Harper Torchbooks 1967) (describing the necessity the master has for the slave in order for the slave to recognize the master's dominance and existence; only by keeping the slave alive can the master achieve self-consciousness).

44. *See* JAN YOORS, *THE GYPSIES OF SPAIN* 17–19 (Macmillan Publ'g Co., Inc. 1974).

45. *See* Edo Banach, *The Roma and the Native Americans: Encapsulated Communities Within Larger Constitutional Regimes* 14 FLA. J. INT'L L. 353 (2002) (for comparison between how the Roma and Native American legal systems operate within larger nation-states and makes the argument that Romani communities should be able to appeal decisions to international human rights entities).

since their bind to secrecy was more important to them than their recognition by outsiders.<sup>46</sup> Other minority groups rights' movements also often do not serve as good models to emulate since many of the goals and histories of the groups are so different. For example, whereas the American Civil Rights Movement in the 1960's focused on equality before the law, Gitanos and all Roma groups have traditionally relied on invisibility before the law in order for their culture to survive.<sup>47</sup> An ethnic group that the Roma are often compared to are the Jews, since both of their diasporas brought them to Europe predominantly where they were both treated with suspicion and hostility as non-Christian peoples, both had no country to which to return, and both also developed reputations for preferring to keep to themselves.<sup>48</sup>

In many ways, the Gypsy also represents the perfect embodiment of the Postmodern hero—the Trickster.<sup>49</sup> As an ethnic group, the Gypsy possesses many qualities touted by Postmodernists—ambiguous, shifting, boundary-crossing, truth-eluding, playful, manipulative, contradictory, delights in overturning the established societal order, living in between worlds, and existing as a result of fusions of cultures.<sup>50</sup> The power of the Trickster lies in its ability to manipulate boundaries, to be able to use its access to multi-faceted worlds, and to know when it is to its advantage to jump in between boundaries. The Trickster also does not hesitate to use its cunning, guile, and advanced oratory skills in order to survive and advance. However, without political and economic clout, the power of the Gypsy's Trickster identity remains just metaphorical. Rather than being acknowledged as the darlings of Postmodernists, the Gypsy's reality is instead filled with rejection from the "legitimate" segments of mainstream society. The Gypsies are a people who lack a clearly defined common culture, language, or religion, nation-state, and vision for their people, making it extremely difficult to politically mobilize as a common force

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46. Interview with Antonio Torres Fernandez, Gen. Dir., Unión Romani., President, Unión Romani Andalucía, in Sevilla, Spain (May 17, 2006).

47. See HARRIS, *supra* note 28.

48. See HANCOCK, *supra* note 16, at 31. This of course has now changed for the Jewish people after the creation of the state of Israel. One further commonality between the Jews and Roma is that they were the only ethnic groups targeted for extermination in the Holocaust. See *id.* at 34. But note that unlike the Jews, the Roma do not and never have had a belief that their people have a destiny to arrive in a geographic place comparable to Israel for the Jews.

49. See generally GERALD VIZENOR, *BEARHEART: THE HEIRSHIP CHRONICLES* (Univ. of Minn. Press 1990)(noting example of representation of the trickster as the postmodern hero).

50. The Trickster is also a character that is cross-culturally represented in folklore and myths, such as Hermes in Greek mythology, the Coyote in Native American culture, Krishna of the Hindu religion, and even the modern day representation of Donna Haraway's Cyborg.

together.<sup>51</sup> Thus, in many ways, the Gypsies also suffer from the typical criticisms that are made of postmodern subjects—they are too heterogeneous and fragmented to mobilize politically, lack unity, have let themselves become invisible to their detriment, and at the same time remain nonchalant and complacent about seeking change.

### B. *Gitanos' Tumultuous History in Spain*

The Roma are a uniquely situated ethnic minority in many ways. For one, they are not the typical traditional type of society that anthropologists studied where a smaller, face-to-face community is bound together without rules of a state, and who did not have much contact with Westerners until their lands were colonized by some Western power. In contrast, the Roma have never existed separately from *gaje* society and have always been intertwined with their “host” societies. Although the Roma have Indian origins, they are not indigenous to India. Since the Roma ethnicity developed outside of India after the Romas’ dispersal from India, the Roma only share common ancestry with Indians, but not a homeland.<sup>52</sup> Due to their traditionally nomadic way of life, they have belonged to no nation-state, other than the ones in which they have traveled through and sometimes stayed.

The word Gitano is used to describe all Roma in Spain, but within their community, a distinction is made between the Roma who have been rooted in Spain for centuries and the more recently arrived nomadic groups. The vast majority of the Roma in Spain are from lineages that have been in Spain for centuries. This group is unique amongst Roma populations in that they have been a predominantly sedentary population for generations now,<sup>53</sup> which has helped ease their integration into mainstream society compared to other nomadic groups. The other nomadic Roma groups, who have only arrived in Spain since the late 19th century, are often lumped together in the category of “Húngaros”<sup>54</sup> by the other Gitanos. Although the origins of these Roma groups vary from different post-Soviet and Eastern European states, these Roma are typically all grouped together as “Húngaros” by the Gitanos. This Article focuses on the Gitanos whose lineages have been linked to Spain for generations, but will also briefly discuss their interactions with other “Húngaros”. Therefore, discussion of Gitanos in this Article will refer only to the Gitanos

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51. HANCOCK, *supra* note 16, at 123 (establishing that Roma groups often have struggled to mobilize politically).

52. *See id.* 17, at 6–16.

53. QUINTANA & FLOYD, *supra* note 21, at 51.

54. *Húngaros* also means Hungarians in Spanish, but within Gitano communities, it has become the *Caló* word used to describe nomadic Gypsies in general. YOORS, *supra* note 44, at 55. *See also* DRUMMOND, *supra* note 5, at 159.

whose base has been Spain for centuries, and when the other Roma groups in Spain are discussed, those groups will be specifically described.

The Gitanos along with the French Gitans are known as the *kalé-romano* Romani group.<sup>55</sup> The origin of the word Gitano comes from the story that when the Roma first appeared in Spain in the 15th century, they told the Spaniards that they were nobles from “Little Egypt” who had been driven out of the country.<sup>56</sup> They were at first welcomed as sacred people because they claimed that their being penitents was the reason for their diaspora, and the Christians were eager to do all they could to help these people.<sup>57</sup>

Some scholars believe that groups of Roma actually did travel through North Africa on their way to Spain, and in this sense there would have been some truth to their claim that they were “from” Egypt in that they had more recently passed through Egypt.<sup>58</sup> The noted French Gypsy scholar Clébert believes that it was likely in Andalucía, where the “African” and “European” Gypsies first met from their separate immigration paths.<sup>59</sup> Since Spanish documents did not distinguish between the groups based on their origin of immigration, but just referred to them altogether as Gitanos, we do not know for sure if this hypothesis is true, but in any case, the lumping together of the different Roma groups at that time could have helped stimulate the official melding of the groups and the creation of the unique identity of Spanish Gitanos. After the Gypsies entered Spain, they shifted around to find the provinces that were most suitable to freely pursuing their lifestyles, and ended up flocking particularly to Andalucía, the southern province in Spain,<sup>60</sup> where an amalgamation of cultures had influenced it to become a more culturally tolerant place than other parts of Spain.<sup>61</sup> Today, Gitanos number approximately 500,000–600,000 in Spain, of which over half or approximately 300,000 located in Andalucía.<sup>62</sup> Gitanos consider themselves to be proud Spaniards and Spain to be the place where their collective cultural conscience as an ethnic group developed. In other words, they know of no other “homeland.”

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55. See YOORS, *supra* note 44, at 56–57 (noting that Kale is also spelled Calé, and their language is known as Caló).

56. QUINTANA & FLOYD, *supra* note 21, at 14–15. See also Agustín Vega Cortés, *The Roma in Spain*, [http://www.unionromani.org/pueblo\\_in.htm](http://www.unionromani.org/pueblo_in.htm) (last visited Mar. 5, 2007).

57. QUINTANA & FLOYD, *supra* note 21, at 13–14.

58. *Id.* at 15. See also JEAN-PAUL CLÉBERT, *THE GYPSIES* 114–116 (Charles Duff, trans., Penguin Books 1970).

59. QUINTANA & FLOYD, *supra* note 21, at 16–17.

60. *Id.* at 17.

61. Andalucía was home to a melting pot of cultures living relatively peacefully together, including Moors, Jews, and Catholics before the expulsion of all non-Catholics starting in 1492.

62. See Vega, *supra* note 56.

C. *Gitano Concentration in Andalucía*

## 1. Special Status of Gitanos in Andalucía

Gitanos have a special status in Andalucía compared to the rest of Spain and their contributions to local culture are greatly recognized. There is a popular saying in Andalucía that “one does not know where the Gitano ends and where Andalucía begins.”<sup>63</sup> Clébert remarked that, “At a time when, in the rest of Europe the nomad remains a pariah, subject to coercive and vexatious measures, the Spanish Gitanos are perfectly integrated in the Spanish population, especially in Andalusia.”<sup>64</sup> The statement that the Andalucían Gitanos have ever been “perfectly integrated into society” is an exaggeration, but Andalucían Gitanos are certainly comparatively more accepted than other Roma groups in other countries. Gitanos’ dress has influenced the way Andalucíans dress in general,<sup>65</sup> their language has introduced slang words into the dialect, but perhaps they are most recognized for their contributions to the art of flamenco.

Flamenco is an Andalucían musical art form with strong Gitano influences<sup>66</sup> that has evolved to focus around *cante* (singing), *baile* (dancing), and *toque* (guitar). Today, the art of flamenco is inextricably tied to the Gitano identity and has established a special place for Gitanos within Spanish culture at large. To the majority of foreigners, flamenco is considered quintessentially “Spanish”, and usually identified as part of Spanish culture rather than Gitano culture specifically. There has developed many Gitano flamenco familial dynasties where the art form has been passed down throughout the generations. This style of flamenco performed by Gitanos has become known as “pure” flamenco (*flamenco puro*), as opposed to the more “academic” flamenco learned in studios and conservatories. The scholars Quintana and Floyd even commented that, “The formation and development of the flamenco caste served to facilitate and accelerate

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63. This saying may have originated from Ramón Perez de Ayala, one of the most distinguished novelists of the modern Spanish literary Renaissance, who said that “Spain is the only country whose inhabitants have merged so harmoniously with the Romani race that gypsy and Spanish tradition coincide with one another.” See Walter F. Starkie, *Introduction* to BERTHA B. QUINTANA & LOIS GRAY FLOYD, *QUE GITANO! GYPSIES OF SOUTHERN SPAIN* ix (Holt, Rinehart and Winston, Inc. 1972).

64. CLÉBERT, *supra* note 58, at 248. Note that Andalucía is typically spelled with an ‘s’ in English, as Clébert has spelled it. However, throughout this article, I have spelled it with the ‘c’ as used in Spanish.

65. Even since the 1800’s, scholars have observed that dressing known as “a la Gitana” is actually “more properly the fashion of Andalusia.” See GEORGE BORROW, *THE ZINCALI: GYPSIES OF SPAIN* 305 (John Murray 1841).

66. Flamenco is not a purely Gitano art form, but rather an Andalucían art form that also has strong Moorish, Jewish and payo influences. See Marion Papenbrok, *History of Flmaenco in FLAMENCO* 35, 39–40 (Claus Schreiner ed., Mollie Comerford Peters trans., Amadeus Press 1990).

the process of Gypsy and Andalusian acculturation.”<sup>67</sup> Starting in the late nineteenth-century, many Gitanos began gaining fame by performing a mix of traditional Andalusian folk music and flamenco.<sup>68</sup> By performing these genres together, Gitanos helped cement their positions as representatives of Andalusian culture. Today, flamenco aficionados come from all around the world to study with many important Gitano flamenco artists.<sup>69</sup> It is noteworthy that in no other European nation has an art form with Roma origins been given such international attention and recognition as a representative national art form. This symbolic acceptance likely gained Gitanos in Andalucía more acceptance than Gitanos in the rest of Spain, and even more so when compared to Roma populations in other European countries.

## 2. Gitanos’ Oppressive History

Notwithstanding the recognition that Gitanos have received in society compared to other Roma groups, Gitanos still have in common with other Roma groups a long history of oppression in the countries where they have lived.<sup>70</sup> Throughout Spanish history, payos have treated Gitanos with sentiments ranging from misunderstanding, ambivalence, discrimination, and fascination. When the Spanish payos realized that these Gitanos were not willing to assimilate so easily, their warm welcome wore out and policies towards them started to change. Spain started shipping Gitanos to the Americas as early as the fifteenth century in order to rid them from the country.<sup>71</sup> As early as 1499, Gitanos were ordered to cease traveling and find a trade and master within sixty days or else suffer lashes, amputation of ears, banishment, and even slavery.<sup>72</sup> Yet this legislation was not very effective in assimilating the Gitanos to mainstream ways, and similar laws were enacted for the next three hundred years.<sup>73</sup> In 1749, a royal decree, later known as the *gran redada de los gitanos* or “great roundup of the

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67. QUINTANA & FLOYD, *supra* note 21, at 23.

68. See DRUMMOND, *supra* note 5, at 155 (stating “Flamenco mystique is intimately tied to Gitano mystique in Jerez.”). Jerez is a city in Andalucía known to be one of the cradles of flamenco.

69. Although only a small minority of Gitanos actually make their living as flamenco artists, the international interest in the art form has affected Gitanos’ mentality, pride, and ethnic identity in positive ways.

70. For example, the Roma were enslaved in Romania for over five hundred years, and shipped to the Americas as an unwilling labor force from Portugal, England, and Scotland amongst other countries. For more details on the historical treatment of the Roma in Europe, See HANCOCK, *supra* note 16, at 27–28.

71. *Id.* at 27.

72. QUINTANA & FLOYD, *supra* note 21, at 19. See also JEAN-PIERRE LIÉGEOIS, *GYPSIES: AN ILLUSTRATED HISTORY* 105–09 (Tony Berret trans., Al Saqi Books 1986).

73. DRUMMOND, *supra* note 5, at 106.

Gitanos,”<sup>74</sup> was issued ordering the incarceration of the entire Gitano population. In a manner prescient to the twentieth-century Holocaust that killed up to half a million Roma throughout Europe,<sup>75</sup> Gitanos were rounded up around the country; husbands and wives separated, boys sent to learn “useful trades” or to the military, and others imprisoned in facilities according to their age group and sex.<sup>76</sup> Many of the Gitanos were kept in these detention centers for up to sixteen years before the Spanish government fully gave up this social experiment.<sup>77</sup> A 1783 decree required Gitanos to show that they were reformed of “Gitantude,” or Gitano language, dress, or vagrancy when released, and if they were found continuing to wander disobediently, the Gitanos would be branded on the face with a red-hot iron so that they could be identified “on the face” if they were caught at the second infraction.<sup>78</sup> In addition to decrees insisting that Gitanos settle and renounce their nomadic lifestyle, other decrees demanded them to give up their language and their dress.<sup>79</sup> Even the word “Gitano” was forbidden to be used in efforts to convince everyone that “Gitano” was just a fabricated ethnic identity.<sup>80</sup> Decrees ordered Gitanos to either submit to the feudal system or risk exile, slavery, or extreme forms of physical punishment ranging from cutting off ears to death.<sup>81</sup> There were also decrees that outlawed familiar Gitano occupations, such as horse-trading and ordered Gitanos’ horses to be taken away by force.<sup>82</sup> Gitano children over the age of five were even ordered to be kidnapped from their Gitano families in order to be raised by non-Gitano Christian families.<sup>83</sup> These decrees continued for a period of over three hundred years.<sup>84</sup> However, these royal decrees were never successful in decimating the Gitano identity in Spain, and their largest successes were

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74. At the time, this population was between 9,000–12,000. See GEORGE HENRY BORROW, *THE ZINCALI: AN ACCOUNT OF THE GYPSIES OF SPAIN* 165 (G.P. Putnum’s Sons 1908).

75. The actual number of Roma killed in the Holocaust has not been documented, and many of the murders were not recorded since Roma were often killed on the spot in the fields and forests where they were found, instead of bothered to be brought to the concentration camps. There are also those who believe that half a million Roma is a gross underestimation of the number of Roma killed in the Holocaust. See HANCOCK, *supra* note 16, at 47 (citing KONIG ULRICH, *SINTI UND ROMA UNTER DEM NATIONALSOZIALISMUS* 87–89 (Brockmeyer Verlag, Bochum 1989)).

76. DRUMMOND, *supra* note 5, at 140.

77. *Id.* at 141.

78. *Id.* at 142.

79. See LIÉGEOIS, *supra* note 72, at 105–106.

80. See QUINTANA & FLOYD, *supra* note 21, at 19–20. See generally *supra* note 65, at 137–157 (describing Spanish legislation against Gitanos).

81. See DRUMMOND, *supra* note 5, at 132.

82. *Id.* at 107.

83. *Id.*

84. *Id.* at 106.

perhaps in widening the gap of understanding between Gitanos and payos.

It was also likely that as a result of these royal decrees, the changed circumstances opened up opportunities for the Gitanos, gradually leading to the majority of the population becoming sedentary. “Gradually, the Gypsy relinquished many practices which, in the past, had operated to keep him feared and segregated. He replaced them with new ways of earning a livelihood which, in general, were socially and legally sanctioned, all the while, however, holding fast to the most basic of his traditional beliefs and attitudes.”<sup>85</sup> Although the Gitanos never lost their strong sense of ethnic identity, somewhere along the line through the historical persecution, they lost most of their ability to speak their language, Caló. The Royal Decrees that outlawed the use of the Gitano’s Caló language, compounded by disinterest on the part of the Spanish government to help preserve the language and the lack of resources within the Gitano community to counter these effects, succeeded in the gradual fading of the use of the Caló language. Today, very few people are able to speak Caló fluently, and almost none of the youth know more than just a few words and phrases.<sup>86</sup>

### 3. The Modern Day Situation of Gitanos

All these factors in the Gitanos’ history clearly have affected the development of the Gitanos’ legal system. Understanding this long history of oppression against the Gitanos is crucial to understanding why Gitanos have reacted by making protecting the sanctity of their culture and legal codes from the outside community so important. Although Gitanos are a very heterogeneous population in terms of lifestyles, customs and beliefs, as well as education level and socioeconomic status,<sup>87</sup> the population still suffers from a high concentration of social problems and poverty.<sup>88</sup> The adult illiteracy rate is at the level of some of the poorest countries in the world.<sup>89</sup> Around 30% of the Gitano population lives in substandard housing, often in the form of non-permanent structures called *chabolas*.<sup>90</sup> Additionally, about 90% of the inhabitants of these *chabolas* are Gitanos.<sup>91</sup> The percentage of inhabitants who are Gitanos has actually grown from about 55% in 1975 to the current percentage, which has remained stable

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85. QUINTANA & FLOYD, *supra* note 21, at 25.

86. Interview with Manuel Garcia Rondón, *supra* note 27.

87. Open Society Inst. 2002, *Monitoring The EU Accession Process: Minority Protection, The Situation Of Roma In Spain* 286 (2002) available at [http://www.eumap.org/reports/2002/eu/international/sections/spain/2002\\_m\\_spain.pdf](http://www.eumap.org/reports/2002/eu/international/sections/spain/2002_m_spain.pdf) (last visited Mar. 5, 2007).

88. *Id.* at 283.

89. *Id.*

90. *Id.* at 283, 315.

91. *Id.* at 315

since the early 1990's.<sup>92</sup> At the same time, many Gitanos who want to move out of *chabolos* feel trapped due to both financial and discriminatory reasons.<sup>93</sup>

There still exists a common belief that Gitanos are “resistant to integration, and that [they] consistently seek advantages at the expense of the majority—whether by abusing the social welfare system or through aggression, cheating, and robbery.”<sup>94</sup> These stereotypes affect Gitanos in gaining access to jobs and education. Gitano children are commonly denied entry into schools,<sup>95</sup> and Gitano adults are regularly denied entry into public places such as discotheques and swimming pools.<sup>96</sup> Gitanos also have lower life expectancies and less access to public health services than the rest of the Spanish population<sup>97</sup> and are disproportionately represented in prisons and serve longer sentences for crimes that usually involve small-scale drug dealing, or theft or robbery related to drug use.<sup>98</sup> Non-recognition of the validity of marriages conducted under Gitano tradition rather than civil ceremonies or religious ceremonies has also been a recurring problem since often Gitano marriages are conducted according to Gitano tradition, rather than the government-sanctioned method.<sup>99</sup> Yet once again, Gitanos seem to have found the most tolerant home in Andalucía where according to surveys on public attitudes,<sup>100</sup> acceptance of Gitanos is the highest.

#### 4. Gitano Identity and Cultural Characteristics

Since Gitanos are such a diverse group,<sup>101</sup> and even as a group, are marked by contradiction, ambiguity, and blurred boundaries, their identity

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92. *Id.*

93. Interview with Manuel Garcia Rondón, *supra* note 27.

94. Open Society Inst., *supra* note 87, at 287.

95. *Id.* at 301.

96. *Id.* at 325, 326; *See also* Interview with Antonio Torres Fernandez, *supra* note 46.

97. *See* Open Society Inst., *supra* note 87, at 284 (citing J.F. Gamella, *The Roma Population in Andalucía*, 171 JUNTA DE ANDALUCIA 1996).

98. *See* Open Society Inst., *supra* note 87, at 284, 331.

99. A common problem with not recognizing Gitano marriages is that widows cannot claim their husband's pensions, even when a couple has been together for a life time and raised a family together. For example, see Press Release from Unión Romani released on May 8, 2007, “Cinco Magistrados del Tribunal Constitucional Niegan la Pensión de Viudedad a una Gitana, a pesar de que su Marido Cotizo a la Seguridad Social Durante Veinte Anos.”

100. *See generally* Andalucía Cuatro Culturas Una Sola Juventud, (Unión Romani 2001) (surveying students in Andalucía, in this study the Unión Romani found that most Andalusians recognize racism against Gitanos, believe that it is unacceptable, and that most students know Gitanos through school and friends rather than through neighbors, work or family. Still, most students at most only have sporadic contacts with Gitanos).

101. *See* LIÉGEOIS, *supra* note 72, at 57.

is perhaps best portrayed by recurring themes in characteristics. When I posed the question to Gitanos of what it meant to them to be Gitano, I consistently heard that it was a combination of things: 1) bloodline; 2) a certain value system; 3) philosophy of life.<sup>102</sup> The Gitano value system and philosophy of life undoubtedly includes the importance of the extended family as well as their “*forma de vivir*” or particular Gitano way of living. Gitanos self-identify with the philosophy of living for freedom, and like other Roma groups, have always been very resistant to wage-labor jobs and state-imposed lifestyles.<sup>103</sup> In describing the Gitano “*forma de vivir*”, Gitanos acknowledge that part of this mentality does correspond with the romanticized and often stereotyped Gypsy mentality of living just for today, without thinking or worrying about tomorrow. However, the zest and celebration for life in the moment does not necessarily correspond with the willingness to sacrifice the future for the present. Almost every Gitano that I spoke to discussed their hope that their children will have a better life than they do and a willingness to extend themselves, including altering their lifestyles, in order to reach the goal of providing a better life for their children.

#### 5. Common Gitano Occupations

Freedom is a dominant concept in making occupational choices for the Gitano. According to the Spanish government, the vast majority of Gitanos (50–80%) are self-employed in occupations such as selling goods, such as junk scrap for men or flowers for women, solid waste collection, and seasonal work, such as picking olives.<sup>104</sup> Gitanos likely prefer these jobs because of the freedom of time and movement that these jobs offer. About 6–16% are antique-dealers, shopkeepers, or artists and 10–16% are engaged in “new” occupations such as construction, public works or unskilled civil service jobs.<sup>105</sup> Many Gitanos are mechanics or sell second-hand cars, natural progressions from their metalworking and horse-trading days.<sup>106</sup> Yet, freedom for many Gitanos today means freedom from poverty and hunger, and Gitanos do not equate the pursuit of freedom with just a nomadic way of life anymore. Many Gitanos see their increased options for making a living as allowing them to pursue their cultural goal of freedom even more so now.<sup>107</sup>

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102. Interview with Antonio Torres Fernandez, *supra* note 46.

103. See QUINTANA & FLOYD, *supra* note 21, at 43–44. The traditional 9–7 office job with siesta or even a grocery store cashier job where there is a rigid schedule is generally not very appealing to Gitanos.

104. See Open Society Inst., *supra* note 87, at 308–10.

105. *Id.* at 309 (citing SPAIN, Report Pursuant to Article 25 of the Framework Convention for the Protection of National Minorities 4 (2002)).

106. Interview with Anonymous A, Gitana, in Sevilla, Spain (May 31, 2006).

107. See QUINTANA & FLOYD, *supra* note 21, at 45.

Even so, there is a generally understood philosophy that Gitanos do not work to make money in order to create capital or see work as an end in itself.<sup>108</sup> Gitanos and Roma groups in general also usually find it immoral to profit from other Gitanos.<sup>109</sup> The traditional Gitano attitude towards money clashes with capitalist notions of hoarding money. For example, Antonio Torres Fernandez, the current President of the Unión Romani Andalucía, states that it is a common Gitano practice if one makes a lot of money, he thinks of how he can celebrate and either spend or share it with his family today, rather than how he could use it tomorrow.<sup>110</sup> This is a characteristic that many Romani activists are eager to change.<sup>111</sup> Yet in other ways, Gitanos' attitudes toward work, such as "trying to gain as much money with the minimum amount of effort,"<sup>112</sup> are in line with capitalist ideals of efficiency and have led Gitanos to be attracted to entrepreneurial ventures while traditionally disfavoring wage-labor. Also, as social situations change, Gitanos are now seeking out professional positions that often focus on aptitudes culturally valued by Gitanos, such as oratory skills and assertive personalities. Today Gitanos are represented in most professions in Spain.<sup>113</sup> Even so, the *Fundación Secretariado General Gitano* (FSGG) estimates that only about 1% of the estimated 650,000 Gitanos in Spain have a university education, with the majority of these degrees being more recently acquired by the youth.<sup>114</sup> This number could also be artificially deflated due to the fact that some Gitanos may feel that they must "hide their true identity" in order to secure a professional job after university since discrimination is still very commonly practiced against Gitanos in the employment context. It would be difficult to quantify how often this truly happens, especially since professionally educated Gitanos hiding their identity are unlikely to reveal their façade. Rather, this statement is an extrapolation from the well-known fact in Roma communities of its members trying to pass for other ethnic groups out of fearing prejudice. For example, one source has told me that she tries to

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108. Interview with Manuel Garcia Rondón, *supra* note 27.

109. *Id.*

110. Interview with Antonio Torres Fernandez, *supra* note 46. Torres also states that there is a strong sense of "easy comes, easy goes" with money ("como entra fácil, sale fácil").

111. Interview with Manuel Garcia Rondón, *supra* note 27. (For example, Rondón believes that Gitanos will not be able to economically integrate until cultural values about the investment and saving of money are changed. Otherwise, the cycle of economic disempowerment continues, and a high percentage of Gitanos will remain living in poverty.)

112. Interview with Antonio Torres Fernandez, *supra* note 46.

113. Ana Gabriela Rojas, *La Mujer, Motor Del Cambio Gitano*, EL PAÍS, May 26, 2006, available at [http://www.mujiereisenred.net/article.php3?id\\_article=210](http://www.mujiereisenred.net/article.php3?id_article=210) (Madrid, Spain).

114. *Id.*

minimize “looking Gitana” when looking for an apartment since she knows that landlords are often reluctant to rent to Gitanos.<sup>115</sup>

Although Gitanos have created a special place for themselves in Andalusian culture, the lingering effects from centuries of oppressive laws and discrimination against Gitanos have left a lasting legacy of mutual mistrust between payos and Gitanos and a culmination of social problems within Gitano communities. This has also perhaps led Gitanos to guard their culture and laws with even more pride and suspicion. Now that we have examined some of the historical factors that have impacted the Gitano legal system along the horizontal axis metaphor of analysis, I turn to the vertical axis mode of analysis where I examine both the Gitano legal system and the ring of other legal jurisdictions and various political and social factors that affect the development of the modern-day Gitano legal system.

### III. VERTICAL AXIS OF ANALYSIS: LAS LEYES GITANAS

The classic problem of concepts not easily translating linguistically or cross-culturally makes discussing the Gitano legal system using the English language and American legal vocabulary even more complicated. For example, “*las leyes gitana*,” or Gitano laws, include a whole repertoire of norms encompassing everything from dispute resolution tribunals to moral imperatives to legal rules, customary law, and hierarchical relationships within the community. None of it is written down. However, these mutually understood norms still indicate expected forms of conduct within the community and provide “a framework sufficient to enable members to predict each other’s actions in day-to-day matters.”<sup>116</sup>

The two guiding principles that were most often stated in my conversations with Gitanos regarding their system of laws was that one had to treat elders with respect (*respeto a los mayores*) and that one desired to be seen as a “good Gitano” (*buen Gitano*) in the community. I heard both of these phrases over and over again, yet few people explained much of their meaning beyond just repetition of the phrases. The frequency that these phrases came up in conversations regarding the law suggested that Gitanos considered respect for elders and retaining a good reputation within the community to be more than just underlying values, but actual legal precepts.

As with other Romani systems of law, the Gitano system of law is based on an unwritten system of legal codes that are passed down through

115. A clear exception to hiding Gitano identity exists within flamenco circles where Gitanos are fiercely proud to state their ethnic identification with the art form. See Section II.C.1.

116. SIMON ROBERTS, *ORDER AND DISPUTE: AN INTRODUCTION TO LEGAL ANTHROPOLOGY* 82 (St. Martin’s Press 1979). For a discussion of why private lawmaking within Roma communities is considered law, see generally Weyrauch & Bell, *supra* note 5.

the generations directly by word of mouth, and also through *cuENTOS*, stories or fairy-tales, where morals of the story exemplify a governing legal principle.<sup>117</sup> According to Torres, the development of unwritten laws for Gitanos made sense for two main reasons: 1) Gitanos, like other Roma groups, depended on the secrecy of their laws to keep their groups insular, and thus Gitanos who exposed their traditions to outsiders would be either cursed or excommunicated; 2) Since Gitanos were a nomadic people who may have had to move without a moment's notice, transmitting laws to paper would only waste time and carrying around books was only considered to be burdensome. This is also the reason given for why Gitano legal codes are streamlined and do not contain "unnecessary" laws.<sup>118</sup> Additionally, the traditional illiteracy of Roma groups naturally led to a system of oral transmission. Gitanos also follow a system of customary law in a patriarchal governance system where the respected men's words govern and are binding in a community, and when practiced enough times, become the law.<sup>119</sup> For example, one could get expelled from the community if one revealed a secret Gitano legal code. The punishment for a Gitana woman doing this is particularly harsh since they are expected to be absolutely loyal to both their men and their community, and shoulder the added burden of being guardians to their culture.<sup>120</sup>

Some Gitanos themselves deny that there are any true *leyes gitanas*, or Gypsy Laws. There could be a variety of reasons for this, the most evident being that the first tenet of the laws themselves is to keep them secret from outsiders. Another reason could be that because often when Gypsy Laws are mentioned in the media, they are sensationalized accounts of some often-invented Gypsy Law used as justification for a Gitano committing a crime, and some Gitanos do not want to encourage spreading these myths about Gypsy Laws by acknowledging their existence. For example, one of the biggest criminal trial media sensations of recent years was the trial of Farruquito, one of the most respected young Gitano flamenco dancers in Spain, on negligent homicide charges in 2005.<sup>121</sup> The media portrayed the incident to be a calloused hit-and-run manslaughter case that ended in the tragic death of the victim and Farruquito then trying to blame the incident on his fifteen-year old brother who was in the

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117. Interview with Manuel Garcia Rondón, *supra* note 27.

118. Interview with Antonio Torres Fernandez, *supra* note 46.

119. Interview with Manuel Garcia Rondón, *supra* note 27.

120. *Id.* See generally discussion *supra* Part I (ethical issues of discussing forbidden laws with outsiders).

121. The level of coverage of this case in Spain in 2005 was similar to the level of media attention that Michael Jackson's child molestation trial received that same year in the U.S. The media interest was also compounded by the string of tragedies and questionable decisions that previous members of his family had made.

car.<sup>122</sup> In the media circus that ensued, many Gitano stereotypes were evoked, particularly delinquency, and that even among international superstars, the secretive legal codes that they must follow condoned this type of behavior. Although it is not clear whether there was any general consensus on what the public believed these “Gypsy laws” were, there was much curiosity and talk about what secret motives or personal sources of law would motivate and legitimize such reprehensible behavior. There was also a morbid fascination with the legal problems of a young talented Gitano artist, who was able to achieve fame, yet was not able to stay out of trouble.

The representation of the case in the Spanish media revealed the traditional distrust of Gitanos in the payo community, as well as perceptions of conflicts between payo and Gitano laws. There was also misunderstanding of the motives in the family’s initial claim of the younger brother being behind the wheel, as well as the conflict in the Spanish concept of individual accountability versus the Gitano concept of clan accountability. From Farruquito’s family’s perspective, rather than considering the consequences of Western law’s concept of “perjury”, the family’s future was put above all as the most important concern, and (along with poor advice given to them by a former police officer family friend) the family unit decided that Farruquito’s younger brother was in a better situation to take the legal consequences of the accident rather than Farruquito, who was the patriarch and major breadwinner of the family.<sup>123</sup> In any case, in the end Farruquito was relieved and satisfied with the outcome of the trial. He was banned from driving for four years and ordered to pay 102,000 euros to the victim’s widow, and 16,400 euros to the victim’s parents. He did not, however get any jail time.<sup>124</sup> It is, however, still unclear if this reputation will recover from the incident.

Understandably, many Gitanos try to disassociate themselves from such negative media representations and some go so far as insisting that there are no Gitano laws. Others have internalized the Western concept that laws must be written, and refer to their rules of governance as *códigos gitanos*, or Gypsy codes. However, no matter how they are described, every Gitano I spoke with acknowledged that Gitano legal codes exist. There is also acknowledgment that because Gitano law is transmitted orally, it is possible that some rules can be forgotten or not be in use for a long time. When the laws are recuperated, they could lose their initial integrity and

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122. The case was quite complicated, which I will not only briefly delve into in this article.

123. More on Gitano legal concepts of agency is discussed in Section A below.

124. *Farruquito Escapes Jail for Hit and Run Killing*, THINK SPAIN, July 29, 2005, <http://www.thinkspain.com/news-spain/9125>. (last visited Nov. 09, 2007)

force.<sup>125</sup> However, this is not to say that because there is an acknowledgment that these unwritten laws can change that there is not a rigorous, definite, and determinate legal system in place at any given moment.<sup>126</sup> It is this law that has kept the Gypsy communities together throughout centuries of dispersion and migration.<sup>127</sup>

During the early years when Gitano and Spaniards first became acquainted with each other, the Spanish government had even granted Gitanos original jurisdiction over legal problems within Gitano communities.<sup>128</sup> Because the Gitanos had been so convincing of their noble and royal origins from Egypt, Gypsies throughout Europe were sometimes granted special rights and privileges, including the right to be tried only by Gypsy tribunals.<sup>129</sup> However, this practice did not continue for long in Spain, and the Spaniards soon became impatient with what they thought of as the Gitanos' strange and foreign ways, leading into the period of time for oppressive practices against them.<sup>130</sup>

*A. Basic Concepts of Agency, Legal Responsibility & Status  
Within Gitano Communities*

In Gitano law, whereas the tenet of objective culpability is an important concept, the concept of the active individual agent is not so important.<sup>131</sup> What this means is that there is less focus on an individual's actions, and the importance rather is placed on who is affected by the results of the individual's actions.<sup>132</sup> In considering the gravity of a crime, circumstances of the offense are considered, as well as the social prestige of the agent. Since group relations and the balance of community harmony is the most important aspect of Gitano life, the seriousness of the offense depends on how much it affects group relations. The more members of a clan that are affected, or the more clans are affected, then the more serious the offense.<sup>133</sup> Antonio Torres divides offenses under Gitano

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125. This is why some members of the community support undertaking a thorough project in writing down the legal codes. See Interview with Antonio Torres Fernandez, *supra* note 46.

126. See generally ANTONIO TORRES, *VIVENCIAS GITANOS* 42 (Instituto Romani de Servicios Sociales y Culturales 1991).

127. See *infra* section III.B., for discussion contrasting Gitano laws to other Roma laws.

128. QUINTANA & FLOYD, *supra* note 21, at 14.

129. *Id.*

130. See *supra* discussion in Part II.C.2 on Gitanos' Oppressive History.

131. TORRES, *supra* note 126, at 39.

132. This is all in the context of incidents within the Gitano community where all parties are Gitanos. See Section III.D. on Normative Measures and Conflicts of Law when individuals who are not Gitano are involved.

133. TORRES, *supra* note 126, at 39.

law into three categories of descending gravity: 1) those that affect the offender and the offended as well as both parties' clans; 2) offenses that affect both the offender and the offended in addition to the offended's clan; 3) only the two individual parties are affected, without any direct repercussions to the clans.<sup>134</sup>

In order to be considered a member of the Gitano community *de pleno derecho*, or with full rights, one has to belong to a "clan,"<sup>135</sup> which makes up the fundamental bases of Gitano society. Because the communal cohesiveness is so strong in Gitano communities, disputes are always between extended families headed by the patriarch. Thus, under this analysis, conflicts never arise just between two Gitanos; what affects the individual is transferred to the clan. When more than two clans are affected, the gravity of the offense grows exponentially. If the conflict is only intra-clan, then the patriarch handles the dispute resolution process. However, if an individual's actions affects inter-clan relationships, then all the members of the clans are affected. San Román stated that Gitanos have the obligation "to defend other members of the same clan, when a member has been insulted, assailed, or abused in any form."<sup>136</sup> Torres described the process by using the analogy that in a nation-state's legal system, a judge's decision is backed by the state and the state's law enforcement agents, such as the police and the army.<sup>137</sup> In Gitano communities, decisions are backed by families.<sup>138</sup> Naturally, this means that having more children will create larger clans, leading to more support in the numbers of people backing one's position in society. This corroborates Romani scholar Ian Hancock's statement about Romani culture that "our children are seen as our fortune."<sup>139</sup>

A Gitano's position within society is dependent upon his or her gender, age, personal attributes, and where he or she is in the life cycle. There is no singular *baro Rom*,<sup>140</sup> "Gypsy King," or person who represents a singular leadership position in the Gitano community such as the *Baro Shero* does in Polish Roma communities.<sup>141</sup> However, honorable titles of

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134. *Id.* at 40.

135. Although "clan" may not be the perfect word to describe these relationships, and may have some implications of a "primitive" society, I am only using the word to describe the extended family relationships within Gitano communities that Antonio Torres uses himself.

136. See TORRES, *supra* note 126, at 40–41 (citing Teresa San Román, *Vecinos Gitanos*, 214 (Akal 1976)).

137. Interview with Antonio Torres Fernandez, *supra* note 46.

138. *Id.*

139. HANCOCK, *WE ARE THE ROMANI PEOPLE*, *supra* note 16, at 59.

140. See generally SUTHERLAND *supra* note 32 at 12 (identifying the *rom baro* in American Rom communities as one who uses his influence with important *gaje* to establish authority with the Rom, and who resolves legal conflict as an arbitrator before stronger legal methods such as the *kris romani* are called for).

141. See Acton, *supra* note 5, at 645–46.

“Tío’s” and “Tía’s”<sup>142</sup> do exist and are given to elder leaders in the Gitano community. In Spanish, these words directly translated mean “Uncle” and “Aunt,” and in Andalusian slang, they are also words of endearment used in calling friends. However, to the Gitano community, these are also titles given to elders who have earned a title of honor and respect in the community. Tío is the highest possible status in the community, and the role is best described as a political leader who may also serve a judicial role in the community.<sup>143</sup> It is the *palabra* or literally, “word” of the Tío that governs the community, and the Tío’s word is the assertion and reinforcement of Gitano law.<sup>144</sup> Faith and submission to the word of the Tíos is what has kept Gitano society together throughout the centuries.

Tíos and Tías usually become eligible for consideration in this category around the age of forty or forty-five, usually at a time in their life cycle that coincides with marrying off their children and becoming grandparents.<sup>145</sup> In Caló, Tío is known as *kako* for the masculine and *bibi* for the feminine (Tía), but because the majority of Gitanos no longer speak fluent Caló, Tío and Tía are the more familiar terms.<sup>146</sup> When a Gitano reaches his 40’s, a certain amount of respect is already naturally given to such a person, assuming that he or she has gained wisdom through living. “In principle . . . all [Gitano] men are Tíos when they reach a certain age.”<sup>147</sup> However, it is more than just reaching a certain age that makes one a Tío or Tía, and there are social expectations to behave with a certain honor.

A man who has reached this age group can become a Tío by becoming known in the community for his intelligence, wisdom, rectitude, knowledge and authority of Gitano legal codes, and is someone for whom everyone in the community expresses admiration. He gains power in a community by showing “reason” and “wisdom” as well as by building up “experience” in giving advice.<sup>148</sup> There is no exact moment when one becomes a Tío, and also no rite of passage in the Gitano community to pronounce one a Tío. One gains this status by showing leadership and strength in keeping one’s family together and showing oneself as a responsible provider. Additionally, one can lose Tío or Tía status if one engages in irresponsible behavior, such as using drugs, taking economic advantage of other Gitanos, abandoning minor children or a wife, or re-

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142. In other Roma communities, including sometimes in Gitano communities, the Tío and Tía are known as *phuri* and *phuri dai*.

143. See *infra* Part III.C for further discussion of this judicial role.

144. TORRES, *supra* note 126, at 108.

145. *Id.*

146. *Id.* at 111.

147. *Id.* at 115.

148. Interview with Antonio Torres Fernandez, *supra* note 46.

marrying too many times.<sup>149</sup> There is also a hierarchy amongst the Tíos, depending on certain circumstances, family lineage, and prestige or moral authority.<sup>150</sup> For example, several brothers may be Tíos at the same time, but a hierarchy amongst the brothers according to their age usually exists.<sup>151</sup> The eldest Tío in a family would be the ceremonial head in such occasions as weddings, or in representing the family in the community. The real power of the eldest Tío becomes evident when there is disagreement amongst the others—because the eldest’s opinion would be the one that carries the most authority.<sup>152</sup> Tíos that govern over clans with more male members also have more power.

Even so, the change in circumstances of Gitano communities, where Gitanos are now living sedentary lives side by side with payos has also changed relations between the two communities. Today, becoming a Tío is not the only way one gains respect in the Gitano community, although it is still the predominant way. A payo who has contributed to the Gitano community can also be given respect within the Gitano community.<sup>153</sup> This aspect of Gitano society contrasts to most other Roma groups where outsiders can never penetrate the internal structure of governance and gain acceptance into the community. Gaining wealth, having a reputation of being a good person, building a large family and lineage, and gaining the support of the payos are all ways that one can gain prestige within the community.<sup>154</sup>

#### B. *Various Dispute Resolution Processes in Roma Communities*

Studying a society’s dispute resolution processes reveals much about power relations in society, and as Laura Nader succinctly put it, “Who gets to decide disputes, and the means they use to decide, will privilege and handicap different sectors of society.”<sup>155</sup> Additionally, in stateless societies, there are typically no official agencies to enforce results of a dispute resolution. “The absence [of official state agencies] emphasizes the importance which must be attached to achieving a settlement acceptable to both parties, or at least to so many other members of the community that

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149. See TORRES, *supra* note 126, at 109 (citing TERESA SAN ROMÁN, *VECINOS GITANOS* 214 (Akal 1976)).

150. TORRES, *supra* note 126, at 115.

151. *Id.* at 108.

152. *Id.* at 116.

153. Interview with Antonio Torres Fernandez, *supra* note 46.

154. TORRES, *supra* note 126, at 108. Note that gaining wealth may seem to be at odds with the Gitano traditional preference of spending money rather than saving it, but Gitanos also recognize accumulation of wealth as a symbol of power and successful integration in the payo economy.

155. OSCAR G. CHASE, *LAW CULTURE AND RITUAL* 4 (New York Univ. Press 2005).

departure from it by either party is made impracticable.”<sup>156</sup> Gitano society is no exception in that their dispute resolution system is geared towards reaching results which meet community standards of agreement.

Romani studies scholars have long recognized the diversity amongst Roma groups due to the Roma’s dispersion throughout Europe.<sup>157</sup> The different cultural influences and historical developments led to different trajectories in the development of different Roma groups’ laws. One should not even assume that at one point in the past that the Roma ever had any uniform legal system. Thus, it is important not to lump together the different legal systems of the Roma people when analyzing their laws. Although there are many similarities amongst the systems, there are also major differences, and a comparison of other Romani legal systems is helpful in gaining a deeper understanding of the Gitano legal system. This Article’s purpose in its brief synopsis of other Roma groups’ dispute resolution system is not to present a comprehensive survey of different systems. Rather, the Article is intended to serve as background in understanding the Gitano dispute resolution process. It is also intended to establish that, even considering the diversity within the systems, there are still some links that the Roma groups’ dispute resolution systems have in common.

### 1. The *kris* and its variations

Much of the recent scholarship in the area of Romani law has focused on Roma groups with Eastern European origins. T.A. Acton has pointed out that Weyrauch and Bell presented a “quintessentially Kalderashocentric”<sup>158</sup> view of the Romani world” in focusing on the *kris* in their analysis of Gypsy legal systems.<sup>159</sup> The *kris* is often described as a tribunal-like assembly where an aggrieved plaintiff makes an official pleading against a defendant after all other forms of problem-solving have failed.<sup>160</sup> Usually, a *kris* is called for only the most serious problems or wrongdoings that affect the community. Some examples of such subject

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156. ROBERTS, *supra* note 116, at 136.

157. See Acton, *supra* note 5 at 139–41.

158. The Kalderash Roma are a subgroup of the Vlax (also spelled Vlach) Roma, one of the most numerous Roma groups, largely based in Romania. Note that the word *kris* is only used within Vlach Roma communities and is not used in other Roma communities. Ian Hancock notes that the structure of the *kris* probably developed and was modeled on the tribunals traditionally found in Romanian villages. (Note on file with author from Ian Hancock, received February 5, 2007)

159. Acton, *supra* note 5, at 643.

160. Weyrauch and Bell, *supra* note 5, at 354. See also Acton, *supra* note 5, at 642. Note that Ian Hancock points out the problematic issue of relying on secondary published sources describing the *kris* by scholars who may not fully understand the *kris* themselves and who have never attended one firsthand. (Note on file with author, received February 5, 2007)

matter are over issues of “immorality such as adultery, incest, homosexuality, or sexual relations with *gaje*.”<sup>161</sup> The *kris* as an institution carries the weight of legal authority in the society. Within Kalderash Roma society, leaders known as *krisnitoria* preside over the *kris* to help find the collective voice of the community.<sup>162</sup> The Kalderash *krisnitoria* are invited mediators from the community’s pool of elders, who are not called to serve their roles until the decision has been made to call the *kris*.<sup>163</sup>

Depending on the Roma community, the *kris* or its equivalent dispute resolution structure varies on how it is assembled as well as the role that the *krisnitoria* or respected elders serve.<sup>164</sup> The Kalderash often try to solve disputes in a less formal and preliminary step before calling the *kris* in a process called the Romani *divano*. In describing the process amongst American Vlax Gypsies,<sup>165</sup> Sutherland states, “the *divano* has force and influence just as public pressure has influence, but the decision is not as morally binding as a *kris romani*.”<sup>166</sup> If the problem cannot be solved in any of the preliminary dispute-resolution measures, then the *kris* may be called. In the Kalderish *kris*, it is the entire collectivity of the tribunal including all the disputing parties, that calls the *krisnitoria* to chair the *kris*. The decision of the *krisnitoria* must be accepted by all in the community.<sup>167</sup> The process is different amongst the Baltic Roma even from the point of assembling the *kris*. In the case of the Baltic Roma, the aggrieved party approaches an elder or elders with the problem, and it is these elders who then call a tribunal. After hearing discussion of the issues, the elders then deliver a judgment instead of reaching a decision by mediation.<sup>168</sup> Similarly, in Marushiakova’s report on Bulgarian non-Vlax Romani groups, the elders also deliberate to reach and deliver a judgment rather than mediate the dispute.<sup>169</sup> These groups use the term *Meshare* or *Meshariava* to describe the dispute resolution tribunal<sup>170</sup> and Acton remarks

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161. SUTHERLAND, *supra* note 32, at 132.

162. See Acton, *supra* note 5, at 648.

163. Kris are also known as *phure*, which are the equivalent of *Tiós* in Gitano society. Note that *phure* are only known as *krisnitoria* during the *kris* because *krisnitoria* is the name of the role they serve. In other Roma communities, *phure* reach their status differently too; some are selected whereas others reach the status by descent. See *Id.*

164. See *id.*, at 642–650.

165. Most people do not realize that the United States has a current estimated population of over one million Romani people. See Kay Randall, *What’s in a Name?*, UT FEATURE STORY, June 23, 2003, <http://www.utexas.edu/features/archive/2003/romani.html>.

166. SUTHERLAND, *supra* note 32, at 131.

167. See Acton, *supra* note 5, at 648.

168. *Id.*

169. Elena Marushiakova, *Self-government among Bulgarian Gypsies*, in NATIONAL IDENTITIES AND ETHNIC MINORITIES IN EASTERN EUROPE 199, 199 (Ray Taras ed., 1998).

170. *Id.*

that Marushiakova is careful to point out that these assemblies are “like a *kris*, but they are not called a *kris*, and we should not say they are a *kris*.”<sup>171</sup>

The point in briefly describing these Romani dispute resolution processes is to highlight the fact that regardless of whether the *krisnitoria* serve as mediators or judges in the community, these dispute resolution processes all have in common that they involve a group of elder, respected men, reflecting the will of the Roma community in establishing the rule of law.<sup>172</sup> For these men, gaining a reputation through the *kris* process is an unquestionable way to gain status within Roma communities. T.A. Acton adds that, “Those who have a good reputation as a chair are in great demand, and will be offered plane tickets and generous expenses to fly round the world to restore harmony, to the point where for a few men in late middle age it becomes their major activity.”<sup>173</sup>

## 2. The Blood-Feud

Since the *kris* represents such a distinguishable Romani dispute-resolution process, other forms of dispute resolution amongst Roma groups have often been neglected by scholars. Acton points out an important yet commonly overlooked structural alternative to the *kris* known as “blood-feuding”, best known for being practiced amongst the Finnish Kaale Romani.<sup>174</sup> Martti Gronfors<sup>175</sup> describes this dispute resolution system as completely different from a *kris*, where individuals are expected to defend their own interests, or, when too weak to do so, must depend on their blood-kin for support. Even though the term “blood-feud” might suggest otherwise, actual physical violence or killings are the extreme ultimate sanctions, and it is only the threat of a potential “blood-feud” that gives it the name. On the whole, the Finnish Kaale have a mostly peaceful system since the community as a whole understands the applicable rights and obligations of each person. In order to avoid the “blood-feud” situation, the most likely solution to the dispute resolution process is for

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171. Acton discussing Marushiakova, *supra* note 5, at 650.

172. Roma groups differ in their policies on whether to allow women to either attend or speak at the *kris* or kris-equivalent dispute resolution process. In some groups, only men may attend, but this has mostly changed, although men still answer for their wives. See Weyrauch & Bell, *supra* note 23, at 352–356. In Gitano communities, women are allowed to speak as long as no man is speaking, and they must wait until after the men speak their turn. Interview with Manuel Garcia Rondón, *supra* note 27. See also *infra* Part III.C.1 for discussion on women’s roles in dispute resolution in Roma communities.

173. Acton, *supra* note 5, at 643.

174. See Thomas Acton, Susan Caffrey & Gay Mundy, *Theorizing Gypsy Law*, 45 AM. J. COMP. L. 237, 237 (1997). See also Acton, *supra* note 5, at 643.

175. See Martti Gronfors, *Blood Feuding Among Finnish Gypsies*, in TUTKIMUKSIA RESEARCH REPORTS 1977, at 66 (Univ. of Helsinki Dept. of Sociology Tutkimuksia Research Reports No. 213, 1977).

members involved in the conflict to avoid the wronged person in the community.<sup>176</sup>

When I questioned Torres about the controversial blood-feud aspect of Roma dispute resolution processes, he simply replied that there are those who believe that “the power of the pistol is stronger than the written word.”<sup>177</sup> Considering the Gitanos’ traditional illiteracy and the acts that were committed against them in the name of written royal decrees and other laws, it is not surprising that Gitanos may choose to solve problems according to different methods.<sup>178</sup> The media loves to sensationalize Gitanos’ reputation with being quick to pull knives,<sup>179</sup> which is a perversion of Gitanos’ self-proclaimed mantra that when one’s honor is at issue, then one must defend it by all means.<sup>180</sup>

Variation is to be expected amongst Roma dispute resolution systems when the cultural influences, migratory patterns, and historical developments in Roma communities are so diverse in of themselves. T. A. Acton states that the common thread that links all Romani governance and dispute resolution processes is the similarity in moral codes.<sup>181</sup> His approach in analyzing and comparing Romani legal systems focuses on structural variation dependent on prioritization of certain key values.<sup>182</sup>

### C. *Gitano Dispute-Resolution and Legal Governance System*

Gitanos have a dispute resolution process that has many similar characteristics to both the *kris* and the blood-feud that Acton describes, but one aspect of the Roma’s legal systems that Acton does not discuss is the influence of outside legal systems on their systems. After all, no legal system develops in a vacuum, and no matter how insular an ethnic minority community is, there will undoubtedly be interactions and influence from the majority community. It is possible that outside legal systems may have even more of an effect on Gitanos’ legal system compared to other nomadic Gypsy groups because their sedentary ways have created more opportunities to develop relations with outside communities.

In general, disputes within Gitano communities are framed as disputes among lineages and families, rather than individuals.<sup>183</sup> When

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176. Acton, *supra* note 5, at 644.

177. Interview with Antonio Torres Fernandez, *supra* note 46.

178. See discussion *infra* Part III.D on Conflicts of Law.

179. The Unión Romani has many projects documenting Gitano representations in the media, including its publication of *¿Periodistas contra el racismo?*. The Asociación Secretariado General Gitano also tracks articles in the press released about Gitanos in its publication *Los Gitanos en la Prensa*.

180. Interview with Antonio Torres Fernandez, *supra* note 46.

181. Acton, *supra* note 5, at 640.

182. *Id.*

183. TORRES, *supra* note 126, at 119–20.

problems arise between two clans, they are usually solved in one of three ways: 1) peacefully between the elder men of the lineages; 2) by force, especially if the original offense was one where blood was shed or had resulted in a death; or 3) by the *Consejo de Ancianos*, the councils of elderly respected men who serve as guardians of Gitano law.<sup>184</sup> In these three options, we have dispute resolution choices that range from peaceful mediation between heads of families, to a practice similar to the blood-feud of the Finnish Kaale, and to another practice similar to the Kalderash *kris*.

While there appears to be variation even within Spanish Gitano communities, since the elderly men resolve disputes on behalf of their families, they are typically also the driving force behind the dispute resolution process in the communities. This is so whether it be through mediating directly on behalf of their families, or serving on a *Consejo de Ancianos*<sup>185</sup> to resolve community disputes. The *Consejo de Ancianos*, roughly translated to be the Council of Respected Elder Men, is a dispute resolution process headed by Tíos in the community who come to a judicial decision after listening to both sides present the facts of the case. The respected elder men that serve on the *Consejo* must be men who have reached *Tío* status.<sup>186</sup> The sources with whom I spoke to also confirmed that the word *kris* is not used to describe this tribunal system in Gitano communities; although according to Torres, *Consejo de Ancianos* is the Gitano version of the *Kris Romani*.<sup>187</sup> There is no other specific name regularly used in Caló to describe this tribunal, but there are different expressions used by Gitanos to describe this tribunal, such as *Consejo de Hombres de Respetos*, *Consejo de Hombres de Bien* or *Consejo de Mayores de Respeto*.<sup>188</sup>

Through many conversations with Gitanos, it was repeatedly stressed to me that the *Consejo de Ancianos* is composed of a group of respected elder men who must always be *invited* by the parties to serve in the role of both mediator and adjudicator in these dispute resolution meetings.<sup>189</sup> The *Consejo* usually arrives at a decision by mediation, but depending on the circumstances, may actually play a role more similar to arbitrator or judge when making their binding decisions. For example, in addition to serving as mediators where the *Consejos* guide the disputants to their own solu-

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184. *Id.*

185. For consistency's sake, I will use *Consejo de Ancianos* in this article when describing this tribunal.

186. Note that the word *Ancianos* from *Consejo de Anciano* literally translates to 'Ancients', and is a synonym for Tío.

187. TORRES, *supra* note 126, at 112.

188. See María Jesús Ibáñez, *Por la ley de los Gitanos*, NEVIPENS ROMANI, May 16–31, 2006, at 6.

189. See Interview with Antonio Torres Fernandez, *supra* note 46; see also Interview with Anonymous C, elVacie resident, in Sevilla, Spain (June 2, 2006).

tion, the *Consejos* may serve as arbitrators where they reach the decision for the disputants, and as judges in circumstances where they more formally declare the solution to the problem. Since the *Consejo de Ancianos* are invited to help solve the parties' problems by voluntarily submitting their problem to the *Consejo de Ancianos*, the parties are agreeing to follow the binding decision that the *Consejo de Anciano* makes. In all cases, it is undisputed that the decision of the *Consejo de Ancianos* is binding. Additionally, by choosing to invite a *Consejo* to preside over their disputes, the parties agree to appear in person to speak their side of the story.

There is no set number of Tíos invited to serve on a *Consejo*, but I was told that there are usually three or four Tíos. These *Consejos* are usually held in the home of one of the problemed parties seeking advice, and usually nobody leaves the house until a solution is reached. This can take a day or up to several if the problem is very serious. Each party gets a chance to present their side of the story. Similar to the description of the Kalderash *kris* in the United States, the litigants may bring witnesses and spokespeople/lawyers to represent them and plead their case for them.<sup>190</sup> My Gitano informants stated that the *Consejo de Ancianos* is the final authority on Gitano customary law and its precedents, but all present may ask questions throughout the process. Women are allowed to attend the Gitano *Consejos*, but I was given different answers on whether they were allowed to speak at the *Consejos*: some said no; others said only when no other men spoke. Gitanos that I spoke to stated that both the status of the complainants and the facts of the situation are important in the decision making process of *Consejos*.

Issues typically decided by *Consejo de Ancianos* are "violations of Gypsy law, financial grievances, insults, and so forth,"<sup>191</sup> such as divorce issues or unrest in the community. An example of a situation that came before a *Consejo de Ancianos* where much of the community was involved was in a situation where a particular family of fifteen settled for about a year and a half in the barrio of La Mariola of Segrià.<sup>192</sup> The family had brought a lot of turmoil to the neighborhood. The tension culminated in a traffic accident which led to an argument where a fifteen year old was hit in the head with a baseball bat and three youths were arrested for public disorder, menace, and aggression. The violence continued throughout the night where two cars of the arrested were burned. Within a week, a *Consejo* was convened and came to a decision. The *Consejo* listened and negotiated with the families and neighbors for three days and nights before coming to the very serious decision of expelling the family from the community, and ordering them to relocate to another community.

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190. RENA C. GROPPER, *GYPSIES IN THE CITY* 82 (The Darwin Press 1975).

191. QUINTANA & FLOYD, *supra* note 21, at 73.

192. See Ibanez, *supra* note 188.

This specific example shows just how quickly a *Consejo de Ancianos* can be called together to make a decision. Pedro Giménez, one of the *Tíos* who served on the *Consejo*, reinforced the strictly binding nature of the decision by stating, “These are very ancient laws, from very deep roots which no one can ignore and which all must comply, because the adopted advice is recognized by the entire community.”<sup>193</sup>

### 1. Role of Women

Although women do not directly participate in the *Consejo de Ancianos* the same way that the elderly respected men do, women still play a unique role in the dispute resolution and governance systems of Gitanos. Women participate in their own versions of these *Consejos* when the issues are limited to women’s issues.<sup>194</sup> *Tías* are similarly invited to preside over such issues, and are likewise chosen based on having a “fair” reputation.<sup>195</sup> In commenting about the Gitanos in the Sacro Monte community outside of Granada in the 1960’s, Quintana and Floyd stated that “deference accorded older women who demonstrate characteristics similar to those of the male chiefs underscore the high cultural regard in which they still are held.”<sup>196</sup> Today, women are still seen as the guardians and transmitters of Gitano culture, and if a woman handles this role well, she will gain *Tía* status when she reaches her forties.

It should also be noted that although Gitana women do not play as large a role in dispute resolution processes, they have still been great catalysts for change in their communities. Of the 1% of the estimated Gitanos in Spain that the *Fundación Secretariado General Gitano* (FSGG) found to have a University education, a vast majority of them are women.<sup>197</sup> Numbers of Gitanos entering University are increasing, and 80% of these Gitano university students are women.<sup>198</sup> This means that many of the women in Gitano communities are the first to be exposed to job opportunities that require a university education. These educated women are also shifting expectations in the community with their own changing desires to balance careers with family. The disproportionate percentage of educated Gitana women and the increased exposure that payo society has with these women is also gradually changing public perceptions of the status of Gitana women. These trends are unique to the Gitano community and contrast with the situation of Roma women in other

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193. *Id.*

194. Interview with Anonymous B, el Vacie resident, in Sevilla, Spain (June 2, 2006).

195. *Id.*

196. QUINTANA & FLOYD, *supra* note 21, at 73.

197. Ana Gabriela Rojas, *La mujer, Motor del cambio gitano*, EL PERIODICO FEMINISTA EN RED, (May 22, 2005), [www.mujaresenred.net/print.php3?id\\_article=210](http://www.mujaresenred.net/print.php3?id_article=210).

198. *Id.*

communities where their education levels are lower than the men's.<sup>199</sup> The importance of the role of women in Gitano society contrasts to the inconsequential role of "pollution" in creating law and order within Gitano communities.

## 2. Role of Pollution

The significance of bringing up "pollution" in regards to Gitano legal codes is that it plays almost no role in enforcement of Gitano laws. Many Romani groups believe in a concept of pollution called *marime*, involving taboo behavior when "polluted" substances are mixed with "clean" elements.<sup>200</sup> Fear of *marime* creates an intricate system of behavioral standards that creates a system of legal codes in order to avoid contact with polluting elements.<sup>201</sup> Since non-Romani people (*gaje*) do not practice *marime*, prolonged contact with them will also become polluting.<sup>202</sup> This is a major reason why many Roma groups have remained insular communities throughout the centuries. However, *marime* is not an inherent characteristic of Romani legal systems, and the fact that the Gitanos do not practice *marime* does not mean that they are not Romani people.<sup>203</sup> The lack of pre-occupation with *marime* was also most likely a huge contributing factor in Gitanos being amenable to living amongst the *payos*.<sup>204</sup> The absence of a fear of *marime* distinguishes Gitanos from other Roma groups in that other factors that contribute to the Gitano social conscience play a more prominent role in their legal system. This is also important because scholarship on legal systems of the Roma should not

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199. See Press Release, European Parliament, *Roma Women in the EU*, Jan 06, 2006, [http://www.europarl.europa.eu/news/expert/infopress\\_page/014-8637-152-06-22-902-20060531IPR08614-01-06-2006-2006-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/014-8637-152-06-22-902-20060531IPR08614-01-06-2006-2006-false/default_en.htm) (discussing the lack of equal access to quality education for Roma girls and women)

200. See Weyrauch & Bell, *supra* note 8, at 343–351 (discussing *marime* and the role it plays in Romani legal systems).

201. See *id.* at 342).

202. See HANCOCK, *supra* note 16, at 75.

203. *Contra* Walter O. Weyrauch, *Unwritten Constitutions, Unwritten law*, 56 WASH & LEE L. REV. 1211, 1228–29(1999) (noting that "all the laws of Romaniya [Gypsy law] can be traced to zones of the human body, which acquire symbolic significance, the upper parts being pure and the lower parts impure." *Emphasis added*) See also Weyrauch & Bell, *supra* note 23, at 342 (stating that "Gypsy society relies heavily on distinctions between behavior that is pure (*vujo*) and polluted (*marime*)).

204. See MERRILL F. MCLANE, *PROUD OUTCASTS: THE GYPSIES OF SPAIN* 48 (Carderock Press 1987)(documenting that the Gitanos from Guadix, a community outside of Granada, were not bothered by defilement when women walked on the roofs, or other issues associated with contamination from the *payo* community). See also DRUMMOND, *supra* note 36, at 226 (noting in her study of Gitanos from Jerez that there were no *marime* traditions that were preventing the Jerezano Gitanos from living amongst *payo* communities or altering their lifestyle in order to accommodate their *marime* taboos). See also Interview with Antonio Torres Fernandez, *supra* note 46.

focus entirely on *marime* as the central dominant organizing factor. Some Roma groups would argue that this lack of fear for *marime* shows that the Gitanos have assimilated more into *gaje* culture than the other Roma groups, but Gitanos view it as just a variation amongst the different cultural practices of the Roma. The absence of following any *marime* traditions is also one of the main reasons that the Húngaros, the name that the Gitanos call the other nomadic Roma groups in Spain, shun the Gitanos. The Húngaros believe that the Gitanos are “polluted” and are not authentic Roma since they do not even practice this central tenet of Roma beliefs.

### 3. The Ultimate Punishment

One aspect of the Gitano legal system that Gitanos do have in common with the rest of the Roma groups is that the ultimate legal punishment for a Gitano is to be banned from the community and excommunicated. Belonging to the Gypsy community is the most important aspect of Gitano identity, and the anxiety for a Gitano to be separated from his community has been well-documented by various Romani scholars.<sup>205</sup> Thus, excommunication is considered the ultimate punishment in Gitano and Romani society and such a decision would be deliberated with the utmost seriousness before being made. The fact that excommunication from the community is the ultimate punishment may seem counter-intuitive since it is the opposite of what we generally perceive to be coercive force in legal enforcement from a state society. Yet most stateless societies do not have systems of jails or physical confinement, and an excommunication ruling is like living death for the condemned, where the condemned is treated like a ghost whose existence is ignored by the rest of the community.<sup>206</sup> Legal anthropologists have confirmed that in other stateless societies excommunication is often the “most dreaded sanction that can be threatened or imposed” and while it is “obviously one of the most effective means of handling conflict” it is “also potentially the most radical as it can involve serious disruption of the business of making a living.”<sup>207</sup> Excommunication compounds social disruption since the exiled Gitanos are both displaced and unable to make a regular living. It may also promote nomadism and compounding social problems since often times the displaced Roma are the problematic ones to begin with, which is why they were banished from their communities in the first place. This

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205. “The fear of aloneness, alienation from the group, is shared by even its most deviant members, and is a cause for cultural stress in contemporary Gypsy life.” QUINTANA & FLOYD, *supra* note 21, at 112. See also SUTHERLAND, *supra* note 32, at 100 (confirming the gravity of being left alone for American Gypsies, stating that “loneliness is perhaps the rarest condition an individual experiences in his lifetime”).

206. ROBERTS, *supra* note 116, at 65.

207. *Id.*

may continue a cycle of *gaje* distrusting new Roma they encounter and leading to their enacting laws forcing Roma to settle so that they can be “held accountable” to the nation-state’s legal system. Within the Gitano legal system, as with all other legal systems, there are normative measures in place to ensure that the laws ensure a predictable and expected result, even when there is diversity amongst the ways certain issues are handled in the dispute resolution process. It is when the results bring consequences for other outside communities that it leads to a situation of conflicts between legal systems.

#### D. Normative Measures and Conflicts of Law

When I posed the question to Antonio Torres how he would define Gitano legal codes, he replied that you would receive five different answers representing the divergence in views amongst the five major Gitano barrios in Sevilla alone.<sup>208</sup> Even with such divergence in views, Gitano legal codes have managed to create a cohesive community for centuries. However, some Gitanos even insisted to the contrary, that there were no major differences in legal codes of all the Gitano communities in Spain and even no major differences in the codes of Gitano communities in Spain and Portugal.<sup>209</sup> The different Gitano communities in Spain remain in constant communication with each other through branches of the same family that may settle in different areas or cities. Due to the nature of Gitano society revolving around extended families, it is not uncommon for elders of a community to have conflicting interests with the disputing parties. A common response in a situation like this is for the elderly men of the community to “recuse” themselves from the situation and to invite respected elderly men from other nearby Gitano communities in Andalucía such as Córdoba or Málaga to serve on the *Consejo de Ancianos* on this particular dispute.<sup>210</sup> This creates a national network of Tíos who may serve on *Consejos de Ancianos* in other communities when a community’s elders have too many conflicting interests with the disputing parties. In turn, this trade in Tíos and “judicial resources” helps to create normalizing measures and a form of standardization of legal concepts amongst the Gitano communities of Spain. The Tíos who serve on *Consejos de Ancianos* in other communities incorporate influences from these other tribunals back into their own home communities.

The Unión Romani has also helped create a venue for respected Tíos to discuss normative measures and new developments of law in their respective communities through the creation of *El Consejo Gitano* (The Gitano Council), which also sometimes meets as the *Consejo Nacional de*

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208. Interview with Antonio Torres Fernandez, *supra* note 46.

209. Interview with Anonymous C, el Vacie resident, in Sevilla, Spain (June 2, 2006).

210. *Id.*

*Ancianos*. This is a group of about ten to twelve members of respected elders from various Gitano communities around Spain who meet every few years to discuss the legal norms that have been developing in their communities.<sup>211</sup> The exchange of ideas that results from Tíos being in contact with each other from serving on each others' *Consejos de Ancianos* in addition to the national meetings of important Tíos becomes a forceful normalizing tool, and keeps the Gitano communities in Spain in touch with the development and reinforcement of their legal norms.

In addition to conflicts that may occur involving dispute resolution within a particular Gitano society, there will undoubtedly also be conflicts with payo legal systems that impose jurisdiction on Gitano societies. When posed the question of what happens when there is a conflict of law between Gitano and Spanish national or regional law, Torres responded that Gitano law applies until the point when the police are called, thus taking the situation out of the realm of Gitano society.<sup>212</sup> There is a sense that at that point, the situation is out of the community's hands, and there is "*no más ley gitana*" (no more Gitano law). It then becomes *ley de la sociedad*, or law of the society in which the Gitanos live.<sup>213</sup> Gitanos do not have a definitive structure of dealing with laws that may conflict with outside jurisdictions, and instead live under the cognizance that they are subject to both their own internal legal system as well as a set of societal laws from the payos. The vast majority of Gitanos have accepted the overlapping jurisdictions that come with living interdependently with the payos, and when the state asserts its power over Gitanos, in most cases, the Gitano will accept the state jurisdiction.

By more closely examining the structures of the modern-day Gitano legal system, the first part of the vertical axis analysis illuminates both what the Gitanos have in common with the other Roma and also how they are uniquely situated, particularly due to the effects from being a predominantly sedentary population for generations. However, with all its similarities and differences, the Gitanos' dispute resolution system definitely has in common with other Roma communities a similar moral code governing the community as well as the traditional emphasis on the role that respected elderly men have in society. It has also evolved so that Gitanos try to keep disputes within their internal legal system as much as possible in order to avoid state jurisdiction.<sup>214</sup> Yet sharing spaces with the payos for centuries has also made it logical and acceptable that Gitanos will not always be able to contain situations of legal friction within the

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211. TORRES, *supra* note 126, at 43. See also Interview with Antonio Torres Fernandez, *supra* note 46.

212. Interview with Antonio Torres Fernandez, *supra* note 46.

213. Interview with Manuel García Rondón, *supra* note 27.

214. See QUINTANA & FLOYD, *supra* note 21, at 37 (noting that Gitanos often adhere to local laws while continuing to impose penalties for breaking Gypsy law within the community.) See also Interview with Manuel García Rondón, *supra* note 27.

confines of Gitano communities. Furthermore, there has never been any large-scale movement to declare independent jurisdiction for a Gitano legal system. Gitanos' recognition of the situation is well summed up by a male elder of a Sacro Monte Gitano family from Granada,<sup>215</sup> who was interviewed by Quintana and Floyd in the 1960's: "Naturally we are first faithful to the laws of our own people, but we know too that it is best today to obey the local laws as well. Always we remember that Gypsy law is the best for us, in spite of changes we have seen. No *real* Gypsy places any other law higher."<sup>216</sup> Even so, there are still complications when different Gypsy laws from different Gypsy communities collide.

#### *E. New Layers to Gitano Population*

Since the fall of the Eastern Soviet bloc countries, there has been a crisis in Roma communities of these Eastern European countries. Today, it is fairly common for Roma to be the victims of racially motivated attacks on their neighborhoods, police raids, and harassment in Eastern European countries.<sup>217</sup> Many of these Roma suffer from so many problems in their Eastern European communities that they choose to seek a better life by moving westward into Western Europe. Spain also has a fair share of these newly arrived Roma populations, which has added complications to Gitano/payo relations. Even before the influx of these Eastern European Roma groups into Spain, there had already been mutual disdain between these groups and the Gitanos.<sup>218</sup> In Andalucía, it is a commonly heard saying amongst Gitanos to "never trust another Gitano", but which is well understood that the other "Gitano" referred to in the saying are those from other Roma groups. They are known to find it as difficult to tolerate one another as payos and Gypsies find it to tolerate each other.<sup>219</sup> Gitanos in Sevilla are often heard saying that these newly transplanted Roma groups in Spain, often called *Húngaros*, have no respect for anyone and that they have no shame.<sup>220</sup> In essence, each group regards themselves as the one who is pure and genuine Roma and the other group as the

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215. Granada is another major city in Andalucía.

216. QUINTANA & FLOYD, *supra* note 21, at 38.

217. See Alyssa Haun, *The Long Road Ahead: The Roma of Eastern and Central Europe and the Freedom of Movement and Right To Choose a Residence* 33 GEO. WASH. INT'L REV. 162-164 (2000) (Giving examples of some specific instances of such practices in countries such as Albania, Bulgaria, Romania, Czech Republic, Slovakia and Hungary).

218. See GROPPER, *supra* note 190, at 13 (noting that the sedentary Gypsy groups, including the Gitanos, are seen as so divergent from the nomadic Gypsy groups, and that they do not associate with each other); Interview with Anonymous D, Staff member of Unión Romání, in Sevilla, Spain (May 24, 2006).

219. CLÉBERT, *supra* note 64, at 83.

220. Interview with Anonymous A, Gitana, in Sevilla, Spain (May 31, 2006).

embodiment of dirt and contamination.<sup>221</sup> Yet most payos do not understand enough about Roma culture to know that there is a huge gulf in between these groups, and lump them together into one category. Thus, even when different Roma groups often look at each other as if each other were bizarre strangers, the payo perception of Gitanos is still being shaped by payo perceptions of these newly arrived Roma groups.

Since Roma populations have been separated from each other for the most part for centuries, historically much of their knowledge of other Roma groups also did not come from direct knowledge. Since few Roma have participated in disseminating depictions of their own groups, many of their impressions of other Roma groups came from stereotypes represented by the *gaje* or from invented fantasies or works of fiction.<sup>222</sup> This in addition to the diversity between Roma groups, adds to the difficulty that many Roma groups have in relating to each other, despite Romani activists' ambitious efforts to instill a sense of historical unity amongst the different groups.

Yet there are also Gitano activists who are sympathetic to and better understand the situation of the Eastern European Roma.<sup>223</sup> According to Rondón, much of the communication gap between the Roma groups results from the newly arrived Roma not following the tenet of asking other Roma for help when they need it. If the newly arrived Roma groups were to reach out to the Gitanos, the Spanish Gitanos would recognize this gesture as one symbolizing mutual dependence on each other for help, and would consider them included in their community. This is because one of the basic tenets in Gitano law is that to be a well-respected Gitano, or "*buen Gitano*" in Spanish, it is obligatory to help your fellow Gitanos if asked. Because Gitanos' identity is so communal-oriented, there is an obligation to help other Gitanos when they are in need, usually in the form of food, money, or finding a job. Rondón illustrated this principle with the example that if a Gitano from Madrid got the impression that Manuel was able to help him with a particular situation, and personally sought out Manuel for his assistance, Manuel would be under an obligation to help him.<sup>224</sup> Even if this Gitano were a stranger who came all the way from Madrid to Sevilla knocking on Manuel's door to ask for money, Manuel would be under an obligation to assist him either by providing him with money or helping him out in some other way.<sup>225</sup>

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221. CLÉBERT, *supra* note 64, at 83.

222. Ken Lee, *Foreword* to IAN HANCOCK, *WE ARE THE ROMANI PEOPLE*, x (Univ. of Hertfordshire Press 2002).

223. Interview with D, Staff of Unión Romani, in Sevilla, Spain (May 22, 2006). (explaining that many activists and in particular at the Unión Romani feel this way).

224. Interview with Manuel Garcia Rondón, *supra* note 27.

225. *Id.*

Since the foreign Roma groups do not participate in this well-understood tenet and behavioral code, many Spanish Gitanos' impression is that these newly immigrated Roma "follow no visible set of rules" and shun the one source that would be willing to help them.<sup>226</sup> If they would only show the gesture of attempting to establish a coalition with the Gitanos, the Gitanos in turn would try to help out the newly arrived Roma groups in any way that they could. However, for the most part, these new immigrant Roma groups do not seek out connections with the Spanish Gitanos, and bring along with them problems, cultures, and moral codes that the Spanish Gitanos do not understand.<sup>227</sup> Note that this is the viewpoint of Gitanos connected to the Unión Romani Andalucía, who are considerably more sympathetic to these newly arrived Roma groups.<sup>228</sup> The average Gitano views these new Roma groups as more alien, and may not be as motivated to extend a helping hand as the official NGO's such as the Unión.<sup>229</sup>

#### IV. VERTICAL AXIS ANALYSIS: NEW DEVELOPMENTS THAT MAY AFFECT GITANO LEGAL SYSTEM—INTERPLAY OF NGO'S, SPANISH LAWS AND SOCIAL PROGRAMS, EU LAWS ON GITANO POPULATIONS

##### A. *Coalition Building, Transnationalism, and NGO's*

Now that we have examined the Gitano legal system and the complications presented to Gitano communities with newly arrived Roma groups, we shift to the second half of the vertical axis analysis in analyzing the factors affecting representation of the Gitano legal system. This includes the ring of legal systems and jurisdictions surrounding Gitano communities today, as well as the NGO's and changing political factors that influence the tiers of legal jurisdictions around Gitano communities. It is crucial to understand these influences in order to evaluate the best avenues for proposing better representation of the Gitano legal system within these structures.

One of the strengths of the Roma people and their legal systems is their malleability and adaptability to change. Whether there exists a desire for change in the legal system is a different issue altogether. As with many minority communities submerged within other communities, many Gitanos are constantly preoccupied with preserving cultural traditions without becoming too assimilated into the majority. Naturally, this also

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226. *Id.*

227. Interview with Anonymous E, Staff Member at Unión Romani Andalucía, in Sevilla, Spain (May 24, 2006).

228. Note that this was the viewpoint of all the staff I spoke with at the Unión Romani Andalucía in May-June 2006.

229. Interview with D, *supra* note 223.

causes splits within Gitano communities on whether change in their society and legal system would benefit them. There are those who believe that too much change has already occurred to the detriment of Gitanos losing parts of their culture, such as their language.<sup>230</sup> Then there are those who believe that adaptation is necessary in order for Gitanos to persevere and continue on as an ethnic identity.<sup>231</sup> There is a common sentiment today that Gitanos should accommodate changes in their community incorporating better economic integration within their larger society, while retaining a cultural identity. The word “*convivencia*” is often used by Gitanos to describe the goal of Gitano/payo relations. In addition to the word’s literal translation of “living together”, it also has a connotation that groups living together harmoniously will still be able to keep their ethnic identity. This contrasts to English words commonly used to describe ethnic group relations, such as assimilation or integration, that do not have as strong of a connotation for retaining a unique ethnic identity. Gitanos have used the word *convivencia* as a guide to their social goals in Spain.

Coalition building has been particularly difficult for Roma groups. Within Roma communities, there is a lack of nostalgia for origins, and no great vision for the future. Since the beginning of the Roma identity only formed subsequent to their dispersion from India, there is no true homeland to which to return, and no destiny to which they dream of arriving.<sup>232</sup> India may be the original source of the Roma people’s bloodline, but India is neither a true homeland nor is it the destiny in the Roma people’s collective consciousness. The oral tradition of the Roma people on which they rely on to pass down information about ancestors is extremely strong, but this still means that genealogy can usually be traced back to no more than five generations.<sup>233</sup> Because of this vast diversity amongst Roma groups, it has been difficult to garner group consciousness.

Nevertheless, since the 1960’s, there has been huge growth in the number of Romani organizations that have developed around the world.<sup>234</sup> Although there are various international Romani groups, a symbolic flag to represent the Roma people, and several World Romani Congresses held, much of the activism seems to be limited to an inter-

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230. Interview with Manuel Garcia Rondón, *supra* note 27.

231. *Id.* See also HANCOCK, *supra* note 16. See also QUINTANA & FLOYD, *supra* note 21, at 39 (documenting this change in sentiment in the Gitano communities of another Andalusian city, Granada, where, in the 1960’s, several informants had expressed a desire for change, but primarily in “laws regulating or restricting external affairs, especially those influencing Gypsy/non-Gypsy business interests”).

232. See *supra* Section II.A. discussing history of Roma dispersion throughout Europe.

233. Interview with Anonymous D, Staff Member of Unión Romaní, *in* Sevilla, Spain (May 24, 2006).

234. LIÉGEOIS, *supra* note 79, at 163.

ested minority of activists and scholars. They have brought much more world awareness to the status of the Roma in the world, as well as educated much of the public about how atrocious events such as the Holocaust affected the Roma community, and the terrible human rights situation of many of the Roma that exists today. In 1979, the United Nations granted the International Romani Union the status as an accredited NGO to the Economic and Social Council (ECOSOC), and in 1993, granted them official consultative status to the United Nations.<sup>235</sup> A central committee includes members from each country and elected members of the various commissions, similar to delegates to the United Nations.<sup>236</sup> It is noteworthy that there is resistance from Roma communities in being represented by these organizations,<sup>237</sup> and some traditional Roma believe that these Roma are behaving like *gaje* themselves in participating in these committees and conferences. On the other hand, the appearance of such organizations also symbolizes another step in the Roma adaptation, in their centuries of adaptation, imitation, and innovation. Otherwise, the Roma would still continue to be represented by outsiders, and be susceptible to stereotypical portrayals.

As the Spanish government, European Union, and the United Nations rely more and more on NGO's to transmit knowledge about Roma communities to them, representatives of NGO's and other Roma groups are increasingly expected to represent their communities to outsiders, and thus often serve as leaders to their community by default. This is not necessarily because they are leaders within their own communities, but because they are represented as the mouthpieces of their communities to outsiders. Thus, their representation of laws, governance, customs, and norms are what outsiders end up relying on to be the defined laws and norms of Gitano society. This is not to doubt an NGO's sincerity or even necessarily to bring into question their approach in representing Gitano communities, but just to recognize that there is an added layer of analysis when it comes to how legal codes and governance within a community is represented to outsiders. It is not necessarily the elders and the guardians of the culture, or even elected officials who are representing Gitano community in this case, but rather the activists or those with political connections who end up speaking for the community.

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235. U.N. INTERREGIONAL CRIME AND JUSTICE INST. RROMANI YOUTHS: THE PATHWAYS OF JUVENILE JUSTICE qt 8, U.N. Sales no. E.98.III.N.2 (1997); *But see* Cara Feys, *Patrin: Towards a New Paradigm of the Nation: The Case of the Roma*, 8 J. PUB. & INT'L AFF. 1,13(1997) available at <http://www.geocities.com/~Patrin/paradigm.htm> (last visited Mar. 5, 2007) (noting that since the International Romani Union was rarely approached for consultation, it returned to observer status which allows it voting rights, participation in all meetings, and a seat in the chamber).

236. LIÉGEOIS, *supra* note 79, at 160.

237. HANCOCK, *supra* note 16, at 123.

This is happening not only on the national level, but also on the international level with the creation of international and national Romani organizations which are affecting the Gitano communities in Spain by changing the dynamics of leadership and governance within Gitano communities. There has been a long absence of national policy frameworks for consistent policies towards Gitanos, which has left much discretion to local authorities. For years, Romani groups have been petitioning the government for recognition of their language, a representative Gitano council in the government to represent their communities' concerns, as well as government support for Roma culture and media representation. These petitions have been steadfast along with the increasing activity with Gitano and Romani groups in Spain, and although the Spanish governmental response has been slow, it has also been increasing.

The Unión Romani Andalucía focuses its work on social change and representation for the Gitano people, and works on issues such as providing new immigrant Roma services to help these new Roma adjust to life in Spain including finding them employment, providing *mediadores étnicas* (ethnic mediators) to help resolve situations such as Gitano student absences from school, and promoting media representation from a Gitano point of view. The Unión Romani includes staff on hand who speak Romani and Eastern European languages, and provides support and information about immigration papers and employment. Their goals are to work on behalf of the Roma people in their region. For example, at the Unión Romani Andalucía, one of their goals is working on educational incentives and encouraging Gitanos to continue pursuing an education in order to expand their opportunities. Another important goal of the Unión Romani is to try to help contain escalating disputes within Gitano communities so that the disputes can be solved under Gitano law, rather than involving the Spanish state and police.<sup>238</sup> Many of the roles that the Unión Romani plays are ones that have legal significance, and that also affect and change traditional dispute resolution within Gitano societies.

Although the Unión Romani has no intention of usurping legal power within the community, their activism for Gitano political rights ends up thrusting them in the limelight for outsiders seeking a representative Gitano voice. The Unión Romani's *representation* also affects outsiders' impressions of how conflicts are otherwise handled within the community. Outsiders may see the *mediador étnica* who mediates school truancy situations with Spanish school officials as someone with legal authority in the community, or a staff representative who tries to intervene in a potentially explosive situation as one who is an appointed leader within the community. Although these representatives must have gained enough respect for the Gitano community to trust them as liaisons on their behalf, this representation to the outside community also masks the traditional

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238. Interview with Manuel Garcia Rondón, *supra* note 27.

internal legal system run by the *Ancianos*. Thus, while NGO activism is making a positive impact on Gitanos gaining representation of their communities, their activity may also potentially mislead outsiders that they would be sources of legal representation in situations not involving representation outside the Gitano community.

## B. Spanish Laws

### 1. Spanish Constitution and Minority Rights

A key contributing factor to Roma groups' diversity is that Roma groups have lived within different legal systems and cultures for centuries, creating diverging paths of development of laws for different Roma groups. Thus, even if on the surface Romani laws seem to have developed independently from the "host" societies in which the Roma have lived, in reality, these laws never developed in a vacuum and are inextricably intertwined with the history and geography of the laws of the nation-state.

In the current Spanish Constitution, effective since 1978, the Preamble states that the Constitution's explicit aim is to "protect all Spaniards and peoples of Spain in the exercise of human rights, their cultures and traditions, languages, and institutions" and to "promote the progress of culture and the economy to insure a dignified quality of life for all."<sup>239</sup> However, Gitanos are overlooked in the implementation and interpretation of this language because Gitanos are not recognized as one of the "peoples of Spain" as described in the Spanish Constitution's Preamble. The "peoples of Spain" are recognized as those officially forming a "*pueblo*", roughly translated as a people, nation, or community.<sup>240</sup> Spain's seventeen Autonomous Communities are granted original jurisdiction over this issue to designate what groups constitute *pueblos*.<sup>241</sup> In addition to the majority ethnicity of Castilians in Spain, the other recognized *pueblos* receive special "minority group" protection in Spain. These include groups such as the Catalans, Basques, and Galicians, who are "minority groups" within the whole of Spain, but who actually make up the majority in their respective regions.<sup>242</sup> Gitanos, on the other hand, are not recognized as a *pueblo* or "ethnic minority group" in any of the Autonomous Communities. As a result, the Spanish Constitution does not provide a coherent legal framework for minority rights that pertain to the Gitano people, including receiving special protection for preservation of their cultures, traditions, or language.

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239. CONSTITUCION [C.E.] [Constitution] pml. (Spain).

240. *Id.*

241. CONSTITUCION [C.E.] art. 148 and 149 (Spain). Note that Spain is organized as a parliamentary monarchy divided into seventeen geographic Autonomous Communities.

242. OPEN SOCIETY INST., *supra* note 87, at 338.

Another missed opportunity for creating a national constitutional framework in support of Gitano interests is through Article 14. Article 14 of the Spanish Constitution explicitly prohibits racial discrimination: "Spaniards are equal before law, without any discrimination on the basis of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."<sup>243</sup> Again, each Autonomous Community is given the authority to legislate particular anti-discrimination statutes<sup>244</sup> as they see fit. Thus, a wide range of different anti-discrimination protection ensues with little national consistency or regulation. This resulted in little protection and recognition for Gitano representation on the national level until the creation of the Roma Development Program.

## 2. Consejo Estatal del Pueblo Gitano

In 1985, the Spanish Parliament created the Roma Development Program to oversee and provide funding for development projects for Gitanos, which in 2002 was receiving an annual contribution amount of about 3.3 million euros.<sup>245</sup> The purpose of the Roma Development Program was to improve the quality of life of the Roma community, and to promote social solidarity as well as affirmative action programs for disadvantaged Gitano communities.<sup>246</sup> However, the program has been criticized for the lack of direct Gitano participation in establishing and coordinating the program at the national level,<sup>247</sup> as well as focusing too much on delivering social assistance at the expense of neglecting promoting the rights and identity of the Gitano population.<sup>248</sup> This criticism eventually led to the development of the *Consejo Estatal del Pueblo Gitano*.

On June 29, 2006, the first *Consejo Estatal del Pueblo Gitano* (State Council of the Gitano Community) convened to represent the Gitano community in the Spanish government.<sup>249</sup> This Council was established in 2005 by the *Ministerio de Trabajo y Asuntos Sociales* (Minister of Labor and Social Affairs), and marks a crucial development for Gitano political representation in the Spanish government. This is a paramount step in official governmental recognition that Gitanos are a relevant community of ethnic minorities with unique issues concerning their community. The Spanish government has allotted 34 million euros in its funding of its *Plan*

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243. CONSTITUCION [C.E.] art. 14 (Spain)

244. *Supra* note 243.

245. OPEN SOCIETY INST., *supra* note 87, at 353.

246. *Id.*

247. *Id.* at 354.

248. *Id.*

249. Press Release, *Constitución del Consejo Estatal del Pueblo Gitano*, Ministerio De Trabajo Y Asuntos Sociales, available at <http://www.tt.mtas.es/periodico/serviciosociales/200606/SES20060629.htm> (June 29, 2006).

*de Desarrollo Gitano 2006–2010* (Gitano Development Plan 2006–2010).<sup>250</sup>

It is critical that finally, a governmental organization that focuses on Gitano issues is represented by elected leaders from the Gitano community itself, instead of the payos who typically previously headed up such social projects.<sup>251</sup> The purpose of this Council will be to study, evaluate and follow through with plans in the development of the Gitano community.<sup>252</sup> The Council will be an official mouthpiece for the exchange of information and opinions between the Gitano community and society in general. In the *Real Decreto* (Royal Decree) that created the *Consejo Estatal del Pueblo Gitano*, one of the stated functions of the Council is to carry out the political proposals and programs of the European Union.<sup>253</sup> This grants the Council the ability to influence public policy both in interpreting the European Union's policies towards Roma and other minority groups, as well as the potential of influencing the development of European Union policy towards how European Union nation-states treat their Roma populations. This is particularly important because it gives Spain a chance to set an example to the rest of the European Union on how to integrate Roma communities in society.

### C. European Treaties & United Nations Laws

In the Spanish Constitution's General Provisions section, it is stated that "The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain."<sup>254</sup> A few of the international agreements regarding protection for minorities and against discrimination that Spain has ratified include the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM)<sup>255</sup> and the European Charter for Regional or Minority Languages (ECRML).<sup>256</sup> The

250. *Id.*

251. *Id.*

252. *Id.*

253. REAL DECRETO (R.D.) 2006, 14549. available at <http://www.boe.es/boe/dias/2005/08/26/pdfs/A29622-29625.pdf>

254. Constitucion [C.E.] Preliminary title, Part II, § 2.

255. Council of Europe's Framework Convention for the Protection of National Minorities, Sept 1, 1995, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm> (last visited Mar. 5, 2007) (treaty in force in Spain since February 1, 1998). Note that the Council of Europe is a political organization that has strong influence on the European Union since no nation has ever joined the European Union without first joining the Council of Europe. See [www.coe.int/3/dg3/romatravellers/documentation/CoEEU\\_en.asp](http://www.coe.int/3/dg3/romatravellers/documentation/CoEEU_en.asp)

256. European Charter for Regional or Minority Languages, Apr. 9, 2001, available at <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm> (last visited Mar. 5, 2007) (treaty in force in Spain since August 1, 2001).

FCNM focuses on creating a climate of tolerance and dialogue for the purpose of protecting national minorities and international human rights, while the ECRML focuses on protection of regional or minority languages within a State.<sup>257</sup> However, under the FCNM, the language of protecting national minorities also does not take into account the unique situation of the Gitanos—a group that although has no homeland other than Spain, is not clearly recognized as an official national minority in Spain, and thus are given only ambivalent protection under the FCNM.

Likewise, under the ECRML, Gitanos once again slip in between the cracks. While broader protection is offered for “regional or minority languages,”<sup>258</sup> Caló, the language of the Gitanos, does not qualify. Rather, Caló would qualify as a “non-territorial language” because although traditionally used within the territory of Spain, it “cannot be identified with a particular area thereof.”<sup>259</sup> This is another example of Gitanos being disadvantaged because they do not have a specific territorial attachment limited to a particular area in Spain. Note that this means that under this analysis, other Romani dialects also would not be offered protection as a regional or minority language under the ECRML due to the Roma’s traditional non-attachment to any particular territory. However, this does not preclude nation-states to individually define parameters to include the Roma in these categories of special protection.

While the ECMRL does include some protection for non-territorial languages, which the Romani dialects would more likely qualify, there is less guaranteed protection: “as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.”<sup>260</sup> Without any enforced preservation protection on both the national and international level, it is no wonder that Caló has gradually died out as a spoken language, and only few people speak it fluently today. In a country where laws have historically forbidden a language to be spoken by a group that has traditionally lacked any substantial political and economic clout to fight against the laws, today only some elderly Gitanos remain who speak the language, whereas very few young people know more than just a few phrases.<sup>261</sup> Yet preserving an ethnic minority’s language is clearly one of

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257. See *supra* note 255–258.

258. See European Charter for Regional and Minority Languages, Art. 1, Nov 6, 1992 (defining regional or minority languages as “traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State.”).

259. *Id.*

260. *Id.*

261. Interview with Manuel García Rondón, *supra* note 27.

the most important aspects of preserving an ethnic minority's common identity.

In addition to the European Treaties that Spain has ratified that neglect the Gitano community, Spain also neglects some opportunities to offer more legal protection for the Gitano community by not ratifying some treaties that do offer broader protection. An example of such a treaty that is still unratified by Spain is the Revised European Social Charter.<sup>262</sup> This treaty adds new rights of protection against poverty and social exclusion, as well as creates a right to housing.<sup>263</sup> These happen to be many of the very issues that disproportionately affect the Gitano communities, which are currently not guaranteed through any international treaty or agreement.

The influence that the European Community has on Spain and the governance, rights, and protection of Roma communities does not operate as just a one-way street. Spain can also influence important European Union policy on the matter, particularly in how future policy towards minority rights are formulated. For example, the "Copenhagen criteria" adopted by the European Council in 1993 specifically states that nation-states seeking admission to the European Union (EU) must demonstrate that they have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."<sup>264</sup> As an EU member for over twenty years and the Western European country with the largest Roma population, Spain can serve as a role model for setting standards and influencing EU policy on Roma communities as many countries with significant Roma populations seek entrance to the EU.

On January 1, 2007, Romania and Bulgaria, the two countries with the largest Roma populations in the world, celebrated as they were admitted to the European Union. Their accession, however, came under strict social demands and restrictive criteria with which they must continually meet in order to remain compliant members.<sup>265</sup> Other countries with high Roma populations, such as Croatia and the Republic of Macedonia, are currently official candidate countries while numerous other Balkan countries that all have substantial Roma populations, are potential

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262. Spain signed the Revised European Social Charter on October 23, 2000 but had not ratified it as of Mar. 5, 2007.

263. See generally European Charter for Regional and Minority Languages, May 3, 1996.

264. EUROPEAN COMMISSION, ACCESSION CRITERIA [http://ec.europa.eu/enlargement/enlargement\\_process/acceesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/acceesion_process/criteria/index_en.htm) (last visited Mar. 5, 2007).

265. See "Bulgaria and Romania latest to join the EU" [http://ec.europa.eu/news/external\\_relations/070101\\_1\\_en.htm](http://ec.europa.eu/news/external_relations/070101_1_en.htm). The current total of the Roma population in Romania is not clearly documented, and common estimates range from between one to three million, while the Roma population in Bulgaria hovers around 800,000–900,000. See also Cortés, *supra* note 62.

candidate countries eagerly awaiting their opportunities to be admitted to the European Union.<sup>266</sup> In many of these Eastern European countries, the high concentrations of Roma are particularly vulnerable to being scape-goated as these post-Communist countries struggle to adjust their weaker economic states to align with European Union standards.<sup>267</sup> Amplified international attention has been recently paid to the human rights situation of the Roma in these countries,<sup>268</sup> particularly as many of these countries seek and await entry into the European Union, and certain social demands and restrictions have been tied to entrance requirements. Undoubtedly, fear of immigration from these Eastern European countries of both its non-Roma and Roma populations into Western Europe will play a large part in deciphering an agreed-upon policy on how to treat its Roma citizens. Since there was no similar fear of immigration of Spain's Gitano population into the rest of Europe when Spain entered the EU, the issue of the status of Spain's Gitanos went largely ignored in the EU entrance process.<sup>269</sup> It will also be interesting to see how well borders between EU states will be controlled as both non-Roma and Roma, non-ethnic minorities and ethnic minorities, will be potentially flooding the gates of wealthier EU countries.

In any case, after examining the present-day EU framework for what protection it offers Gitanos against discrimination and minority rights, there is little that can be concretely established. In fact, much of the language of the international agreements can be separated into what Istvan Pogany categorizes as political commitments rather than legally enforceable rights.<sup>270</sup> Pogany agrees that the EU "has so far failed to elaborate clear and detailed norms with regard to the treatment of minorities."<sup>271</sup> If EU laws and agreements continue to border on the side of vague rhetoric as opposed to enforceable legal rights in minority protection and representation situation for Gitanos, then Gitanos would do better to focus their energies on building minority rights and protection from the grass-roots level out to the national, rather than rely on any protections from the international level to filter down.

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266. See European Commission, Enlargement-What's New, [http://ec.europa.eu/enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/index_en.htm).

267. See generally Alyssa Haun, *The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose a Residence*, 33 GEO. WASH. INT'L L. REV. 155, 176-181 (2000).

268. See generally Istvan Pogany, *Minority Rights and the Roma of Central and Eastern Europe*, 6 HUM. RTS. L. REV. 1 (2006).

269. Instead, the focus was on making sure that Spain tightened its borders to Moroccans and other North Africans so that they would not create a floodgate into the rest of the European Union.

270. Istvan Pogany, *Minority Rights and the Roma of Central and Eastern Europe* 6 HUM. RTS. L. REV. 1, 5 (2006).

271. Pogany, *supra* note 268, at 6.

## V. FUTURE OF GITANO LEGAL CODES

There is a range of possibilities to what might happen to governance and laws within Gitano communities in the future. There are those older Gitanos who are afraid that the codes will die out, and because of this, advocate that the codes get written down in a comprehensive project. Others still carry the instinctual fear that their true culture will be exposed to the payos, and their cultural goals would be compromised by more dialogue with outsiders. Complicating the matter is that although the Gitano legal system should be recognized as a legitimate system governing over a network of hundreds of thousands of people living within Spain, it is unlikely that such a movement would develop enough momentum within Gitano communities to demand official recognition of their legal system. This is because many prominent Gitanos would likely be reluctant in bringing magnified attention to their communities, and especially in exposing too much of their legal system which they have guarded as sacredly secret to outsiders for centuries.

By analyzing the tiers of laws that affect Gitano communities, this Article's goal was to identify and explore particular pressure points that may be pushed to potentially affect change in Gitano communities. As established in Section III's discussion on Gitano legal codes, Gitano communities have a strong leadership system in place that reinforces a centuries-old governance and dispute resolution process. In Section II, the impact from the Gitanos' tumultuous history with the Spanish payos is traced through the horizontal axis analysis which illustrates the lasting ramifications from such turbulence on Gitano society and legal system. While the Gitanos of Andalucía may be arguably today the best integrated Roma community worldwide, they still suffer disproportionately from poverty, unemployment, poor health, and discrimination. The Gitanos of Andalucía stand in a distinctive position amongst Roma groups in that they still share many of the human rights and social problems as other Roma, but they are also recognized as having substantially contributed to the development of Andalusian culture and securing a strong identity within the Spanish national conscience particularly through the art of flamenco.

Gitanos could benefit by applying some established principles from their dispute resolution and governance systems to the present-day external political structures affecting their communities on the regional, national, and international level. The elaborate system of respected elder Tíos who enforce the traditional Gitano legal codes within the community and hold reign over *Consejos de Ancianos* in dispute resolutions shows that as long as problems are confined to the Gitano community, there is a consistent, deliberate, and effective manner in which governance and dispute resolution is handled. However, even though leadership in Gitanos' internal governance system is strong, Gitanos could better integrate such

local leadership with political leadership on the regional and national level. The NGO's have largely picked up the responsibility for speaking on behalf of the Gitano community, and the Unión Romani Andalucía, as one of the umbrella organizations of the International Romani Union currently serves a very important liaison role between the communities and government structures. Gitana women are also a rich resource for new leadership in Gitano communities, since their higher University attendance rate is changing both their goals in life as well as shaping impressions of Gitana women both inside and outside of their communities.

Better coordination efforts must also be made between the Tíos and the NGO leaders. Since Gitanos live amongst the Spanish payos and must regularly interact with people outside their community, it only benefits them to better understand the breadth and scope of the umbrella of other legal jurisdictions that have power over their community. In our increasingly globalized world, the traditional dichotomy of Gitano/payo relations is an outdated framework in which to evaluate the issues that affect the Gitano community. This Article's vertical axis analysis examines the umbrella of laws that affect Gitano communities outside of traditional Gitano governance. These include regional laws, Spanish national laws, European Union laws, and United Nations laws. At each level, there are plenty of opportunities for improving leadership and communication between Gitano communities and organizational structures. The *Consejo Estatal del Pueblo Gitano* shows promise as a sanctioned official representative council linking Gitanos to the national Spanish government. This organization allows Gitanos to finally represent their self-interests not just through the form of an NGO but as an official governmental organization, as well as gives Gitanos a chance to have an organizational direct liaison to the European Union.

It is ironic that although Gitanos have been in Spain since the 15th century, they do not qualify for minority rights protection as one of the "peoples of Spain" under the Spanish Constitution.<sup>272</sup> Yet they are clearly Spanish and if they are not considered indigenous to Spain, they certainly are not indigenous to anywhere else. Gitanos' disqualification for minority rights is further exacerbated by not being able to receive protection under the Council of Europe's Framework Convention for the Protection of National Minorities because of Gitanos' lack of a link to a "territory."<sup>273</sup> Even so, the European Union serves as a huge potential source of change for Gitanos and Roma communities throughout Europe. At the moment, this potential has only begun to be tapped. As more dialogue and understanding between Gitanos, other Roma groups, and European state organizations develops, more exact "pressure points" on how to better

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272. See Section IV. B. 1.

273. See Section IV. C.

integrate Gitano governance principles into political representation can be further identified and pressed.

## CONCLUSION

Gitanos, like all Roma groups, have had to be innovative and responsive throughout their history as their community's needs have changed. Many realize that adaptation and evolution are necessary in keeping their culture alive. The Roma have always been able to adapt to their societies in order to survive. One Gitano proudly told me that wherever the Roma go, they take what is already there and make it part of the Roma culture. In Eastern Europe, where the violin was prevalently found, the Roma brought their own rhythms to the instrument to make "Gypsy music." In Spain, when the Roma first arrived, they had no instruments. In the sun-drenched Andalucían fields where the Gitanos worked, they started singing stories about their oppression and pain, and flamenco was born. As the Gitanos became less nomadic, the development of flamenco also became more tied to the Andalucían earth. *Compás* or clapping, started accompanying the *cante*, or flamenco singing, then came the rapping of knuckles on the table, and eventually, the guitar and dance. Although many different musical sources influenced the development of flamenco, including Moorish, Jewish, Andalucían, today it has taken on a new identity of being inextricably tied to the Gitanos of Andalucía. Just as flamenco developed from its origins as a mere diversion for Gitano workers in the olive tree fields to a world-class multi-faceted rich art form that has brought much acclaim and respect to Gitano communities, it is possible that the Gitano legal system unify its goals with the other legal systems that also currently have jurisdiction over Gitano communities to create an amalgamation that would preserve the integrity of the ancient codes while responding to the changing needs of the increasingly globalized world. The Gitanos of Andalucía should embrace their unique position in a rapidly changing world where new national and international structures will give them an important opportunity to speak on behalf of the Roma people of the world.

A focused examination of a stateless legal system such as the Gitanos and exploration of how community leaders can propose solutions utilizing the governmental and political structures exerting overlapping jurisdiction on their communities to uniquely represent the will of their people challenges many of our assumptions about public policy, our concepts of law, and the purpose that law serves in our society. By accepting this challenge, we start brainstorming for more creative solutions associated with integrating the Roma, both socially and legally, throughout Europe—a problem that can only result in disaster if further ignored. As we further delve into these issues, we will become more sensitive to the complexity and diversity of the Roma diaspora and better be able to

evaluate when more narrowly tailored solutions would be suitable for just the Gitanos, and which ones may be beneficial if applied to other Roma populations. The complex and diverse nature of the Roma identity demands that any serious proposal must not lump different Roma groups into a single solution. Understanding the circumstances that surround the development of Gitano legal codes challenges our assumptions of the nature of law, and only enriches our understanding of the complexity and diversity of all forms of human governance.