

Philippine Environmental Law Practice and the Role of the Courts*

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Let me begin by thanking Madam Justice Ameurfina A. Melencio Herrera, Chancellor of the Philippine Judicial Academy (PHILJA), for this invitation. I also greet the representatives of our generous donors, the officials of the different government agencies and non-governmental organizations, my fellow judges, and fellow friends of the environment.

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This is the second time that PHILJA has invited me to discuss the role of the courts in environmental protection. The first time was on July 23, 2001 in scenic Puerto Princesa where I emphasized the responsibility of the judiciary in resolving the duel of rights and duties in environmental disputes. I urged the judges to equip themselves with a commanding armor of the emerging substantive body of Environmental Law, especially considering the depth and breadth of contemporary environmental issues. I nudged them to be creative and to shed their fears even when they find themselves in some unfenced spaces of our environmental law.

I am reiterating the same clarion call to my fellow judges, but today, allow me to underscore the historical and philosophical backdrop of our environmental policies. I promise to keep my speech short. To cast a sleeping spell on stewards of the environment would be the last thing I will do. Our world needs you wide awake.

The 1987 Constitution spells out our national policy on the protection of our environment. In a lot of ways, the present provisions in our fundamental law are more forward-looking than our 1973 and 1935 Constitutions. As guardians of the Constitution, it is our duty to grasp the spirit of these provisions for it is jurisprudence that will endow them their final flesh and blood.

he received are: Ten Outstanding Young Men Award (TOYM); *Araw ng Maynila* Award as Outstanding Jurist; U.P.'s Most Outstanding Law Alumnus; Grand Cross of Rizal from the Order of Knights of Rizal; Grand Lodge Gold Medal from the Grand Lodge of Free and Accepted Masons of the Philippines; and Centennial Awardee in the Field of Law by the United Methodist Church on the occasion of its 100th anniversary.

Our task is not going to be a cake walk. Environmental Law is still at its cradle years in our country. Although the embryo of environmentalism has long been implanted into our consciousness by our indigenous customs and traditions, it has not, until recently, been translated into a body of coherent national policies and legal principles. The glacial growth of environmental law in the country may be attributed to the fact that for most part of our existence as a nation, activities inimical to the environment were minimal. To be sure, many of their destructive effects on the environment manifest only after the lapse of a long length of time.

Oftentimes, exhaustive and costly scientific studies have to be undertaken to determine potential injury to the environment of a particular developmental activity. Absent the clear and imminent injury, the enactment of measures protecting the environment was not placed in our shortlist of national needs. The onslaught of industrialization to fast track our economic development, however, punished us for our lack of foresight in caring for our environment. The lack of legal arsenal in our fight to preserve and protect our environment resulted in widespread deforestation, contamination of our air and water resources, displacement of cultural minorities, and the rapid extinction of various species of our flora and fauna.

For some time, we were beguiled by the theory that proven risks to the environment are necessary, if not indispensable, trade-offs of economic development. To some of our policy makers, Gross National Product (GNP) is the defining factor of development, and not the quality of air we breathe, or the purity of water we drink. In their cost-benefit analysis, the factors to be considered were weighed and measured by their economic value. The policy thrust was the immediate maximization of economic

gain, hence, the long-term benefits accruing from a healthy environment were invisible in the equation.

But this is not all. Even in instances where the adverse effects of developmental activities to a sound environment were measurable and manifest, political realities set in. Consider the devastating floods that bedevil the lives and livelihood of our countrymen in some of our provinces. These catastrophes will continue to knock at our doorstep for we are located along the typhoon belt in Asia. Nonetheless, our forest resources in these typhoon ravaged provinces continue to be depleted by so called developmental programs, some of which are state-sponsored. In her book, *Power from the Forest*, Marites Dañguilan Vitug of the Philippine Center for Investigative Journalism exposed the link between ugly politics and deforestation in the Philippines. Similar studies reveal that people who stalk the corridors of power also control the country's mining industry. Some of them are stockholders of the country's major real estate developers charged with tampering the integrity of our environment.

The good news is that the new wave of environmentalism in the international community in the 1960's compelled a radical paradigm shift. The philosophy of economic utilitarianism and its one dimensional approach failed to deliver its promises and alternative methods of managing our resources had to be developed. The critical question is which path we take given the fork of the road. To answer this query, I respectfully submit that we have to retake a hard look on the relationship of man and his environment.

There are divergent views on the issue and all of them are intellectually enticing. Indeed, scholars worldwide are split into two main groups: those who view humans at the apex of the world, and those who believe that all creatures were created equal.

To the first category belong the *conservationists* who champion the anthropocentric (human-centered) ethic of the utilitarian tradition. To the second category belong the *preservationists* who take a biocentric (life-centered) approach to our environmental problems.

In a nutshell, the conservationists peddle the proposition that only human beings possess moral value. The natural environment has no intrinsic value of its own apart from its instrumental value to men. Since plants and animals do not have moral value, they cannot be the subjects of rights. Air and water pollution, toxic waste, and abuse of pesticides are seen as problems because they cause harm to humans. That these problems affect the environment *per se* is merely incidental. Their end goal in advocating the efficient management of our natural resources is to “serve the greatest good of the greatest number for the longest time.”

Although the conservationist movement follows the basic ethical foundation of the economic utilitarian tradition pervading in the 1960's, it is nonetheless a step forward. Its adherents argue that our natural resources are being wasted when they are left undeveloped. But these resources should benefit all citizens, not just the wealthy few who privately own vast amounts of property. They advocate government policies that prevent waste, limit monopolistic control, provide economic opportunity for the many, and keep prices low. They push for the use of experts, especially social scientists who can calculate measure, compare, predict, and influence the consequences of different policy programs.

In contrast, the preservationists seek to protect the environment from any human activity that would disrupt or degrade it. Their goal is to preserve the wilderness in its natural, unspoiled state for two reasons. *First*, undeveloped wilderness

has instrumental value since it is a source of religious inspiration, refuge from modern life, location for aesthetic experience, and so forth. *Second*, wilderness has its own intrinsic value apart from its use to humans.

Deriving inspiration from the natural law tradition, the preservationists assume that the natural ecosystems are well-ordered and harmonious. All parts of the ecosystem, and especially all its biotic members, have a distinctive place in the overall scheme. Each one contributes to the natural order in its own way. Thus, nature undisturbed is goodness preserved. Ecological problems arise when man interferes with the natural order and treat other natural objects as having value only insofar as they serve human purposes.

Although the natural law tradition of Aristotle allows for a moral hierarchy with humans “higher” than animals and animals “higher” than plants, it nevertheless recognized that living things have a good of their own. Some preservationists interpret this as granting moral standing to animals and plants. They argue that plants and animals are not only objects, but are holders of rights as well.

There is an emerging third view, espousing the Christian view of creation as basis for analyzing policies concerning the environment. The Christian view adopts a *theocentric* ethics that centers on the analysis of man’s relationship with the environment in the context of the *divine plan*. The Christian view, which is shared by some non-Christian but theistic societies, holds that all creatures are created and owned by God. Human beings are only stewards of nature. Consequently, while humans could use the natural resources for their own good, they also have the responsibility to take care of the environment for the characteristic activity of all natural objects results from God’s

plan and purpose. Of course, Buddhism preached the ethics of living in harmony with the earth. It has been said that Buddha was born, attained enlightenment, and died under a tree. In his collected sermons, he called for due care and living kindness to all sentient creatures, (birds and animals) and all life forms.

Although differing in their approaches, the three views share common threads. All of them acknowledge that environmental degradation affects the quality of life of human beings, and that future generations are objects of our moral responsibilities. These points of convergence remain, until today, the fabric that binds environmentalists worldwide. These points also made it possible for State leaders, despite their ideological differences, to take a united stand for the protection of the environment during the 1972 Stockholm Conference on the Human Environment, now considered as the chrysalis of international environmental law.

To recall, the discussions during the conference centered on the clashing demands of the economy and ecology. On one end of the spectrum was the view that environmental degradation is the biggest threat facing the planet and, hence, measures should be undertaken to immediately arrest the declining state of our natural environment. On the other end was the opinion that poverty and alleviation of misery remain the real problem. Its proponents believe that the greater development leading to material prosperity far outweighs any damage to environment. They express resentment over the fact that the developed countries – whose drive toward wealth had consumed a great part of the earth's resources and had led to devastating pollution – are now asking them to remain poor and to pay for the clean-up, restoration, and conservation of the earth.

In the end, this ideological divide was resolved by way of compromise. The Stockholm Declaration held that economic

development is not necessarily incompatible with environmental protection, and that development could proceed provided it avoids damaging the environment. Several principles in the Declaration undoubtedly are the sources of our environmental policies in Presidential Decree No. 1151.

Principle I lays the foundation for the current trend resolving environmental issues in light of the person's right to life. Along with Principles 2 and 5, it affirms the present generation's responsibilities to future generations. Principles 2, 3, 4 and 5 identify areas of concern that need special protection:

- a. Natural resources of the earth, including the air, water, land, flora and fauna, and special representative samples of natural ecosystems;
- b. Capacity of the earth to produce vital renewable resources;
- c. Heritage of wildlife and its habitat; and
- d. Non-renewable resources of the earth.

Principles 21 and 22 emphasize the international character of environmental problems and stress the responsibility of the States to refrain from causing damage to the environment of other States, and the importance of developing international law regarding liability and compensation of victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas that transcend their jurisdiction.

The principles outlined in the Stockholm Conference started the rapid development of International Environmental Law, including important global, regional, and multilateral agreements involving such far-ranging subjects as the preservation of flora and fauna, protection of the marine environment, defining third party liability in the field of nuclear energy, the control of

transboundary movement of hazardous waste, and the protection of world cultural and natural heritage.

The 1987 Constitution cemented the Philippine's commitment to strike a delicate balance between the demands of economics and the needs of the environment. But it offers more.

For the first time, the right of the person to a balanced and healthful ecology was recognized not only as an abstract policy statement, but an enforceable legal right under Section 16, Article II. This is clear from the discussion of the members of the Constitutional Commission that drafted the 1987 Constitution. Our Supreme Court affirmed the enforceability of this legal right in the seminal case of *Oposa v. Factoran*.

Forming the matrix of this right is the recognition that human beings are an integral part of a complex ecological community. Although constantly changing, the preservation of this ecological community involves a balancing of interdependencies. Nothing less than the survival of the human species hangs on this delicate balance. Section 4, Article XII, thus, enjoins the State to protect our endangered forest and watershed areas, while Section 7, Article XIII calls upon the State to protect, develop, and conserve communal marine and fishing resources. In pushing the frontiers of industrialization, the State is cautioned to make "full and efficient use of human and natural resources" (Section 1, Article XII).

The 1987 Constitution also takes due account of the high impact of developmental activities to the distinct welfare of our indigenous peoples. Thus, it mandates the State to give due regard to the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being (Section 5, Article XII). It also emphasizes in Section

4, Article XIII the duty of the government to undertake the just distribution of all agricultural lands, taking into account ecological, developmental, and other equity considerations.

To make sure that these constitutional commitments do not become mere gems of oratorical pieces, the legislature has enacted laws to enhance and safeguard the integrity of our environment. Among the most significant of these statutes are the Clean Air Act, the Ecological Solid Waste Management Act, the NIPAS Act, and others.

We, in the Judiciary, can do no less. To be sure, efforts to save the environment would be a monumental task. The debate between economists and ecologies should be no more. I urge all to ponder the fact that the words “economy” and “ecology” both came from the Greek word *oikos*, which means “home.” A home is not a house where division can be allowed. To my fellow judges, to all of you, I leave as food for thought the words of the nature poet, William Wordsworth, who wrote, “Nature never did betray, the heart that loved her.”

A pleasant evening to all of you.