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INQUIRING INTO THE CONCEPT OF PERPETUAL LAND TRUST USING THE LENS OF MORAL EXTENSIONISM: THE CASE OF THE MASUNGI GEOPARK PROJECT

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The Constitutional and legal landscape for environmental protection in the country, by its nature, can be characterized as a form of anthropocentric extensionism, where stewardship over the environment and natural resources is structured as conserving the environment to advance the rights of human beings, and not as moral extensionism which considers stewardship as acting on behalf of the rights of the environment. The concept of perpetual land trust, as operationalized in the Masungi Geopark Project, looks at stewardship in the context of protecting the environment as a value in itself. Thus, the idea of a perpetual land trust, as implemented in the Masungi Geopark Project, is consistent with moral extensionism.

While the Constitution limits the period of exploration, development and utilization of natural resources to 25 years, renewable for a period of 25 years, the perpetual land trusts as operationalized in the Masungi Geopark Project is not for the exploration, development and utilization of natural resources, but solely for protection and rehabilitation purposes. Thus, it can be argued that this management approach does not violate the Constitution or any law.

Keywords: environmental protection, moral extensionism, perpetual land trust, stewardship

INTRODUCTION

The policy problem that requires a philosophical lens

In 2017, the Department of Environment and Natural Resources (DENR), through its Secretary, Gina Lopez, signed a Memorandum of Agreement (MOA) with

the Masungi Georeserve Foundation, Inc. (MGFI). The main thrust of the arrangement, as stipulated in the MOA, is for the DENR and MGFI:

> To jointly and exclusively cooperate, coordinate, and implement a public interest project in the area consisting of PD 324 and Greater Masungi Karst Area with an approximate area of 2,700 hectares covered by the technical description of PD 324 and the Masungi Rock Protected Area, located in Rizal Province with the objective of protecting, conserving and sustainably developing the Masungi Geopark Project and its environs and surrounding communities in accordance with the stringent and sustainable conditions already demonstrated and presently implemented by Masungi in adjacent areas (DENR and MGFI 2017).

MGFI is an entity which was already involved in environmental protection activities since 1996 through its parent company, the Bluestar Development Corporation (BSDC), a construction firm that was engaged by the Philippine Government, represented by DENR, through a joint venture agreement (JVA) for a housing project for government employees in 1997. While the housing project was later abandoned due to operational problems, which included the failure of the government to address the problem of illegal squatters in the area, BSDC acquired an environmental agenda and engaged in reforestation and other environmental protection activities. In 2012, it was designated by the Municipality of Tanay as the private sector partner in the Masungi Rock Management Council (MRMC). It is from the environmental protection activities of BSDC that the MGFI evolved, and later was incorporated as a separate entity.

Due to certain issues, the 2017 MOA between DENR and MGFI has been marred by controversy. It is not the intention of this paper to dwell on such at length, but rather to focus on one contentious issue. Stated clearly in the said MOA is the following provision:

> It is the intent of both parties that the project area shall be constituted as a perpetual land trust for conservation, subject to law. Masungi will be Trustee and shall continue to be so for as long as there is no neglect or violation of the Agreement (DENR and MGFI 2017).

While the intent of the agreement is to place Masungi under the arrangement of being a perpetual land trust, the status of MGFI as a trustee is not to be interpreted in the same light. In fact, the MOA further stipulated that:

> In the event that such trust is declared invalid by a regular court with finality, the trust agreement shall be deemed terminated only upon just compensation of Masungi as determined by the courts for all developments made and with the full right to match any counteroffer on the continued conservation and operation of the project site (DENR and MGFI 2017).

The perpetual nature of the land trust has now become a main issue that is assailed by critics of MGFI, which even include some people within the DENR. At issue is the claim that this runs counter to the Constitutional provision that limits the duration of access rights that are given to private parties in relation to natural resources. Specifically, being cited is Section 2 of Article XII of the 1987 Constitution, which states that:

> All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law (1987 Constitution).

Thus, there is an allegation that the 2017 MOA between DENR and MGFI is constitutionally infirm, and is therefore void *ab initio*, for the simple reason that it provided for a perpetual land trust, and it presumably violated the provision setting the maximum period to 25 years, which may be renewed for another 25 years.

The main arguments

The idea of perpetual land trusts is an innovation that may facially appear contradictory to the intent of the Constitution. It is also granted that the determination of the legality or constitutionality of the idea of perpetual land trusts is an empirical question that the policy-making process and its attendant legal bodies may deal with. However, the very idea of land trusts rests on the principle of stewardship over nature, which is an overarching theme in environmental ethics. It is in this aspect that philosophers may be able to offer insights on human-nature relationships that can be detached from the legal and constitutional determination, and the political processes that may attend thereof. As propounded in the next section, while philosophical questions may be purely questions of theory, there is an increasing need to make philosophy speak to policy science, and in the process satisfy not only the theoretical needs of philosophy, but also provide justification for a policy alternative that is otherwise assailed as unconstitutional and illegal.

This paper inquires into the concept of a perpetual land trust using the lens of environmental ethics, particularly on the ethical theories associated with moral extensionism, specifically that propounded by Christopher Stone (1974). This inquiry uses as a reference the implied philosophy that can be applied to analyze the constitutional and legal frameworks for protected area management in the Philippines

pursuant to the 1987 Constitution and Republic Act (RA) 7586, or the National Integrated Areas Systems (NIPAS) Law of 1992, as amended by RA 11038, or the Extended or E-NIPAS Law of 2018, but also on how their interpretation can be challenged and modified based on emerging philosophical insights. It will further consider the role of indigenous constructs, as articulated in RA 8371 or the Indigenous People's Rights Act.

This paper has two main arguments. The first is focused on the philosophy of perpetual land trusts in the context of Christopher Stone's moral extensionism (1974), and the second is on the constitutionality and legality of perpetual land trusts.

On the philosophy of perpetual land trusts, the paper's major premise is that the constitutional and legal landscape for environmental protection in the country, by its nature, can be characterized as a form of anthropocentric extensionism, where stewardship over the environment and natural resources is framed as conserving the environment to advance the rights of human beings, and not as moral extensionism where stewardship is advanced as acting on behalf of the rights of the environment. Its minor premise is that the concept of perpetual land trust, as operationalized in the Masungi Geopark Project, looks at stewardship in the context of protecting the environment as a value in itself. Thus, the idea of a perpetual land trust, as implemented in the Masungi Geopark Project, is consistent with moral extensionism.

On the constitutionality and legality of perpetual land trusts, the major premise is that the Constitution limits the period of exploration, development and utilization of natural resources to 25 years, renewable for a period of 25 years. The minor premise is that the concept of a perpetual land trust, as operationalized in the Masungi Geopark Project, is not for the exploration, development, and utilization of natural resources but solely for protection and rehabilitation purposes. Thus, it can be argued that this management approach does not violate the Constitution or any law.

THE RATIONALE: THE VALUE OF MAKING PHILOSOPHY CONVERSE WITH PUBLIC POLICY

The conventional wisdom among many scholars is to establish a wall between philosophy on the one hand and policy science on the other. Philosophy is perceived to be a domain of purely theoretical discussions, mainly articulated at the level of abstraction, and is not useful in problem-solving. Engster (2016) posited that philosophers, particularly political philosophers, have enabled this view by resting their scholarly endeavors on ideas, and not on the details of social policies. He further argued that most analytical philosophers have, since Rawls published his 1971 work *A Theory of Justice*, expressed preference toward ideal theory as their methodology. A key feature of ideal theory is its elevation of abstraction as the key rubric for philosophical analysis, and where philosophers were admonished to stay away from closely engaging existing policies lest they can be distracted in their endeavors to deepen their understanding of justice.

This is a view that was challenged by (Hale 2011) who argued that philosophers can find a niche in public policy formation. However, this would require a re-orientation of objectives, modification of methods, and collaboration with policy

scientists to develop analytic tools. Engster (2016) identified benefits for philosophers who engage in policy analysis. He argued that social policies offer philosophers the opportunity to explore interesting and underexplored philosophical questions. He also posited that engaging policy can even enable philosophers to gain a deeper understanding of justice, not to mention the opportunity to contribute more directly to the analysis of problems and the identification of solutions. He noted that one of the key contributions of philosophy to policy is in the role played by libertarians Milton Friedman and Robert Nozick in economic policy formation.

However, there are also forces on the side of policy science that tend to constrain philosophical analysis. The predominance of empirical-positivist approaches in policy science has been framed as one where decisions are evidence-based. This has engendered the process of inquiry as basically ideologically-neutral, and even amoral. At best, the only political position taken by empirical positivists is their privileging of instrumental rationality. However, as Marcela (2020) pointed out, policy-making is a morally loaded enterprise, and that it entails philosophical thinking.

It should be noted that Harold Lasswell (2003), considered to be the forerunner of policy science, has argued that policy questions always bear values and goal orientations, where problems cannot be addressed and solved without taking these into consideration. He further argued that policy solutions to problems should be crafted through a process that is contextual, problem-oriented, and methodologically diverse.

Marcela (2020) argued that contextual analysis of problems is never morally neutral for three reasons. First, since policies are assessed in particular contexts in relation to other policies, there will always be value judgments. Second, all policies possess symbolic values which are rarely ideologically neutral. And third, policies are evolving, and the process of policy succession and deciding which alternative to adopt to replace the current policy would require rendering value judgments.

Hale (2011) positioned philosophy in the context of policy science by drawing parallelisms between the views of Lasswell and that of Jürgen Habermas (1987), both of whom celebrated democracy and human dignity as ideals, and upheld public policies that are free from coercion. Habermas also channeled Lasswell when he valued mutual understanding and communicative rationality over instrumental reason. This connection between Lasswell and Habermas was further celebrated by John Dryzek (1990), another policy scientist, who moved away from the instrumental rationality of positivism, and argued for a "postpositivism" which placed at the center of analysis the role of values.

Hale (2011) offered ways in which philosophers can enable the mutual understanding that Habermas proffered in his theory of communicative action. Addressing philosophers, he (2011) wrote:

> We facilitate mutual understanding by dramatically refiguring our place in the philosophical, academic, and policy landscape. We abandon the notion that practical policy problems are put on better footing by the research that has characteristically been done in applied philosophy. We abandon, in short, philosophy's orientation toward knowledge and reorient it toward insight.

A similar argument was propounded by Briggle and Frodeman (2016), who urged philosophers to be more open to dialogue with others, which would include policy scientists.

It is in this context that this paper would like to enable a conversation between philosophy on one hand, and the challenge of managing protected landscapes on the other. In offering moral extensionism as a framework for rationalizing the existence of perpetual land trusts, what would be clearly privileged is not the evidence imputed by the wordings of the Constitution and the prevailing laws, but by the insights that are evinced by perspectives that are otherwise marginalized and denied legitimacy simply because at face value they appeared contradictory to the Constitution and the prevailing laws. As will be argued, these are not conclusions, but are mere assertions, or assumptions at best, based on a dominant reading that rationalizes state and bureaucratic power. Applying philosophical analysis would unsettle this dominant framing and would provide critical insights into an alternative modality of land management and environmental protection. In the end, and as it will be shown, applying philosophical analysis even unearths a different reading of the Constitutional and legal texts.

THE ANALYTICAL FRAMEWORK: ETHICS OF MORAL EXTENSIONISM AND THE CONCEPT OF ENVIRONMENTAL TRUSTEES

The Philippine state is a child of Western colonial forces where the predominant perspective in relation to nature is very much instrumentalist, utilitarian and anthropocentric. The indigenous worldviews about the environment were replaced by a Western worldview that considers nature as a mere physicality devoid of moral standing and finds value only in how humans benefit from its resources. Environmentalism in the Philippines is predominantly in the form of revisions of anthropocentrism, and could not be hardly classified as biocentric or ecocentric. Even Filipino environmental activists would not grant moral standing to all life forms in the same way that Albert Schweitzer (1966) posited it in his "reverence for life" ethos that forms the core of biocentrism. Expectedly, this is the same environmentalism that stops short of embracing the "land ethic" that Aldo Leopold's ecocentrism has offered, where even material entities like the land and the air are accorded rights (Leopold 1949).

Despite the seemingly radical posturing, Filipino environmental activists remain ensconced in anthropocentrism, albeit in its revised but not in its extended form. Inherent in the cosmology or environmental worldview of ordinary Filipinos is the widespread adherence to the Judeo-Christian ethical tradition, where only human beings are given moral standing. This perspective draws much of its philosophical anchor on the Aristotelian view that natural objects have no moral status. Aristotle clearly stated this when he said in *The Politics* (1941: 1256b) that:

> Plants exist for the sake of animals … all other animals exist for the sake of man, tame animals for the use he can make of them as well as for

> the food they provide, and as for wild animals, most though not all of these can be used for food and are useful in other ways; clothing and tools can be made out of them. If then we are right in believing that nature makes nothing without some end in view, nothing to no purpose, it must be that nature has made all things specifically for the sake of man.

Later, philosophers adopted this Aristotelian perspective and gave it their own imprint according to their ethical orientations. Thomas Aquinas framed it within a theological context, by arguing that man has the right to kill or use animals, as this is what God has commanded (Aquinas 1924). Immanuel Kant (1997) spoke of duties to future generations and, by extension, to nature, but clarified that these are to be interpreted as duties to human beings regarding nature. Rene Descartes dismissed any possibility for plants and animals to acquire moral standing since they lack consciousness. However, there are those who argue that contrary to the view that Descartes adhered to the dominion theory where humans took charge of the earth on behalf of God, that in fact, he believed that it is good for humans to subordinate their interests to that of the universe, which presumably includes nature (Wee 2001).

Jeremy Bentham (1907) radically altered the anthropocentric construct of moral standing by positing that animals can be accorded moral standing simply because they are sentient or that they can feel pain. He provocatively raised this possibility when he asked:

> Is it the faculty of reason, or perhaps the faculty of discourse? But a full-grown horse or dog is beyond comparison, a more rational, as well as more conversational animal, than an infant of a day or a week, or even a month old. But suppose they were, otherwise, what would it avail? The question is not, Can they reason? nor Can they talk? but can they suffer? (Bentham 1907: footnote to paragraph 4 in Chapter 17, Section 1).

Anthropocentric environmental ethics was further advanced by philosophers such as John Passmore (1974), who argued that humans have responsibilities toward the natural world but not because it has an inherent moral right, but because such will advance human interests. William Blackstone (1974) argued that humans have rights to a livable environment, and such is essential for humans to avail of the rights to liberty, happiness, life, and property.

In *Laudato Si*, Pope Francis (2015) wrote of an "ecological conversion," where he invited everyone to engage in a change of direction by celebrating beauty, and assuming the responsibility of "caring for our common home." The Pope took note of the "growing sensitivity to the environment and the need to protect nature, along with a growing concern, both genuine and distressing, for what is happening to our planet." This admonition naturally resonates among many in the environmental movement in the Philippines, where Christianity is predominant, and it provides openings to advance a more progressive view about the idea of stewardship over the environment that is no longer framed as an issue of rights, but as an issue of duty and responsibility.

Joel Feinberg (1974) transcended anthropocentrism and offered an ethical theory that was willing to grant moral standing to higher forms of animals but not to lower forms and not to plants. However, it was Christopher Stone who radically advanced the view that moral rights can be extended even to the ecosystem and to natural objects. Working within the framework of legal rights, Stone argued that in order to be accorded a legal right, one must satisfy three criteria: "First, that the thing can institute legal action at its behest; second, that in determining the granting of legal relief, the court must take injury to it into account; and third, that relief must run to be benefit of it" (1974: 11). To support his argument that natural objects can have legal standing, Stone drew parallelism with the case of corporations and the mentally incapable, who retain their moral and legal standing through the assignment of a trustee or guardian. He further considered as parallel the compensation that legal personalities receive when injured to the existence of payments made as fines by those who destroy property or cause environmental damage.

This paper considers Stone's moral extensionism as its core framework. It is in Stone's theory that the ethical context of the concept of an environmental trustee emerges. There is, however, a need to connect these Western ethical perspectives to indigenous worldviews. It is largely recognized that non-Western cosmologies have always been organically embedded in a discourse of stewardship, where humans do not have dominion over the earth, but are at best its mere trustees, as "stewards of the planet's resources and biological diversity" who are inherently bestowed, by their very nature, with "responsibility to preserve and sustain the natural order of the environment" (Tu'itahe et al. 2021). This indigenous perspective is fundamentally different from the Western ethical theory of moral extensionism, where rights are accorded to nature only through legally assigned guardians or stewards. This is captured in the statement by the Waiora Indigenous Peoples during the 2019 IUHPE World Conference on Health Promotion.

> Core features of Indigenous worldviews are the interactive relationship between spiritual and material realms, intergenerational and collective orientations, that Mother Earth is a living being – a "person" with whom we have special relationships that are a foundation for identity, and the interconnectedness and interdependence between all that exists, which locates humanity as part of Mother Earth's ecosystems alongside our relations in the natural world'" (IUHPE 2019).

The intergenerational role of Indigenous peoples and, by extension and attribution, their worldviews as stewards or trustees of the environment, and the perils that they face, as well as the indigenous construct of stewardship and trusteeship that is organic, and not just an embodiment of Western moral extensionism, has been amplified by UN Secretary-General Antonio Guterres' address at Columbia University when he said:

> …Indigenous knowledge, distilled over millennia of close and direct contact with nature, can help to point the way. Indigenous peoples make up less than 6 percent of the world's population yet are stewards of

> 80 percent of the world's biodiversity on land. Already, we know that nature managed by Indigenous peoples is declining less rapidly than elsewhere. With Indigenous peoples living on land that is among the most vulnerable to climate change and environmental degradation, it is time to heed their voices, reward their knowledge, and respect their rights (Guterres 2020).

ENVIRONMENTAL PROTECTION AS ANTHROPOCENTRIC REVISIONISM

Designating the state as an environmental steward

A close reading of the relevant Constitutional provision and its attendant laws reveals a policy and governance discourse that, while not consciously articulated, can be interpreted as subsisting on an anthropocentric form of revisionism that draws its philosophical anchor on Judeo-Christian tenets, that is also articulated by a broad range of philosophers from Aristotle, Thomas Aquinas, and Immanuel Kant, to Jeremy Bentham and its later proponents John Passmore and William Blackstone, Even the Papal Encyclical *Laudato Si* issued by Pope Francis remains within the confines of this form of revisionism where humans are admonished to care for the environment as a matter of moral duty and responsibility, without granting the environment inherent rights.

In this context, the Philippine State is already a de facto environmental steward, but within the context of anthropocentric extensionism. The 1987 Constitution has rendered the Philippine State such status. Executive Order (EO) No. 292. Or the Administrative Code, has assigned this power to the DENR. Thus, at the very least, there is already a prevailing environmental ethical standard that, though unarticulated, and may not even appear in the consciousness of the writers of the Constitution, and its attendant laws, reflects an anthropocentric perspective embodying the dominion theory where humans are assigned as natural stewards.

However, two things appear to be predominant in relation to this function of the State. It is important to contextualize the nature of this stewardship of the state over the environment and natural resources. First, it is clear that the discourse of the constitution is predominantly still in the context of looking at the environment as a material entity, a mere resource that needs to be conserved for human interests. Thus, the state discourse is mainly economistic, and is geared toward positioning the State as a regulator of the various extractive activities in relation to the environment. The wordings of Section 2 of Article XII are clear. The State was granted the sole authority to control the exploration, development, and utilization of natural resources. In addition, it was granted the authority to delegate this function to juridical and natural persons by entering into co-production, joint venture or production sharing agreements. Likewise, it was tasked to protect the marine wealth of the nation within its archipelagic waters and territorial sea, as well as its exclusive economic zone, the benefits from which are reserved solely for the exclusive use by Filipino citizens.

By congressional action, the State can also allow small-scale utilization of natural resources, including cooperative fish farming, with priority given to subsistence fishing within inland and coastal waters. The State gave the President of the Republic sole authority to enter into agreements with foreign-owned corporations in relation to large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils, as long as this is limited to technical or financial assistance.

Second, while there is already an indication that the Constitution has gone beyond the dominion theory, it has not bestowed moral standing on the environment and continued to valorize it in the context of human interests, wants and rights. While the acquisition by the State of authority over the governance of the environment and natural resources exists in the context of an anthropocentric worldview of considering the environment as a resource that can be exploited, it is also now illustrative of William Blackstone's (1974) ethical theory in recognizing the right of humans to a livable environment. This is encapsulated as one of the State's policies stated in Section 16 of Article II, which posits the obligation of the State to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

But beyond a discourse of rights, the legal landscape has evolved to now take on the view that humans have duties to the environment, which embodies Passmore's (1974) philosophy. However, this remained in the context of duties not to the environment, but about the environment in relation to advancing human interests, which mirrors Blackstone's (1974) anthropocentric revisionism. This was clearly evident in RA 7586, a law passed by Congress in 1991, which established the National Integrated Protected Areas Systems (NIPAS) in the county. The text of the law was clear. It was predicated on the premise that the State has a duty to protect the environment, which was facing threats from an increasing population and its concomitant resource exploitation and industrial advancement. Section 2 of the law stipulates the premises and the commitment of the State, which embodies its policy in relation to environmental protection:

> Section 2. Declaration of Policy – Cognizant of the profound impact of man's activities on all components of the natural environment, particularly the effect of increasing population, resource exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, it is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution (Republic of the Philippines 1987).

Discursively, this is an affirmation of the role of the State as an environmental steward, but not in the manner that Christopher Stone imaged as a trustee.

The legal separation of environmental production and protection

It is significant to note that RA 7586 is the first act of Congress that distinguished protection from production. In addition, it also recognized the timelessness of environmental protection, with a clear reference to its intergenerational nature as embodied in its commitment to secure the environment for the present and future generations. This is relevant to the issue of whether an arrangement to assign juridical persons as caretakers, stewards, or environmental trustees can take on the nature of being perpetual. One should take note that the phrase "perpetual existence" appears in the text of the law. RA 7586 was amended by RA 11038, passed by Congress in 2018. However, RA 11038 did not alter or change the overall tenor of protection, albeit it even expanded its coverage.

The intent to protect embodied in RA 7586, as amended by RA 11038, clearly subsumes the discursive intent of the 1987 Constitution to limit the period of all instruments that are granted to juridical persons in relation to production and extraction activities. While the Constitution limited productive activities for a period of 25 years, renewable for another 25 years, it was silent on protection activities. Such silence was given voice in RA 7586, which stipulated that such is, in fact, timeless and perpetual.

RA 7586, as amended by RA 11038, clearly distinguished production activities from protection, and has provided that productive endeavors should be done in buffer zones that are adjacent to but outside protected areas. Section 6 of RA 11038, which amends Section 8 of RA 7586, clearly stated the primacy of protection over production, when it directed even privately titled lands that are in buffer zones to conform to the protected areas management plan. A closer analysis of the acts prohibited reveals that absolute prohibition attaches to all productive activities. Exceptions can be made but only when there is clearance from the Protected Areas Management Board (PAMB), and limited to endeavors such as "occupying or dwelling in any public land within the protected area" and "constructing, erecting, or maintaining any kind of structure, fence or enclosure, conducting any business enterprise within the protected area."

Section 20 of RA 11038 stipulated how to deal with existing property and private rights, as well as tenured migrants who find themselves within protected areas after the promulgation of the NIPAS. The law is carefully worded in such a way that these rights will be considered and respected provided that they are consistent and compliant to all prevailing laws, including the laws on protected areas. Local government units (LGUs) and communities that are within protected areas have to submit themselves to the provisions of RA 7586 as amended by RA 11038. Thus, by implication, they are obliged to uphold the requirements and prohibitions.

Tenured migrants within protected areas can be provided with the status of being stewards. However, it is notable that production activities that are deemed incompatible with the protection functions stipulated in the law are prohibited.

However, despite the prevalence of environmental protectionist discourse in the text of RA 7586, as amended by RA 11038, adjustments have been made to accommodate productive endeavors. Aside from the buffer zones that are established at the periphery of protected areas, the law also provides for multiple-use zones, which are defined as "the area where settlement, traditional and sustainable land use including

agriculture, agroforestry, extraction activities, and income generating or livelihood activities, and may be allowed to the extent prescribed in the protected area management plan."

The DENR allows juridical persons, including tenured migrants, Indigenous communities, local government units, other government agencies and private organizations to avail of a special use agreement in protected areas (SAPA). Indigenous communities and tenured migrants are given priority. SAPAs can be issued in protected areas, except in strict protection zones, in accordance with the protected areas management plan. The special uses that may be allowed include ecotourism facilities, campsites, communication facilities, transmission lines, irrigation canals/waterways, rights of way for communication facilities and transmission lines, aquaculture, scientific monitoring stations, agroforestry, and forest plantation.

It is clear that the intent of a SAPA is to use portions of protected areas for income-generating and profit-seeking activities. Anent to the procedures and requirements is the financial capability and paid-up capital of the applicant, and the presumption that profit will be generated. In fact, included in the articulated goals of SAPA is to provide economic opportunities to stakeholders, and to earn revenues for sustainable practices. Income from SAPA is envisioned to be used as a source of revenue for the Integrated Protected Areas Fund (IPAF). An annual fee is required of SAPA holders.

One of the structural problems inherent in the SAPA is the likelihood that the opportunity can only be availed of by financially capable juridical persons, and not by tenured migrants and Indigenous peoples. A cursorial examination of the first batch of SAPA beneficiaries indicates the inherent bias against local peoples and in favor of external commercial interests. This clearly provides evidence to the inherent attempts to install what can be classified as anthropocentric revisionism that still privileges material benefits, now in the form of productive activities that are allowed inside protected areas by merely relabeling the land as a "buffer zone" or one devoted to multiple uses.

It is clear that RA 7586, as amended by RA 11038, has created a significant discursive space for environmental protection. However, such spaces encounter closures when accommodations are made to enable productive activities which not only differentially favor more-endowed stakeholders, but may even be construed as directly contradictory to the text of the law. The discourse remains anthropocentric, albeit in its revisionist forms.

Implications on indigenous environmental worldviews

The anthropocentric worldviews that predominate policy and practice in environmental management have displaced much of the indigenous worldviews held by cultural communities. Creeping modernization has further eroded these worldviews and their attendant practices to a point that concomitant with environmental protection was the need to pass laws to protect indigenous rights. It is notable that both are Constitutionally guaranteed. In 1997, Congress passed RA 8371, or the Indigenous People's Rights Act (IPRA). Adopted as a State policy was the

recognition and promotion of the rights of Indigenous cultural communities (ICCs)/Indigenous peoples (IPs). The need to link indigenous rights to environmental protection was, therefore, deliberate. Relevant to environmental protection is RA 8371's commitment to "protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being," and to recognize "the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain." In addition, the State committed to "recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions."

Prior to RA 8371, the State, through the DENR, had already granted ICCs/IPs tenure and allocation instruments in relation to their use of forest lands and their resources. With the passage of RA 8371, the processing, approval, and administration of these instruments were transferred to the National Commission on Indigenous Peoples (NCIP), and the instruments were labeled no longer as mere claims but are now referred to as titles. From being labeled as Certificates of Ancestral Domain Claims (CADC), the tenurial claims were strengthened now to become Certificates of Ancestral Domain Titles (CADT), which the law now defined as "a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law." On the other hand, a Certificate of Ancestral Land Claims (CALC) was replaced by a Certificate of Ancestral Land Title (CALT), which now refers to "a title formally recognizing the rights of ICCs/IPs over their ancestral lands."

It is, therefore, clear that the law has bestowed on the Indigenous peoples the full recognition of being not just stewards of but as trustees with ownership rights over their ancestral domains and lands and the environmental and natural resources that are found therein. Section 7, Letter b of RA 8371 empowered them with sweeping and vast rights and powers, which included the

> …right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights (Republic of the Philippines 1997).

Acting as stewards and trustees, the protection of critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or

reforestation areas that are within their ancestral domains and lands are entrusted to the ICCs/IPs. The State has, in turn, bestowed on ICCs/IPs the duty to preserve, restore, and maintain ecological balance within their ancestral domains and to protect the flora, fauna, watershed areas, and other reserves. It is also their duty to restore and reforest denuded areas. In addition, they are given the priority rights in the harvesting, extraction, development or exploitation of any natural resources within their ancestral domains. They were, however, given the option to allow non-members of the ICCs/IPs to engage in production and extraction activities, for which they would obtain a share in the income generated.

It is here that there is now a clear distinction on the idea of trusteeship, which extends beyond protection activities, but now includes rights to extract and engage in productive activities. ICCs/IPs are granted perpetual ownership rights on their ancestral domains. Furthermore, their productive and extractive activities within their ancestral domains and lands appear not to be bounded by any time limitation, which are otherwise imposed on non-members of ICCs/IPs who they will allow to engage in similar production and extraction activities within the areas covered by their CADTs and CALTs. Thus, it now appears that they have been granted perpetual rights to also engage in productive and extractive activities. It is in indigenous peoples that Stone's moral extensionism is beginning to take life.

However, the overarching policy reflects an unarticulated philosophy that is still trapped in the discourse of state ownership of environmental resources and the lands that contain them. RA 8371 is casted as an attempt to grant to indigenous communities the status of environmental stewards. This, however, is contradicted by the policy on SAPA, where Indigenous peoples are still required to apply for special use agreements if they wish to engage in productive activities within their ancestral domains and lands that happen to be located within protected areas, or in protected areas that are located within their ancestral domains and lands. Furthermore, they will have to technically pay the annual fee for the use of those lands. In addition, their special use privileges will have a maximum period of 25 years, renewable for another 25 years.

There is, therefore, a glaring contradiction between RA 8371 and the SAPA, which is pursuant to RA 7586, as amended by RA 11038. It is also not entirely clear whether ICCs/IPs will have to apply for permits, leases, or special use agreements in order to engage in productive and extractive activities within their ancestral domains and lands.

This is at the core of the contradictions between RA 8371 and all the other environmental and natural resource laws and instrumentalities. The contradiction is amplified by a legal and political system that remains firmly founded on anthropocentrism, where access rights can only be granted on a limited basis and where the idea of stewardship is a symbolic subterfuge and is mainly defined only in the context of privileges to engage in extractive and productive activities.

In fact, the constitutionality of RA 8371 was challenged in the Court for the basic reason that it has practically granted ownership rights to ICCs/IPs on lands that are otherwise considered as inalienable and could not be disposed of. The Court noted in GR 135385 promulgated on 2000 that the petitioners challenged several provisions of RA 8371 on the "ground that they amount to an unlawful deprivation of the State's ownership over lands of the public domain as well as minerals and other natural

resources therein, in violation of the regalian doctrine embodied in Section 2, Article XII of the Constitution." However, the Court was deadlocked, and failing to gain a majority, the petition was dismissed, and RA 8371 retained its status as a binding law.

Thus, the inherent contradictions remain to fester. On a positive note, these could also offer spaces for bold interpretations, and push for more innovative concepts, such as the idea of perpetual land trusts in protected areas. It is in these spaces of vagueness that a more philosophically informed and nuanced analysis can shed some alternative perspectives.

MORAL EXTENSIONISM AND LAND TRUST

The concept of environmental trusteeship

The various tenure and allocation instruments issued by the State have clearly revealed the preponderance of the concept of stewardship, not only appropriated as a label for specific instruments or as appearing in the text of laws, policies, and rules, but as the unsaid philosophical backbone of State policy. The challenge is to assess whether the assignment of the status of being a steward to certain juridical persons is consistent with Christopher Stone's (1974) requirements for these juridical persons to be able to fully represent the environment to accord it some legal right, for them to rise to the level of becoming trustees, and for the arrangement to contain attributes characteristic of moral extensionism. We should recall the three conditions cited by Stone, which should be satisfied. First is that the trustee can institute legal action on behalf of the environment; second, that the basis for granting legal relief is the injury that was inflicted on the environment; and third, that the relief must be used to benefit the environment.

It is clear that while the State acquires the status of a guardian or a steward, at best what can only be outrightly satisfied are the first two conditions. That is, the State, through the DENR, can institute legal action against those who harm the environment, and the fines can be assessed relative to the environmental damages incurred. However, unless the money derived from litigation is used to directly finance activities designed to rehabilitate the damaged environment to which the amount was assessed, then Stone's trifecta of requirements is not completely satisfied. This stops short of becoming a form of moral extensionism.

Juridical persons that are awarded tenure and allocation rights by the government to have access to, and use, environmental resources for commercial purposes cannot be considered as environmental trustees. By the very nature of their status as engaged in production and extraction, they cannot run to the courts when it is probably their activities that would be responsible for those damages. They cannot possibly litigate against themselves.

There are, however, situations when participants in co-management activities, and those that participate in community-based resource management, can be deputized to enforce environmental law, such as those involved in "Bantay Kalikasan,' "Bantay Gubat" and "Bantay Dagat." When they perform these functions, they become part of

an endeavor that can possibly be considered to satisfy some of the condition of being labeled as trustees of the environment.

As argued earlier, from among the type of environmental stakeholders, it would be the ICCs/IPs that are clothed with the presumption of being natural trustees, not only by law, but by the moral and ethical discourse that bestows on them the label of being ecological peoples. In RA 8371, they are already empowered to initiate legal action against those who may cause damages, which would include environmental damages in their respective ancestral domains and lands. The law prescribes that they are entitled to fair and just compensation for these damages. In order for them to become full trustees, however, evidence must be shown that the fines and damages are ploughed back to environmental protection and to rehabilitate and restore the natural ecosystem.

The constitutionality of a perpetual land trust

The prevailing tenure and allocation instruments in the legal landscape in relation to the environment and natural resources in the Philippines are palpably skewed toward providing access for production activities. It is clear that such actions alone do not guarantee stewardship and trusteeship. This is precisely why they are regulated not only in terms of technology, but also by the area covered by their activity, and the duration of their access to the resource, which is using the constitutional standard of 25 years, renewable for 25 years.

However, a closer scrutiny of the 1987 Constitution would reveal that such limitation on duration only applies to productive and extractive activities, but is relatively silent on protection. Prior to the passage of RA 7586, and RA 11038 which amended it, which legislated environmental protection, all the tenure and allocation rights were framed in the context of production and extraction. The legislation on protection has somewhat embodied, while not fully, an environmental ethics that went beyond the dominion theory, where the environment was seen simply as a resource to be exploited, extracted, mined and farmed. It embraced a new environmental ethics that exhibited, at best, an attempt toward Stone's ethical theory of moral extensionism relative to the natural world. This was further amplified in RA 8371, which is the legislation that sought to recognize and protect Indigenous people's rights.

It is significant to note that the constitutional limitation of 25 years, renewable for another 25 years, was not articulated in RA 7586 and its amendatory law, RA 11038, both of which are focused on environmental protection. It also did not prominently appear in the text of RA 8371, which focused on the protection of Indigenous rights. The only spaces where the limitation appeared is when it pertains to production and extraction activities within protected areas and ancestral domains and lands.

It is important to highlight a distinction that was made by the separate opinion of former Chief Justice Reynato Puno in relation to GR 135385, where he argued for the Constitutionality of RA 8371. Puno provides a logical explanation that can be used to explain why the "25-years renewable" rule applies only for production purposes. Puno argued that RA 8371 granted ownership rights to ICCs/IPS but only "over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places,

traditional hunting and fishing grounds, and all improvements made by them at any time within the domains," which is contained in Section 7 of the law. Puno argued that the law did not give ownership rights over natural resources, which are not included in the enumeration. He argued that "the right of ownership under Section 7 (a) does not cover "waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution as belonging to the State." This opinion of Puno would further buttress the argument that while tenure and allocation instruments may correctly impose a maximum term of 25 years, renewable for another 25 years, for the use of public lands for the production and utilization of natural resources, this may not necessarily apply when the use is for the purposes of protecting the physical space that contains these resources that is exclusive of production and extraction.

It can therefore be rightfully concluded that the environmental ethic of moral extensionism, particularly that which grants legal rights to the environment through guardians and stewards who become trustees whose main duty is to protect the environment, is germane to legislation addressing protected areas and Indigenous rights, even if these are undermined when the policy landscape is drowned by the preponderance of legalistic attempts to reassert the State's claim to be the only legitimate entity granted stewardship over the environment, and thus all other forms of land access, from use rights to ancestral titles, are still subject to State regulation. As such, there is space to further the idea of perpetual land trusts but only in the context of protecting the environment, and of Indigenous peoples, but not for its exploitation and use. It is now already embodied in the perpetual nature of CADTs and CALTs. It opens up the possibility for designing a legal instrument for protection that would allow for the concept of perpetual land trusts to find its rightful place.

The Constitutional and legal basis for the State acting as principal steward for the environment is robust. Section 2 of RA 7586, as amended by RA 11038, clearly recognizes that environmental protection requires the participation and cooperation of non-state actors. The provision states that:

> It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan to conserve and protect our natural heritage; that effective administration of these areas is possible only through cooperation among the national government, local government, concerned nongovernment organizations, private organizations, and local communities (Republic of the Philippines 2017).

The State is not prohibited from entering into a partnership arrangement with juridical persons to implement environmental protection activities. It can devolve to these parties its functions as stewards that act as trustees, and it can assign these roles to juridical persons without breaking the law, and without being restricted by the space and time limitations prescribed for production and extraction activities.

There is a preponderance of precedent where the State has granted perpetual rights to juridical persons over lands that would otherwise be considered as protected

areas. The State has already ceded its stewardship role to several government agencies like the University of the Philippines at Los Banos for the protection and conservation of the Makiling Forest Reserve by virtue of RA 6967 in 1990, and the Department of Energy with respect to the protection and conservation of several watershed areas (DENR 2004). Prior to independence, the Commonwealth State also bequeathed in 1930 to be held in perpetuity by the University of the Philippines (UP) the Laguna-Quezon Land Grant covering 6,765 hectares. By this action, UP is technically and legally the owner of the land. Despite being a protected area, the Bureau of Corrections now holds a title, and thus possesses perpetual rights, to 270 hectares within the Upper Marikina River Basin Protected Landscape by virtue of a proclamation issued by former President Gloria Macapagal Arroyo in 2006 (Tamoria 2023).

And yet, despite all of these, the main attribute of moral extensionism, which is founded on extending moral standing to nature, remains encumbered by the State's assertion of its power and authority and its fixation on an economistic interpretation of the value of the environment. The key element of a perpetual land trust, where a third party is bestowed the status of a steward and a trustee, is a necessary but not sufficient condition for moral extensionism to thrive as the unsaid logic of environmental protection policy. It will never become sufficient as long as the State continues to uphold the dominant reading where the environment, despite the protective mantle provided in law, remains valued only for the marketable goods and services that are derived from it.

MAKING PHILOSOPHY CONVERSE WITH POLICY: REVIS(IT)ING THE CASE OF MASUNGI

The paper has articulated insights that affirm to support the two main arguments it offered. First, the idea of a perpetual land trust as implemented in the Masungi Geopark Project is consistent with moral extensionism propounded by Christopher Stone; and second, that it does not violate the Constitution and the law.

One of the main contentious issues in the case of the Masungi Georeserve, particularly in the MOA between DENR and the Masungi Georeserve Foundation, Inc. (MGFI) is the alleged violation of the Constitution that is inherent when it appeared that the agreement granted MGFI the status of a perpetual land trustee. A perusal of the agreement suggests that what was cited is the intent to make the arrangement perpetual, and that there is nothing in the agreement that exempts MGFI from legal responsibility if it violates the terms of the agreement, or if it will conduct actions that would negate its role as a trustee. The DENR, in its role as the principal steward of all environment and natural resources, can always sue MGFI on behalf of the reserve should MGFI violate any of its provisions.

Furthermore, and going back to the issue of the perpetual nature of the agreement, which, as argued above, is not a matter of fact but a statement of intent, it is about time to explore the possibility of bestowing the status of environmental trustee to juridical persons, which can include private entities. Such an instrument, which would solely focus on the protection of the environment will be unbounded by the Constitutional limitation imposed on those engaged in production and extraction

activities, but still subject to review and termination for just cause and after due process. The 2017 MOA between DENR and MGFI already provides a template for that. Instead of being assailed, it should be revisited, revised to correct its flaws and amplify its advantages, and advanced as a new form of access in the array of environmental property rights regimes.

This is an insight that emerged when philosophical analysis was brought to shed alternative meanings and interpretations to prevailing constitutional and legal contexts. The conversation between philosophy and the policy landscape anent to environmental protection has unsettled the dominant readings of the constitutional and legal texts that are being cited which effectively limits the imagination of solutions to the problem. The discourse of environmental protection cannot be straitjacketed by an economic logic where resources are exploited for profit. Applying Christopher Stone's (1974) moral extensionism radicalizes the manner the environment is imagined in the context of the State's limited agenda, dominantly articulated in legal and constitutional texts and the practices they engender. Perpetual land trusts is the cutting-edge policy alternative that forces the State's policy apparatus to imagine solutions beyond the dominant reading of legal and constitutional texts. They would be better equipped if only they converse with philosophers, and when philosophers devote time to engage policy decision makers. This is what Hale (2011, 227) meant when he posited that the goal is to replace knowledge with insights, which he succinctly reiterated in the following words:

> The idea, then, is that … the philosopher ought not to retreat into esoteric debates about the priority of the right over the good or about prima facie versus absolute principles. Instead, the philosopher should seek to clarify and illuminate principles that can contribute to the overarching project of policy clarification. …They should seek to provide accounts that reduce the difficult philosophical issues down to their core ideas, for the express purpose of simplifying these extraordinarily difficult concepts for people who otherwise don't have the same luxury to read and discuss philosophical issues that most philosophers have.

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