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ENVIRONMENTAL ETHICS AND LAW: THE PHILIPPINE EXPERIENCE

Emmanuel Q. Fernando

Department of Philosophy

University of the Philippines-Diliman

Abstract. In this article, I will distinguish the anthropocentric from the other points of view. Thereafter, I will discuss Philippine law and jurisprudence on the environment. I will explain, assess, and analyze the law. In the end, I will argue that the Philippines has good laws. Unfortunately, it has failed to implement the law properly so as to jeopardize and endanger the environment.

Keywords: Philippine environmental laws, intergenerational responsibility, Human-centered ethics, justification for environmental ethics

Introduction

Environmental ethics is a unique and radical ethics in that it is the only one, among the other practical ethics such as business ethics, medical ethics, professional ethics, etc., which does not necessarily adopt a human-centered or anthropocentric point of view. Indeed, it challenges this chauvinistic viewpoint as the proper viewpoint with which to investigate ecological and environmental matters.

There are five points of view with which to view life and experience: that (i.) of humans; (ii.) of animals; (iii.) of life; (iv.) of rocks, and (v.) of ecological holism. Only the first is anthropocentric. In this article, I will distinguish the anthropocentric from the other points of view. Thereafter, I will discuss Philippine law and jurisprudence on the environment. I

will explain, assess, and analyze the law. In the end, I will argue that the Philippines has good laws. Unfortunately, it has failed to implement the law properly so as to jeopardize and endanger the environment.

Environmental Ethics

Environmental ethical theory, as said above, seeks to explicate five different points of view with which to study the environment, the perspective (i.) of humans; (ii.) of animals; (iii.) of life; (iv.) of rocks, and (v.) of ecological holism. Then, from this perspective, it seeks to construct and justify an environmental ethic. In the process, it determines what objects could be considered morally considerable so as to allow it to expand from a purely human-centered environmental ethic to broader and broader environmental ethical viewpoints up to and including ecological holism.

The first decision an environmental ethicist is to make, when engaging in ethical inquiry, is the decision to abandon the human-centered viewpoint or not and adopt a viewpoint that takes into account the rest of nature.

1. The Varieties of Environmental Ethics

i. Human-centered ethics

A human-centered ethics treats humans and human interests as the only things worthwhile or ethically valuable. Humans are thus treated as ends. It views the world from the human perspective and judges the worth or value of things in terms of human interests, human good, and human happiness. Things are important or valuable only in the sense that they increase or protect human happiness or welfare.

Thus the question arises: should environmental policies be evaluated solely on the basis of how they affect humans? Is it fair to the rest of the things or beings in the world? When the classical

utilitarians saw this unfairness and included animal suffering in their ethical calculation, they had abandoned the human-centered point of view. Take for example a sunset or an animal species about to be extinct. They are not valuable in themselves. They are valuable only in the sense that they make human existence more rich and interesting.

ii. Animal centered-ethics

Under this viewpoint, it is not only humans who are morally considerable but non-human animals as well. It includes all animals in its scope. Many of the things which affect the natural environment, adversely or otherwise, affect non-human animals, and they must be taken into account.

A true animal centered-ethics treats animals as valuable in themselves. An ethics, on the other hand, which gives special consideration or treatment to animals, because it will lead to the long term benefit of humans is still anthropocentric. That is how, for example, we treat cows, pigs, and chickens, whom we fatten up so as to make sumptuous our meals. It is the human interest taken into consideration and the animal is merely taken advantage of.

Under true animal-centered ethics, polluting the environment or rivers is to be protested not only because it jeopardizes human existence, but that it would endanger the lives of the fish swimming in the river. An animal-centered ethic enjoins the moral consideration of individual animals and not of species. The importance of the whole is measured only in terms of the welfare of its individual members.

Animals need not necessarily be ranked equally. Some animals may be more valuable than others. For example, it is not surprising if we take the interests of ants, flies or mosquitoes as of minimal importance. So too with respect to dinosaurs. After all, they endanger human existence. There are simply some

animals which are annoying, make uncomfortable or endanger the lives of human beings.

iii. Life-centered ethics

The class of living things includes not just humans and non-human animals; it includes plants, algae, single-celled organisms and even the whole biosphere. The complexity of a life-centered ethics will depend on how the question 'What is living?' is answered. A self-regulating system has certain goals. On the basis of this system, moral consideration of living things is conferred. A life-centered ethic counts all living things as morally considerable, although not necessarily of equal moral significance. Its value is measured, perhaps, in terms of how it makes the biosphere lush, variable and viable. Complexity acts as an intensifier: if living, then the more complex, the more morally significant it is.

A life-centered ethics requires first that in deciding how humans should act, they need to take account of the impact of their actions on every living thing affected by them. Let us take the example of a company polluting the river again. It will involve destroying plants and endangering fish life. A means must be arrived at to ensure that the whole biosphere is protected and conserved.

iv. The Everything ethic or Rights for rocks

Why not take the argument another step and count non-living things too as morally considerable? There is no attempt here to attribute a mental life or a point of view to non-living things; that would be to enter into an entirely different dispute. The claim is that non-living things, which, like many living things lack consciousness and which also lack even rudimentary biological organization, are morally considerable. Call this ethic, the 'everything ethic.'

v. Ecological holism

Ecological holism, unlike the previous environmental ethics, does not count individuals, such as animals and humans, as well as the plants, rocks, molecules, etc., as morally considerable. They matter only in relation to the whole; insofar as they contribute to the maintenance of the holistic framework to which they are a part of.

Hence, it does not matter if some species becomes extinct. Only the whole matters. However, if the species is important for the maintenance of the whole, then it does matter. Holism has a different focus, the whole and not the individual. It is also possible to view the biosphere and ecosystems as individuals, albeit extremely complex ones, and not as a whole.

2. *The Justification of an Environmental Ethic*

As we justify an environmental ethic, we begin with human-centered ethics and proceed down the line. We try to establish what is the moral considerability first of humans and determine whether this applies also to the other things in the universe, such as animals, plants, rocks and the biosphere or ecosystems. As Elliot put it,

. . . one way in which the move from one ethic to the next is accomplished by finding a determinant of moral considerability in that ethic and showing that a rigorous application of it leads us to the next kind of ethic. Another way is by showing that there are new morally relevant features which the more restrictive ethics unjustifiably ignore.¹

i. Justification for human considerability

It is easy to justify the claim that humans are morally considerable. They are so because they have the capacity to feel pleasure and pain; they have knowledge, reason, and make

decisions; they make moral choices; and, they have interests which can be protected, harmed, or advanced. These interests are based on capacities which humans have: for example, the capacity for independent thought and free action. Less obviously, they are considerable because of properties or characteristics that they possess which do not give rise to interests, to things in which they themselves have a stake. It is assumed that they are intrinsically valuable.

Indeed that is the justification for a theory of natural rights. Men have rights by virtue of being human. There is a moral reason for respecting his rights, his autonomy and dignity, and for preserving him for his own sake independently of whatever uses he serves.

ii. Justification for animal considerability

The value of humans leads to a consideration of the value of animals. They can feel and suffer. This is what Bentham said about them.

The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? 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 a more conversable 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?²

In fact, “the animal rights position takes the significance of morally considerable claims to be absolute. Thus, any use of animals that involves a disregard for their moral claims is problematic.”³

The commitment of animal rights activists is comprehensive and unrelenting. For Regan, “[i]t is equality of consideration of interests, not equality of rights, that the case for animal equality seeks to establish.”⁴ Hence he characterizes utilitarianism, say of Singer, thus:

Utilitarianism has no room for the equal moral rights of different individuals because it has no room for their equal inherent value or worth. What has value for the utilitarian is the satisfaction of an individual's interests, not the individual whose interests they are.⁵

Regan then advanced:

The rights view, I believe, is rationally the most satisfactory moral theory. It surpasses all other theories in the degree to which it illuminates and explains the foundation of our duties to one another—the domain of human morality. On this score it has the best reasons, the best arguments, on its side.⁶

Tom Regan, thus, conceded that animals have rights and justified the moral consideration of them, not to their interests, but to their individual worth. Moreover, he objected to “the total abolition of the use of animals in science; the total dissolution of commercial animal agriculture; the total elimination of commercial and sport hunting and trapping.”⁷

This view is rather extreme. As Regan intimated, it objects to animal agriculture and important medical research, such as cancer research. What is fundamentally wrong is that animals are viewed as our resources, to be eaten, surgically manipulated, or exploited for sex for money.

The goal of the animal liberation movement seems to be this: "The aims of the movement can be summed up in one sentence: to end the present speciesist bias against taking seriously the interests of nonhuman animals."⁸

There have been unprecedented gains in the pursuit of its goals.

In the past few years the animal liberation movement has made unprecedented gains. Whereas a few years ago the public in most developed countries are largely unaware of the nature of modern intensive animal rearing, now in Britain, in West Germany, in Scandinavia, in the Netherlands and in Australia, a large body of informed opinion is opposed to the confinement of laying hens in small wire cages, and of pigs and veal calves in stalls so small they cannot walk a single step or even turn around. In Britain a House of Commons Agriculture Committee has recommended that cages for laying hens be phased out. Switzerland has gone one better, actually passing legislation which will get rid of the cages by 1992. A West German court pronounced the cage system contrary to the country's anti-cruelty legislation - and although the government found a way of rendering the court's verdict ineffective, the West German state of Hesse announced that it would follow Switzerland's example and begin to phase the cages out.

Perhaps the most positive step forward for British farm animals has been in the worst of all forms of

factory farming, the so called "white veal trade". Veal calves were standardly kept in darkness for 22 hours a day, in individual stalls too small for them to turn around. They had no straw to lie on - for fear that by chewing it they would cause their flesh to lose its pale softness - and were fed on a diet deliberately made deficient in iron, so that the flesh would remain pale and fetch the highest possible price in the gourmet restaurant trade. A campaign against the trade led to a widespread consumer boycott; as a result, Britain's largest veal producer conceded the need for change, and moved its calves out of their bare, wooded, five feet by two feet, stalls into group pens with room to move and straw for bedding.⁹

However, there are obstacles too. There is always the danger that the movement resorts to violence. In that regard, we should follow in the footsteps of our great pacifist civil disobedients.

Instead of going down the path of increasing violence, the animal liberation movement will do far better to follow the examples of the two greatest - and, not co-incidentally, most successful - leaders of liberation movements in modern times: Gandhi and Martin Luther King. With immense courage and resolution, they stuck to the principle of non-violence despite the provocations, and often violent attacks, of their opponents. In the end they succeeded because the justice of their cause could not be denied, and their behaviour touched the consciences even of those who had opposed them. The struggle to extend the sphere of moral concern to non-human animals may be even harder and longer, but if it is pursued with the same

determination and moral resolve, it will surely also succeed.¹⁰

When I was in Cambridge, I had a Polish girlfriend, a biologist, who did not sympathize with animal rights activists. She herself was not averse to experimenting on animals as it brought about benefits to human welfare. Activists then were protesting the candy company Mars Bars, which experimented on monkeys to determine whether the eating of the candy caused cavities. The response of the activists was to warn the populace that they had injected Mars candy bars with poison. The company had no recourse but to recall the candy bars. The warning was a fake alarm however.

Another incident which revealed the concern of activists towards the rights of animals concerned the Canterbury cathedral. Bat droppings, somewhere in the attic, caused a tremendous stench which discouraged sightseers from visiting the cathedral, causing a huge drain on their donations. The clergy thought up of a brilliant idea to use a scarecrow of an owl to threaten the bats. Consequently, the bats left the cathedral. Animal Rights activists were aghast and filed a case in court to remove the owl scarecrow on the ground that the bats were being deprived of their natural habitat. The activists won the case.

Or there was a bill sponsored by a Member of Parliament regarding the cages with which chickens were transported. He complained that they were too small so as to violate the hens' rights to spread their wings. The bill was not passed.

I guess that enough of the examples have been mentioned to show how seriously animal rights activists in England have objected to the way things were.

iii. Justification for life-centered ethics

Just as humans and non-human animals, plants appear to have a good of their own. A plant is nourished by sufficient nutrients for its continued growth and development; it is likewise harmed when deprived of nutrients. That is its good. But does this good have moral significance. Perhaps it has insofar as the satisfaction of interests has moral significance, as the utilitarians claim.

The problem is that plants do not experience this satisfaction, unlike humans and non-human animals who do. This is perhaps what separates plants from animals and encourage environmental ethicists to draw the line between what is morally considerable and what is not at this point.

There is the interest in being a complex living thing and of having beauty which, it is alleged, render plants morally considerable. If animals are morally considerable in virtue of possessing them, then so too are plants. The point is if these properties are intrinsically valuable, then plants are morally considerable.

iv. Justification of an everything-ethic

It is much harder to justify wherein lies the moral considerability of rocks. They can only be part of a collection of non-living things. Of course, there is their aesthetic quality. Boulders, dunes, lifeless moons, and icebergs can be beautiful. Hence if aesthetic beauty qualifies for attributing moral considerability to living things, then at least some non-living things are morally considerable.

There is also the property of being a natural object, an object which is not the product of human technology and culture. Some claim that this carries moral considerability. Other candidates for moral considerability are the property of exhibiting diversity of parts, the property of functional integration of parts, the property of exhibiting harmony and the property of being a self-regulating system.

v. The justification of ecological holism

This brings us into the direction of ecological holism. They exhibit properties quintessentially exemplified by ecosystems and the biosphere. They are determinants of moral considerability and this gives us reason to resist policies which would lead to disruption of ecosystems.

Naturalness and exhibiting diversity of parts are the best examples of moral considerability of ecosystems. Consider a natural park with all its beauty. There are the plants, trees and wild animals, the hills and mountains, the lakes and rivers, all interacting with each other to produce something truly beautiful and worth visiting. They provide such happiness to human visitors.

Philippine Law and Jurisprudence

Philippine Law and Jurisprudence adopts the anthropocentric view of the environment. No provision in any law or in any case proposes a point of view which takes into account that of non-humans.

1. Laws

The laws are constituted by the Philippine Constitution and various statutes.

i. The Philippine Constitution

There are various provisions in the Philippine Constitution meant to conserve and protect the environment. Thus Art. II on the Declaration of State Principles and Policies, Sec. 16 states: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." It is clear that Sec. 16 promotes an anthropocentric point of view. The protection and advancement

of a balanced and healthful ecology is meant to address the interests of Filipino citizens.

Then there are the provisions on Article XIII, on National Economy and Patrimony. The fact that provisions on the environment are incorporated in the Article on national economy shows that the nation is concerned with the economy, rather than the preservation of the environment, or of the natural resources.

Sec. 2 thereof provides for “[t]he exploration, development, and utilization of natural resources [which] shall be under the full control and supervision of the state.” The purpose of this provision is to ensure that these natural resources redound to the wealth of the Filipino, again an anthropocentric point of view.

Included in the natural resources that the state protects is the marine wealth (Sec. 2). Then, in Sec. 3, the “(l)ands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks.” There exists the practice of transforming the agricultural lands into residential areas, wherein subdivisions and malls are constructed, a practice again contrary to the environmental concerns but meant to address human needs. This is the phenomenon we now experience in the province of Laguna.

Section 4 provides for national parks.

The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

Hence, consideration for the preservation of forest lands and national parks is made.

Section 5 provides for the preservation of the environment of cultural communities:

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

It is clear from the above that the Philippine Constitution adopts and adheres to a human-centered point of view with respect to the environment.

ii. The Philippine Statutes

There are many laws enacted by Congress meant to protect the environment. In discussing environmental law, I will begin with the Presidential Decrees. The government of President Marcos has been known for championing the cause of the environment. In fact, the First Lady, Madame Imelda Romualdez Marcos, was one of the pioneers in this regard.

She established the Environmental Center of the Philippines in 1973. At its inauguration, she declared like a proud mother: "The Environmental Center is therefore a small part of the larger enterprise that is being undertaken to make human life not only safe today but, even more important, possible in the years to come."¹¹

She proposed the solutions of waste recycling and energy conservation. Living “in a world of rapidly expanding population requires the moderation of consumption and an end to the profligate use of resources. Under these conditions, recycling becomes an imperative, and the only acceptable way of life.”¹² “[T]he enormous energy of sunlight, the winds, the ocean waves, and biomass [should not be] ignored or wasted.”¹³

In pursuit of that vision, she launched various projects for the environment. She launched a nationwide drive for cleanliness and beautification in every community so as to create a more livable environment by means of the National Beautification and Cleanliness Program. The Metro Manila Commission recruited and fielded more than 4,000 Metro Manila aides to keep Manila’s major thoroughfares clean.

She preached that beauty is an essential aspect of the sublime activity of gardening. “Other than adding to the sufficiency of food, gardening manifests one’s capacity to appreciate beauty, a trait which we must not lose if we are to retain our humanity.”¹⁴

She started the Youth Civil Action Program, wherein students, during their summer vacation or as a pre-requisite to graduation, helped in street-cleaning and tree-planting. She organized, apart from the Environmental Center of the Philippines, the Seedling Bank Foundation,¹⁵ the National Tree-Planting Program, the Pasig River Development Project, among others.

She sought a self-sustaining and lasting solution to the garbage problem of Metro Manila through recycling. She first undertook “a program of recycling such waste through the organization of ecological aides who collect(ed) sorted garbage from households and deliver(ed) them to redemption centers, which in turn (re-sold) them to factories for recycling.”¹⁶ “The long term plan . . . was to establish composting plants which recycled garbage into organic fertilizer . . .”¹⁷

As early as the 1980s, we already availed of non-conventional sources of energy, such as solar power, methane gas from animal waste and city sewage, and energy plantations, where fast-growing trees called *ipil-ipil* in the Philippines, were fed to small generators.¹⁸ We encouraged the use of and developed hydroelectric and geothermal power plants. In fact in 1982, she was able to convince the President to abandon the nuclear energy project in favor of geothermal power, fearful, as she was, of the danger of nuclear waste thousands of years hence. To that date some time in the 1980s, the geothermal power plants in her home province of Leyte provided 13% of the country's electricity as well as 70% of power consumption in the Visayan region. Indeed, their production is reputed to be the largest in Asia.

In 1979, she proposed, before the United Nations Convention on Trade and Development, "the early establishment of an international energy institute within the United Nations system, which would promote the development and utilization of new and renewable sources of energy with a view to meeting energy requirement of developing nations."¹⁹

President Marcos, too, was not oblivious to the needs of the environment. By virtue of a number of Presidential Decrees (P.D.s), he enacted laws to protect it. Thus, he issued P.D. No. 1152, the Philippine Environmental Code, P.D. No. 1151, the Philippine Environmental Policy, P.D. No. 1067, the Water Code of the Philippines, P.D. No. 984, National Pollution Control Commission, P.D. No. 879, Marine Pollution Decree of 1976, P.D. No. 856, Code of Sanitation of the Philippines, P.D. No. 825, Penalty for Improper Garbage Disposal, P.D. No. 705, Revised Forestry Code of the Philippines, P.D. No. 704, and Philippine Fisheries Code of 1975.

P.D. No. 1152, the Environmental Code, was all-encompassing, embracing such concerns as (a) air quality management; (b) water quality management; (c) land use management; (d) natural resources management and

conservation embracing: (i) fisheries and aquatic resources, (ii) wild life, (iii) forestry and soil conservation, (iv) flood control and natural calamities, (v) energy development, (vi) conservation and utilization of surface and ground water, (vii) and mineral resources. It was an impressive piece of legislation meant to cover all aspects of environmental concerns.

I have to make mention, at this point, of how laws were enacted during President Marcos' time. There was no Congress at that time. What the President did was to commission the brightest legal minds in the U.P. Law Center to craft laws. The laws enacted were not confined to environmental law. They included the Labor Code or the Family Code among others. President Marcos had a vision and he wanted to enact something so comprehensive as the Code Napoleon.

One wonders whether it is best left to unelected legal experts to craft laws. Now we have the elected members of Congress to do it. Happily, the members of Congress do not rely on their own expertise and rely on experts to craft laws. I, for example, have been commissioned to craft a divorce law. Sadly this was not passed.

The period of the 1987 Constitution also saw the passing of many good environmental laws.

For example, Republic Act (R.A.) 8749 provides for a comprehensive air pollution control policy. R.A. 9003 provides for "an ecological solid waste management program, creating the necessary institutional mechanisms and incentives, . . ." With respect to this legislation, I have some experience. I was working closely with the mayor of Tacloban to build a landfill area where the solid waste would be deposited. He had grandiose plans as he set aside a large portion of land for it. Unfortunately, it did not materialize and instead a less ambitious landfill program was instituted. I understand that other cities and municipalities experience the same problem with respect to this project.

R.A. No. 9147 provides for the conservation and protection of wildlife resources and their habitats. R.A. 9483 provides for the implementation of the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. R.A. 9512 promotes environmental awareness through environmental education.

R.A. 9729 mainstreams climate change into government policy formulations, establishing the framework strategy and program on climate change, creating for this purpose the climate change commission.

2. Jurisprudence

There have been many illustrative cases on the environment. For lack of time, I will only talk about two of them, *Oposa vs. Factoran*²⁰ and *MMDA vs. Concerned Residents*.²¹

i. *Oposa v. Factoran*

In this case, petitioners, all minors represented by their parents, filed a case against the DENR to cancel all existing timber license agreements in the country and to cease and desist from receiving, accepting, processing, renewing or approving new timber license agreements. What was unique about this action was that the minors were filing this petition on behalf of minors yet unborn.

Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational

responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the “rhythm and harmony of nature.” Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.²²

The problem with is, is that the unborn become petitioners. They do not yet have legal personality. They lack standing. They have no interests. No rights of theirs have been violated to constitute a cause of action. Long-standing and well-settled law will be violated if they can be considered petitioners.

Let me explain. Any law or government action can be challenged on the ground that some unborn person will be adversely affected by it. We should not allow such a possibility.

I understand the point of Mr. Oposa, however, of including them. It is to emphasize the dire state of our ecology and our environment, and our intergenerational responsibility towards children yet to be born.

My other misgiving to the way this case was decided was the right on which the cause of action was based, that of the

“right to a balanced and healthful ecology,” found in the Declaration of state Principles and Policies of the Constitution. That ought not to have been as a self-enforcing right; it needs legislation to make it operable. But the Supreme Court decided otherwise. Justice Feliciano noted this anomaly.

As a matter of logic, by finding petitioners' cause of action as anchored on a legal right comprised in the constitutional statements above noted, the Court is in effect saying that Section 15 (and Section 16) of Article II of the Constitution are self-executing and judicially enforceable even in their present form. The implications of this doctrine will have to be explored in future cases; those implications are too large and far-reaching in nature even to be hinted at here.

The implications which he left to future cases to explore were simply this: If it is a self-enforcing right, then individuals ought to be penalized or punished for violating it. For example, a citizen may fart or vomit in public. That certainly disturbs a balanced and healthful ecology. Should he be jailed for farting? Certainly there is a need for legislation specifying which specific actions constitute violations of this right.

I do not disagree with the resolution of the main issue of the case. Certainly the denudation of our forests have been appalling. Chief Justice Davide, quoting from the Petition, points out:

8. Twenty-five (25) years ago, the Philippines had some sixteen (16) million hectares of rainforests constituting roughly 53% of the country's land mass.

9. Satellite images taken in 1987 reveal that there remained no more than 1.2 million hectares of said

rainforests or four per cent (4.0%) of the country's land area.

10. More recent surveys reveal that a mere 850,000 hectares of virgin old-growth rainforests are left, barely 2.8% of the entire land mass of the Philippine archipelago and about 3.0 million hectares of immature and uneconomical secondary growth forests.

11. Public records reveal that the defendant's, predecessors have granted timber license agreements ('TLA's') to various corporations to cut the aggregate area of 3.89 million hectares for commercial logging purposes.

....

12. At the present rate of deforestation, *i.e.*, about 200,000 hectares per annum or 25 hectares per hour—nighttime, Saturdays, Sundays, and holidays included—the Philippines will be bereft of forest resources after the end of this ensuing decade, if not earlier.

13. The adverse effects, disastrous consequences, serious injury and irreparable damage of this continued trend of deforestation to the plaintiff minor's generation and to generations yet unborn are evident and incontrovertible. As a matter of fact, the environmental damages enumerated in paragraph 6 hereof are already being felt, experienced and suffered by the generation of plaintiff adults.

14. The continued allowance by defendant of TLA holders to cut and deforest the remaining forest

stands will work great damage and irreparable injury to plaintiffs — especially plaintiff minors and their successors — who may never see, use, benefit from and enjoy this rare and unique natural resource treasure.

These acts of the timber licence holders constitute a misappropriation and/or impairment of the natural resource property he holds in trust for the benefit of plaintiff minors and succeeding generations.

ii. *MMDA vs. Concerned Residents*

This case constitutes another triumph for environmentalists. Concerned Residents of Manila Bay filed a Complaint before the Regional Trial Court against the Metro Manila Development Authority (MMDA) and other several government agencies, for the cleanup, rehabilitation, and protection of the Manila Bay. The Complaint alleged that the water quality of the Manila Bay had fallen way below the allowable standards set by law, specifically Presidential Decree No. (PD) 1152 or the Philippine Environment Code.

The Court ordered Petitioners to clean up and rehabilitate Manila Bay. The Court of Appeals sustained the Regional Trial Court. Hence, the MMDA and the other government agencies, sought recourse in the Supreme Court.

The Supreme Court found that the cleaning or rehabilitation of Manila Bay can be compelled by mandamus. It held that:

The MMDA is duty-bound to comply with Sec. 41 of the Ecological Solid Waste Management Act (RA 9003) which prescribes the minimum criteria for the establishment of sanitary landfills and Sec. 42 which provides the minimum operating requirements that

each site operator shall maintain in the operation of a sanitary landfill.²³

It is also set forth not only in the Environment Code (PD 1152) and RA 9003, but in its charter as well. This power is not discretionary. The pertinent government agencies are enjoined, as a matter of statutory obligation, to perform certain functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay. They are precluded from choosing not to perform these duties.

The Court sought a long-term solution.

The cleanup and/or restoration of the Manila Bay is only an aspect and the initial stage of the long-term solution. The preservation of the water quality of the bay after the rehabilitation process is as important as the cleaning phase. It is imperative then that the wastes and contaminants found in the rivers, inland bays, and other bodies of water be stopped from reaching the Manila Bay.

Otherwise, any cleanup effort would just be a futile, cosmetic exercise, for, in no time at all, the Manila Bay water quality would again deteriorate below the ideal minimum standards set by PD 1152, RA 9275, and other relevant laws. It thus behooves the Court to put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform, their mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level. Under what other judicial discipline describes as "continuing mandamus," the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its

decision would not be set to naught by administrative inaction or indifference. In India, the doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution.

The Court can take judicial notice of the presence of shanties and other unauthorized structures which do not have septic tanks along the Pasig-Marikina-San Juan Rivers, the National Capital Region (NCR) (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycuayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and connecting waterways, river banks, and esteros which discharge their waters, with all the accompanying filth, dirt, and garbage, into the major rivers and eventually the Manila Bay. If there is one factor responsible for the pollution of the major river systems and the Manila Bay, these unauthorized structures would be on top of the list. And if the issue of illegal or unauthorized structures is not seriously addressed with sustained resolve, then practically all efforts to cleanse these important bodies of water would be for naught. The DENR Secretary said as much.²⁴

There is likewise the problem of factories and other industrial establishments.

Judicial notice may likewise be taken of factories and other industrial establishments standing along or near the banks of the Pasig River, other major rivers, and connecting waterways. But while they may not be treated as unauthorized constructions, some of these

establishments undoubtedly contribute to the pollution of the Pasig River and waterways. The DILG and the concerned LGUs, have, accordingly, the duty to see to it that non-complying industrial establishments set up, within a reasonable period, the necessary waste water treatment facilities and infrastructure to prevent their industrial discharge, including their sewage waters, from flowing into the Pasig River, other major rivers, and connecting waterways.²⁵

Hence, the Court concluded:

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

The importance of the Manila Bay as a sea resource, playground, and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the

State, through petitioners, has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and *ad hoc* measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. We are disturbed by petitioners' hiding behind two untenable claims: (1) that there ought to be a specific pollution incident before they are required to act; and (2) that the cleanup of the bay is a discretionary duty.

RA 9003 is a sweeping piece of legislation enacted to radically transform and improve waste management. It implements Sec. 16, Art. II of the 1987 Constitution, which explicitly provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.²⁶

No doubt, the Supreme Court was serious and determined in cleaning up Manila Bay. As a result, the Supreme Court ordered the pertinent government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.

There were reportorial requirements issued by the Supreme Court to the government agencies to inform it to state the progress of their cleaning-up operations. As far as it can be told, the agencies did not conform to this requirement. Simply take a look at the state of Manila Bay and you will be convinced.

Conclusion

The Philippines did not consider a point of view other than the human. Moreover, the state has good laws meant to protect and conserve the environment. The problem is in its implementation. The Court may come up with wise and appropriate rulings. But there is the problem of enforcement. So long as the bureaucracy remains corrupt, inept, and negligent, our laws will not be enforced.

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² Jeremy Bentham as cited by Peter Singer, *The Animal Liberation Movement: Its Philosophy, its Achievements, and its Future* (Nottingham: Russell Press, 1985), 1-12.

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⁴ Singer, *Animal Liberation Movement*, 4.

⁵ Tom Regan, "The Case for Animal Rights," *The Moral Status of Animals*, Ch. 7, 340.

⁶ *Ibid.*, 342.

⁷ Regan, *Case for Animal Rights*, 336-44.

⁸ Singer, *Animal Liberation Movement*, 6.

⁹ *Ibid.*, 9.

¹⁰ *Ibid.*, 12.

¹¹ *Man's Battle for Survival*, Speech delivered at the launching ceremonies of the Environmental Center of the Philippines, April 7, 1973.

¹² *The Right to be Human*, *supra* fn.

¹³ *The Right to be Human*, *id.*

¹⁴ *Gardening: A Sublime Activity*, Speech delivered at the opening of the First National Flower and Garden Show, February 13, 1980.

¹⁵ At the inauguration of the Seedling Bank Foundation, I commented: "The planting of a tree is a dialogue of love between God and man in celebration of life." *The Tree of Life*, Speech delivered on September 17, 1977.

¹⁶ *The Right to be Human*, *idem.*

¹⁷ *Humanism, the Ideal*, Speech delivered at the closing Ceremony of the First National Conference on Human Settlements, March 12, 1976.

¹⁸ "At the University of Arizona, I was briefed on the latest research and development efforts on solar energy. . . . I also obtained information on adobe-brick making as indigenous materials for cheap, housing components." *Report on a Mission to Two Continents*, Arrival Statement following my trip to Belgium, Copenhagen, New York, Tucson, Arizona, August 16, 1980.

¹⁹ *Liberation of Man by Man*, *supra* fn.

²⁰ G.R. No. 101083, July 30, 1993.

²¹ G.R. Nos. 171947-48, December 18, 2008.

²² *Oposa vs. Factoran*; G.R. No. 101083, July 30, 1993.

²³ MMDA v. Concerned Residents; G.R. Nos. 171947-48, December 18, 2008.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*