# CONSTITUTIONAL DIMENSIONS OF NATIONAL PATRIMONY

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In the Philippine setting, any academic discussions on national patrimony have to be pursued against a backdrop of constitutional dimensions. This must be so considering the references in the 1987 Constitution of the Philippines to the patrimony of the nation which may well provide constitutional underpinning to any serious endeavor towards legislating on the subject. Thus, the Preamble of the constitution proclaims the avowed desire and aspiration of the sovereign Filipino people for a Government that shall *inter alia* "conserve and develop our patrimony." And in Article XII of the same Constitution on "National Economy and Patrimony," Section 10 (2nd par.) declares that "In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos." For the purposes of this presentation, an analytical parsing of these cited provisions of the Constitution will be essayed.

"Patrimony," as understood in its ordinary sense, simply means heritage or inheritance. "National patrimony" though assumes a special signification from the constitutional perspective. The effort to discover the true meaning of this term has been rendered lighter by the decision of the Supreme Court in the case of *Manila Prince Hotel Corporation v. Government Service Insurance System, et. al.*[2] In that decision, the High Tribunal declared that "[w]hen the Constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, xxx but also, the cultural heritage of the Filipinos." In the considered view then of the Court, the national patrimony basically comprises two components, namely, natural resources and cultural heritage. Such conceptualization may perhaps be expanded to include everything else that through time has become identified with the Filipino people as reflecting their values, beliefs and aspirations.

If viewed in the light of the constitutional command enshrined in the Preamble, *supra*, these components of the national patrimony should be *conserved* and *developed.* Evidently, if they are to be the subject of a grant of rights, privileges and

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[2] Manila Prince Hotel Corp. v. Government Service Insurance System, G.R. No. 122156, 267 SCRA 408, Feb. 3, 1997.

concessions, preferably to qualified Filipinos, the grant must be such as to conserve and develop these components.

The nationalization, conservation and development of the national patrimony have always been among the basic philosophies of our Constitution commencing with the 1935 and then the 1973 and now the 1987 Constitutions. Such conservation and development of "our patrimony" should have in view not only the prosperity of the present generation but also the welfare of our posterity. The philosophy then is to envision the national patrimony as the exclusive heritage of the nation to be utilized by the entire Filipino people as the present inheritors for their collective benefit and prosperity and to be preserved by them for succeeding generations. A perpetuity of succession from generation to generation appears to be the constitutional design.

To "conserve," as commonly understood, means to keep in a safe or sound condition, or to preserve from destruction. Conservation entails sustained maintenance and upkeep. It may include, if necessary, restoration, refurbishment, renovation, or reconstruction in order to protect and preserve the historicity and/or cultural integrity or significance or the symbolic value of the property.

"Development," on the other hand, may involve any alteration, transformation, or change in the character of the property in order to allow its growth and increase in value and productivity, or to enhance the significance of the thing to the community.

Regarding the aforecited provision of the Constitution (Sec. 10, 2nd par., Art. XII), the Supreme Court in its *Manila Prince Hotel* decision treated or viewed the same as self-executing and "*per se* judicially enforceable." And by way of interpreting it, the Tribunal, in a somewhat simplistic manner, declared that "[w]hen our Constitution mandates that in the grant of rights, privileges, and concessions covering national economy and patrimony, the State shall give preference to qualified Filipinos, it means just that – qualified Filipinos shall be preferred."

Still, this writer perceives the need for legislation that would really flesh out the language in which the subject constitutional provision is couched, give it effect, and lend meaning and substance to its import. For one thing, the provision merely lays down a general principle or policy without more. It does not supply a sufficient rule whereby the right which it recognizes may be enjoyed or protected, or the duty which it imposes may be enforced. This writer likes to think that the said provision would be a perfect insertion in Article II of the Constitution on "State Policies" where it will be in good company. Undoubtedly, as such state policy, it can be carried out, given effect, or implemented only by and through appropriate legislation designed to guide the courts in its application or interpretation in proper cases. For another thing, the provision under scrutiny leaves plenty of room for vagueness or ambiguity which would likely render it susceptible of varied interpretations. Thus, the meanings/import of the terms "grant," "rights, privileges and concessions," "national patrimony," "preference," and "qualified Filipinos" are

not readily discoverable or discernible in the context that they are used. Such paucity provokes questions that beg for the right answers which can be supplied only by appropriate legislation.

Thus, what is the form of the "grant" envisioned? Is it a grant by legislation or by executive fiat? What are the conditions of the grant?

What specifically are the "rights, privileges and concessions" contemplated in the grant? What is their precise nature, scope and extent?

At this juncture, it is pertinent to point out that the *Manila Prince Hotel* case involved the *sale* of the Manila Hotel, or to be precise, 51% of the shares in the Manila Hotel Corporation which, in the words of the Supreme Court, "cannot be disassociated from the hotel and the land on which the hotel edifice stands" by which ownership thereof was acquired by the successful bidder. In resolving the issue raised by the petitioner Manila Prince Hotel Corporation, the Court invoked and applied the so-called Filipino First Policy enshrined in Section 10 (2nd par.) of Article XII of the Constitution, thereby necessarily implying that the "rights, privileges and concessions," subject of the grant, include the *ownership* of a part of the national patrimony.

Here lies the rub.

With particular regard to *natural resources* as components of the national patrimony, a constitutional ban stares in the face. Section 2, Article XII of the 1987 Constitution categorically ordains that "[a]ll 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" and "[w]ith the exception of agricultural lands, all other natural resources shall not be alienated," and "[t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State," and "[t]he 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."

Clearly then, by constitutional fiat, the natural resources of the Philippines are under the exclusive ownership of the State and, with the exception of agricultural lands, are inalienable in any manner and, hence, outside the commerce of man. Only their exploration, development and utilization under the full control and supervision of the State may be undertaken by Filipino citizens or corporations or associations at least 60% of whose capital is owned by such citizens, not by themselves alone but in tandem with the State through co-production, joint venture, or production-sharing agreements.

Since the Constitution proscribes the alienation of natural resources (except agricultural lands), they cannot possibly be the subject of a grant of

ownership. As earlier stressed, the limitation to a grant of rights, privileges and concessions covering the natural resources as part of the national patrimony is already provided by the Constitution itself. The evincible intent, indeed, is to restrict such grant to the exploration, development and utilization, short of ownership, of the natural resources. Bearing in mind the *expresio unius* principle of statutory construction, it is seriously doubted if such limitation can be expanded to include other forms of grant.

It is humbly submitted then that, in the ultimate analysis, to avoid unconstitutionality, the grant of rights, privileges and concessions covering inalienable natural resources as components of the national patrimony is limited to their exploration, development and utilization.

What about *cultural heritage*? The prevailing concept of cultural heritage is that it is the totality of cultural properties preserved and developed through time and passed on to posterity, including all forms of human creativity, tangible and intangible, by which a people and a nation reveal their identity. Inasmuch as cultural heritage is a component of the national patrimony, its protection and preservation should be a primordial concern of the State.

There is an existing law, Republic Act No. 7356, which mandates the National Commission for Culture and the Arts to "preserve Filipino cultural heritage"[3] and to "conserve and promote the nation's historical and cultural heritage"[4] as well as to "regulate activities inimical to preservation/conservation of national cultural heritage/properties."[5] The same law imposes upon every citizen the "duty to preserve and conserve the Filipino historical and cultural heritage and resources."[6]

In its decision in the *Manila Prince Hotel* case, the Supreme Court categorically classified the Manila Hotel as a cultural heritage of the Filipino people and in the same breath allowed its sale to a private firm. The questions now that bug the mind are: Would not such alienation of the hotel run afoul of the constitutional and statutory philosophy of conservation and preservation of the Philippine cultural heritage? Would it not defeat the constitutional intent to conserve and preserve the cultural heritage *as such* not only for the benefit and prosperity of the present generation of Filipinos but also for the welfare and well-being of generations of Filipinos yet unborn? Now that the Manila Hotel is in the hands of a private owner, may it still be rightly deemed as cultural heritage of the Filipino people? Under private ownership, would the hotel still retain its historicity and cultural integrity or significance or symbolic value? May not the private owner, in the valid exercise of his right of dominion over the hotel, transform or convert it

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[3] Rep. Act No. 7356, § 8 (1992).
[4] § 12
[5] § 13
[6] § 7

into a shopping mall or an entertainment/commercial complex or an office condominium and the like supposing that the hotel business is no longer profitable or viable, thereby signifying lack/absence of cultural consciousness on his part? Or, worse still, may not the private owner later dispose of or convey/alienate the hotel to another party, say, a foreigner? May not the Malaysian firm which actually won the bidding offer to buy back the hotel from the present owner for a price that the latter cannot refuse or resist? Are not these transactions or activities inimical to the preservation and conservation of the hotel as cultural heritage of the Filipino people? Perhaps, if only the lease of the Manila Hotel, not its ownership, was bid out, no constitutional problem would have arisen.

What then is the import of the "preference" to be given to "qualified Filipinos" as envisioned in the cited provision of the Constitution? Does it signify exclusivity so that only qualified Filipinos can enjoy and be benefited by the rights, privileges and concessions covering the national patrimony? Is it really meant to be "Filipino only?" (As intimated in the above-portrayed situations, it might well be a case of Filipino first and foreigner next!) To what extent is the preferential treatment contemplated? What are its implications? Does the State lose control over the exercise and enjoyment of the rights, privileges and concessions after it has given preference to "qualified Filipinos?"

And who are these "qualified Filipinos?" Does the term "Filipinos" embrace natural and artificial persons? If they are natural persons, must they necessarily be natural-born citizens of the Philippines? If they are artificial persons, say, corporations, to what extent must they be Filipinos? What are the specific qualifications that these "Filipinos" must possess to be entitled to preferential treatment?

Parenthetically, elsewhere in Article XII on National Economy and Patrimony, the 1987 Constitution specifies "Filipino citizens,"[7] "citizens of the Philippines,"[8] "natural-born citizen of the Philippines,"[9] and "natural-born Filipino citizens"[10] as the grantees of rights and privileges involving natural resources, lands, investments, public utilities, and practice of profession. But when the same Article included the "national patrimony" clause in its Section 10, it avoided a similar particularization and opted for couching it in imprecise and indefinite language by using the term "qualified Filipinos" as if to betray an intentional ambiguity. No attempt was made to spell out its meaning with any degree of exactitude, apparently leaving this task to Congress. Indeed, for the sake of consistency and uniformity, the term "citizens of the Philippines or corporations at least sixty *per centum* of whose capital is owned by such citizens" could have been repeated in the "national patrimony" clause.

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[7] CONST. art. XII, §§ 2, 14
[8] §§ 3, 10 ¶ 1, 11
[9] § 8
[10] § 20

All of the foregoing concerns are better addressed by the legislative branch through the vehicle of an appropriate law in the valid exercise of its plenary power of legislation facilitated by expert advice from knowledgeable and experienced personalities in both the public and private sectors.

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