EN BANC

G.R. No. 202897 – MAYNILAD WATER SERVICES, INC., *petitioner*, v. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE POLLUTION ADJUDICATION BOARD, THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-NATIONAL CAPITAL REGION, THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION III, THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION IV, *respondents*;

G.R. No. 206823 – MANILA WATER COMPANY, INC., *petitioner*, v. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-NATIONAL CAPITAL REGION, THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION III, THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU-REGION IV, and THE POLLUTION ADJUDICATION BOARD, *respondents*;

G.R. No. 207969 – METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioners,* v. THE POLLUTION ADJUDICATION BOARD and ENVIRONMENTAL MANAGEMENT BUREAU, *respondents*.

Promulgated:
August 6, 2019

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

"Where is the ground that knows only the love of water? Where are the passageways to your heart?"

Chingbot Cruz @conchitinabot Twitter, August 29, 2019

"How ashamed water is to be what you have made it."

Chingbot Cruz @conchitinabot Twitter, August 28, 2019

I concur in the result in the first major *En Banc ponencia* of my esteemed colleague, Associate Justice Ramon Paul L. Hernando. Petitioners

should be held liable for violating Section 8 of Republic Act No. 9275, or the Philippine Clean Water Act.

I qualify my concurrence with my views on substantive due process, and the public trust doctrine vis-à-vis the *parens patriae* doctrine, police power, and the regalian doctrine.

I

Petitioners claim that they were denied due process when the Secretary of the Department of Environment and Natural Resources found them liable and imposed a penalty on them without the recommendation of the Pollution Adjudication Board, as required under Section 28 of Republic Act No. 9275.[1]

Petitioners were sufficiently accorded due process. I, however, differ from how the *ponencia* defined substantive due process as "the intrinsic validity of a law that interferes with the rights of a person to his property."[2] Intrinsic validity of the law goes into the wisdom of the legality of the substance of its provisions. I maintain that substantive due process refers more to the law's freedom from arbitrariness and unfairness.[3]

The due process clause, as enshrined in Article III, Section 1 of the 1987 Constitution, states:

> SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

In determining whether a person was accorded due process of law, the standard is to check if the restriction on the person's life, liberty, or property was consistent with fairness, reason, and justice, and free from caprice and arbitrariness. This standard applies to both procedural and substantive due process.[4] In *Legaspi v. Cebu City*:[5]

> The guaranty of due process of law is a constitutional *safeguard against any arbitrariness* on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. It is a

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1 Ponencia, pp. 10–11.

2 Id. at 16.

3 *See Torres v. Borja,* 155 Phil. 51 (1974) [Per J. Fernando, Second Division] and *Maglasang v. Ople,* 159-A Phil. 126 (1975) [Per J. Fernando, Second Division].

4 *Philippine Association of Free Labor Unions v. Bureau of Labor Relations,* 161 Phil. 179, 188 (1976) [Per J. Fernando, Second Division].

5 *Legaspi v. Cebu City*, 723 Phil. 90 (2013) [Per J. Bersamin, En Banc].

protection essential to every inhabitant of the country, for, as a commentator on Constitutional Law has vividly written:

> . . . If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an *unreasonable* requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the *ordinary norms of justice or fair play* is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.[6] (Emphasis supplied, citations omitted)

The difference between substantive due process and procedural due process was discussed in *White Light Corporation v. City of Manila.*[7] Procedural due process refers to the manner in which the deprivation of life, liberty, or property was executed. The question to be asked is whether the person was given sufficient notice and an opportunity to be heard. Substantive due process, on the other hand, pertains to the reason and justification for the denial or restriction on life, liberty, or property. It raises the question of whether such was necessary and fair to all parties involved. In *White Light Corporation*:

> The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a *protection against arbitrary regulation or seizure.* Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.
>
> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process". Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.
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> If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the

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6 Id. at 106–107.

7 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

> government has *sufficient justification* for depriving a person of life, liberty, or property.[8] (Emphasis supplied, citations omitted)

In *Associated Communications & Wireless Services, Ltd. v. Dumlao*:[9]

> In order to fall within the protection of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process "refers to the method or manner by which the law is enforced," while substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is *fair, reasonable, and just.*"[10] (Emphasis supplied, citations omitted)

Thus, substantive due process looks into the justness or fairness of the law. Jurisprudence has developed several tests to determine whether a law is fair or just, depending on the government act, the rights impeded by the act, and the means used by the government to perform the act. The tests are: (1) the rational basis test; (2) the heightened or immediate scrutiny test; and (3) the strict scrutiny test.

Under the rational basis test, laws or ordinances affecting the life, liberty, or property of persons are generally considered valid so long as it rationally advances a legitimate government interest. Under the heightened scrutiny test, the law or ordinance will be deemed valid only after the government interest has been extensively examined, and the available less restrictive means of furthering it have been considered. Under the strict scrutiny test, there must be a compelling government interest, and there must be no other less restrictive means to achieve it. Each test depends on the right that is affected by the government act affecting the person's life, liberty, or property. The origins of these tests were discussed in *White Light Corporation*:

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: *strict scrutiny* for laws dealing with freedom of the mind or restricting the political process, and the *rational basis standard* of review for economic legislation.

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8 Id. at 461.
9 440 Phil. 787 (2002) [Per J. Carpio, First Division].
10 Id. at 804.

> A third standard, denominated as *heightened or immediate scrutiny*, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig,* after the Court declined to do so in *Reed v. Reed.* While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
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> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the *rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.*
>
> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[11] (Emphasis supplied, citations omitted)

Thus, more than the law's intrinsic validity, substantive due process looks into the fairness and freedom from arbitrariness in its deprivation of life, liberty, or property. It should not refer to any other source of legitimacy or validity; otherwise, this Court intrudes into the realm of the political, which is beyond our constitutional competence.

II

I agree with this Court's adoption of the public trust doctrine. I add some of my views and observations on the principle.

The concept of trust in a limited government is already real and implicit in the most fundamental concept articulated in Article II, Section 1 of the Constitution:

> SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

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[11] 596 Phil. 444, 462–463 (2009) [Per J. Tinga, En Banc].

In light of this principle, our Constitution expressly articulates in Article X, Section 1 of the Constitution that:

> *Public office is a public trust.* Public officers and employees must at all times be *accountable* to the people, serve them with utmost *responsibility,* integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

This provision echoes the fiduciary relation between the government and the sovereign. Public officials, as trustees, are expected to act with responsibility and accountability in favor of the beneficiary. As in this case, the beneficiary of this public trust are the people. The trustees are held to higher standards and are liable for violations of public trust. Their betrayal of public trust is even considered an impeachable offense, as provided in Article XI, Section 2 of the Constitution:

> SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or *betrayal of public trust.* All other public officers and employees may be removed from office as provided by law, but not by impeachment.

While the State's relationship with its natural resources is not as expressly stated to be a public trust, it also flows from the fundamental nature of a constitutional republican state.

The constitutional provisions on national economy and patrimony, as found in Article XII of the 1987 Constitution, emphasizes that the State's power is always subject to the common good, public welfare, and public interest or benefit. Many of its provisions put primacy in favor of the State's citizens:

> SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation *for the benefit of the people;* and an expanding productivity as the key to *raising the quality of life for all, especially the underprivileged.*
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> . . . .
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> SECTION 2. 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. In cases of *water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use* may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its *use and enjoyment exclusively to Filipino citizens.*

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and *general welfare of the country.* In such agreements, the State shall promote the development and use of local scientific and technical resources.

. . . .

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the *requirements of conservation, ecology, and development,* and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

SECTION 4. 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.

SECTION 5. 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.

SECTION 6. The use of property bears a *social function,* and all economic agents shall contribute to the *common good.* Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote *distributive justice* and to intervene when the *common good* so demands.

. . . .

SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the *common good* so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

SECTION 13. The State shall pursue a trade policy that serves *the general welfare* and utilizes all forms and arrangements of exchange on the basis of *equality and reciprocity.*

> SECTION 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the *national benefit.*
>
> The practice of all professions in the Philippines shall be limited to *Filipino citizens,* save in cases prescribed by law.
>
> SECTION 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for *social justice and economic development.*
>
> SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the *common good* and subject to the test of economic viability.
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> SECTION 17. In times of national emergency, when the *public interest* so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.
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> SECTION 18. The State may, in the interest of *national welfare or defense,* establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.
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> SECTION 19. The State shall regulate or prohibit monopolies when the *public interest* so requires. No combinations in restraint of trade or unfair competition shall be allowed.
>
> . . . .
>
> SECTION 22. Acts which circumvent or negate any of the provisions of this Article shall be considered *inimical to the national interest* and subject to criminal and civil sanctions, as may be provided by law. (Emphasis supplied)

These constitutional provisions on the State's national patrimony and economy, on which the public trust doctrine is anchored, highlight that the common good, public interest, public welfare—the people—are of primary consideration.

In addition, the public trust doctrine is founded on both social justice and equity.

The people, as a community, depend and rely on their ecology. They will not exist without it. This ecology cannot have unlimited resources, especially in the face of climate and environmental changes, as well as unrestrained policies in connection with the exploitation of resources. The public trust doctrine recognizes these limitations and expands the concept of property, giving it a more equitable, just, and reasonable interpretation. Land and water are not simply owned and disposed of at will by the State. They are part of a community and an ecosystem, interdependent with each other.[12]

III

I note the *ponencia*'s discussion on how the public trust doctrine is an integration of three (3) doctrines, in which the public interest is highlighted and the security of people, rights, and resources is protected:[13] (1) the regalian doctrine; (2) police power; and (3) the doctrine of *parens patriae*.[14]

In my view, the public trust doctrine is firmly anchored on the text of the Constitution. There may be no need to situate it in the implicit concepts of the regalian doctrine and the doctrine of *parens patriae*.

III (A)

The *ponencia* discusses that *parens patriae* "expresses the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*."[15] It refers to the State "as the last-ditch provider of protection to those unable to care and fend for themselves."[16] The *ponencia* opines that the persons *non sui juris* in this case are the Filipino consumers whose welfare needs the State's protection from overpowering business pursuits.[17]

I, however, maintain my view in *Samahan ng mga Progresibong Kabataan v. Quezon City*[18] that there must first be "harm *and* the subsequent inability of the person to protect himself or herself"[19] before the doctrine of *parens patriae* may be applied. It is not a utility concept that replaces or motivates the concept of police power.

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12 Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519–559, 522, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).

13 Ponencia, p. 23.

14 Id. at 22–23.

15 Id. at 23.

16 Id.

17 Id.

18 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

19 Id. at 1172.

In my separate opinion[20] in *Samahan ng mga Progresibong Kabataan*, I discussed the origins of the *parens patriae* doctrine, and how it has significantly developed from its common law origins:

> The doctrine of *parens patriae* is of Anglo-American, common law origin. It was understood to have "emanate[d] from the right of the Crown to protect those of its subjects who were unable to protect themselves." It was the King's "royal prerogative" to "take responsibility for those without capacity to look after themselves." At its outset, *parens patriae* contemplated situations where vulnerable persons had no means to support or protect themselves. Given this, it was the duty of the State, as the ultimate guardian of the people, to safeguard its citizens' welfare.
>
> The doctrine became entrenched in the United States, even as it gained independence and developed its own legal tradition. In *Late Corporation of Church of Jesus Christ v. United States*, the United States Supreme Court explained *parens patriae* as a beneficent state power and not an arbitrary royal prerogative:
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> > This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarch to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and **for the prevention of injury to those who cannot protect themselves**. . . .
>
> In the same case, the United States Supreme Court emphasized that the exercise of *parens patriae* applies "to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority." It is from this reliance and expectation of the people that a state stands as "parent of the nation."
>
> American colonial rule and the adoption of American legal traditions that it entailed facilitated our own jurisdiction's adoption of the doctrine of *parens patriae*. Originally, the doctrine was understood as "the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*."[21] (Emphasis in the original, citations omitted)

As to the protection of minors, I noted that under Article II, Section 12 of the 1987 Constitution, parents have the natural and *primary* right and duty to rear the youth. In this instance, thus, the *parens patriae* doctrine must take a step back in favor of the child's parents. The State acts as *parens patriae* in protection of minors only when there is a clear showing that they are neglected, abused, or exploited:

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[20] J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

[21] Id. at 1168–1170.

> The addition of the qualifier "primary" [in the provision] unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.
>
> . . . .
>
> . . . *Imbong v. Ochoa*, a cased decided by this Court in 2014, unequivocally characterized parents' rights as being "superior" to the state:
>
> > Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Like the 1973 Constitution and the 1935 Constitution, the 1987 Constitution affirms the State recognition of the invaluable role of parents in preparing the youth to become productive members of society. *Notably, it places more importance on the role of parents in the development of their children by recognizing that said role shall be "primary," that is, that the right of parents in upbringing the youth is superior to that of the State*. . . .
>
> Thus, the State acts as *parens patriae* only when parents cannot fulfill their role, as in cases of neglect, abuse, or exploitation:
>
> . . . .
>
> As it stands, the doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient. The wisdom underlying this doctrine considers the existence of harm *and* the subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.
>
> To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.
>
> More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents

> themselves when they have not acted in manifest offense against the rights of their children.[22] (Emphasis in the original, citations omitted)

I, thus, maintain my opinion that before the *parens patriae* doctrine may be properly applied, there must first be harm inflicted upon a person, *and* the subsequent inability of that person to protect him or herself. It may also only be applied if the matter is outside the scope of the powers, right, and duty of the person charged with protection, or if the latter is incapacitated or grossly deficient in fulfilling his or her duty. To apply it without these conditions is to grant an almost absolute power to the State, allowing it to arbitrarily exercise such power that might render the bestowed constitutional rights on another inutile. With due respect, the reference to the civil concept of *parens patriae* may not have been accurate.

III (B)

The *ponencia* also cites Article XII, Section 2 of the 1987 Constitution and states that it is the embodiment of *jura regalia*, or the regalian doctrine.[23]

I reiterate my opinion that the regalian doctrine is not provided in our Constitution.[24] The regalian doctrine provides that all lands not of private ownership belong to the State. However, Article XII, Section 2 of the 1987 Constitution states:

> SECTION 2. 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. . .

Since the 1987 Constitution limited the State's ownership to lands *of public domain*, not *all* lands are presumed public.[25] They must be part of the public domain for the State to be deemed its owner.

Furthermore, contrary to the regalian doctrine, the due process clause in the Constitution protects all types of property, including those not covered by a paper title. This protection extends to those whose ownership resulted from possession and prescription, and to those who hold their properties in the concept of owner since time immemorial.[26]

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22 Id. at 1170–1173.
23 Ponencia, pp. 22–23.
24 *See* J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203–209 (2013) [Per J. Bersamin, En Banc].
25 Id. at 206.
26 Id. at 206–207.

In my separate opinion *Heirs of Malabanan v. Republic*,[27] I further emphasized that the State's power over land and resources has been tempered to recognize the rights of the people:

> We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section 1 in the McKinley's Instructions. The case clarified that the *Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.*
>
> Thus, in *Cariño*:
>
> > It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown. . . It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*
> >
> > *Whatever may have been the technical position of Spain, it does not follow that, in view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized the land. The argument to that effect seems to amount to a denial of native titles throughout an important past of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.*
> >
> > No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to *do justice* to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, Â§ 12, 32 Stat. 691, *all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."* . . .
>
> . . . .
>
> *Cariño* is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However,

[27] 717 Phil. 141 (2013) [Per J. Bersamin, En Banc].

> nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on *completion of imperfect titles* in earlier laws were efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.
>
> There are also other provisions in our Constitution which protect the unique rights of indigenous peoples. This is in addition to our pronouncements interpreting "property" in the due process clause through *Cariño*.
>
> It is time that we put our invocations of the "regalian doctrine" in its proper perspective. This will later on, in the proper case, translate into practical consequences that do justice to our people and our history.[28] (Emphasis supplied, citations omitted)

The regalian doctrine emphasizes the State's ownership of all lands, irrespective of their ecology and the people who occupy them. The State acts as owner, exercising all rights of ownership over it, including the *jus possidendi* (right to possess), *jus utendi* (right to use), *jus fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose). *Cariño* clarified, however, that after the Spanish occupation, all properties and rights of the State are now "to be administered for the benefit of the inhabitants[.]"[29]

This shift in perspective—from unquestionable State ownership to the consideration of the inhabitants' rights—is affirmed by the application of the public trust doctrine. Under the regalian doctrine, the natural resources simply belong to the State, no qualifications. Under the public trust doctrine, the State's resources exist and are tempered for the benefit of the community.

III (C)

Finally, as in police power, the public trust doctrine acknowledges that the people, as a community, hold an independent right that may be superior to private individual rights.[30] Its objective may be to prevent widespread public harm and injury.[31] Thus, while it may be used to regulate private rights, all still benefit from its application:

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28 Id. at 207–209.

29 Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519–559, 535, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).

30 Craig, Robin Kundis, *What the Public Trust Doctrine Can Teach Us About the Police Power, Penn Central, and the Public Interest in Natural Resource Regulation*, 45 ENVIRONMENTAL LAW 519–559, 535, <*JSTOR*, www.jstor.org/stable/43432857> (last visited on August 5, 2019).

31 Id. at 541 and 546.

> The public trust doctrine, viewed in this light, is a communitarian doctrine, protecting the broader and longer-term community interests against private exploitation that eventually can destroy *both* the community *and* the exploiters. . . . [U]nder the public trust doctrine . . . individual members of a community may have to endure shorter-term pain in order to ensure that both they and, more importantly, the community as a whole avoid long-term diminishment or disaster.[32]

Nothing in the public trust doctrine sets the government apart from communities or individuals to be the sole repository of that trust. Indeed, as a democracy, and in recognition of the reality that we are all beings that depend on each other and on the web of life in this pale blue dot in a vast universe, we are all both trustees and beneficiaries of all natural resources, especially its waters—without which we will cease to exist.

ACCORDINGLY, with these qualifications, I vote to **DENY** the Petition.

MARVIC M.V.F. LEONEN
Associate Justice

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[32] Id. at 557.