G.R. No. 213207 – Republic of the Philippines, *petitioner*, v. Pasig Rizal Co., Inc., *respondent.*

Promulgated: February 15, 2022

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SEPARATE CONCURRING OPINION

GAERLAN, *J.*:

"There is no running away from history. It shapes our reality, and as time goes by, we become a part of it ourselves..."[1]

I concur in the *ponencia*. I submit this opinion to provide a fuller discussion of the constitutional concept of *public domain*, its relation to the civil law concept of *public dominion*, and the implications of the legal act of declaring lands of the public domain as *alienable and disposable*.

I.

Philippine constitutional law recognizes three fundamental forms of title to land. The first is private title;[2] the second, indigenous title;[3] and the third, state dominion. State dominion is a derivation of the Regalian doctrine, which in turn is the medieval political notion that the sovereign "possessed the prerogative or the right in the property of private persons as well as in all public lands."[4] As conceptualized in Philippine constitutional law, the principle of state dominion over lands is now based on the following principles: 1) popular national ownership of natural resources; 2) eradication of caciquism, absentee landlordism, and other forms of land accumulation abuses; 3) multiplication of landowners and encouragement of smallholding in land; 4) conservation of natural resources through

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1 From Grzegorz Górny and Janusz Rosikoń, VATICAN SECRET ARCHIVES: UNKNOWN PAGES OF CHURCH HISTORY (2020), as quoted in Piotr Gursztyn, "Vatican Secret Archives" (Peter Obst, trans.), in New Books from Poland Fall 2020, p. 38 (2020, Polish Book Institute). Accessed June 19, 2021 at https://instytutksiazki.pl/download.php?path=sections/catalogs&file=499dafc9878b162bfa59fd2e81edf9a01603704279.pdf&name=nbfp%202020%20fall.pdf (archive link: https://archive.is/fl6p1).

2 CONSTITUTION, Article II, Sections 20 and 21; Article III, Section 1; Article XII, Sections 3, 6, 7, and 8. This includes rights to land dating back to the Spanish occupation or from time immemorial. *Republic v. Cosalan*, 835 Phil. 649 (2018); *Republic v. Court of Appeals and Cosalan*, 284 Phil. 575 (1992); *Republic v. Court of Appeals and Paran*, 278 Phil. 1 (1991); *Abaoag v. Director of Lands*, 45 Phil. 518, 520 (1923); *Tan Yungquip v. Director of Lands*, 42 Phil. 128 (1921); *Cariño v. Insular Government*, 212 U.S. 449 (1909).

3 CONSTITUTION, Article II, Section 22; Article XII, Section 5; Republic Act No. 8371; concurring opinion of Leonen, *J.*, in *Sama v. People*, G.R. No. 224469, January 5, 2021.

4 H. Lawrence Noble, REGALIAN THEORY REVIVED IN PHILIPPINES, 9 American Bar Association Journal (No. 1) 13-14 (1923), accessed June 10, 2021 at https://www.jstor.org/stable/25711111?refreqid=excelsior%3A91b100f99a18782aed1f6da6235516ba&seq=1#metadata_info_tab_contents.

government regulation; and 5) national defense through control of natural resources.[5] The principle of state dominion is enshrined in Article XII, Sections 2 and 3 of the Constitution, *viz.*:

> Section 2. All lands of the public domain x x x 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. x x x
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> 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 to 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.
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> 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.

The 1986 Constitutional Commission deliberately retained the term "*public domain*," which was also used in the 1935 and 1973 constitutions, to refer to lands which are owned by the government under the principle of state dominion.[6] Furthermore, Article XII, Section 3, in regulating the disposition of such lands, consistently uses the modifying phrase "*of the public domain*" in describing the "alienable and disposable" or "agricultural" lands being distributed under said provision.

II.A.

The phrase *public domain* first entered Philippine statute books in 1901, when the American-constituted Philippine Commission created the Bureau of Public Lands through Act No. 218. Section 1 of said law provided:

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5 Vicente G. Sinco, PHILIPPINE POLITICAL LAW 376-378 (1949); II Hector S. De Leon and Hector M. De Leon, Jr., PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES 965-966 (2017), citing Report of Committee on Nationalization and Preservation of Lands and other Natural Resources, 1935 Constitutional Convention.

6 3 RECORD OF THE CONSTITUTIONAL COMMISSION (No. 063, August 22, 1986) 596-597 (1990).

> SECTION 1. There is hereby created, under the Department of the Interior, an Insular Bureau of Public Lands, which shall have charge of all of the **public domain** of the Government of the Philippine Islands, except so far as control thereof may be necessary to the functions of the Forestry and Mining Bureaus, which shall not be affected by this Act. Under the supervision of the Bureau of Public Lands shall be executed all instruments for the sale or conveyance of the **public lands** when authorized by law.

The Philippine Bill of 1902, which served as the basic law of the Philippines at that time, then authorized the government to classify and dispose of—*i.e.*, *render capable of being transferred to the ownership of another*—lands of the **public domain** under *terms and conditions embodied in a general law enacted for such purpose*, *viz.*:

> SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its **agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands**, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.
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> SECTION 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to **public lands** in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.
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> SECTION 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such **parts and portions of the public domain, other than timber and mineral lands**, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial

payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents.

SECTION 16. That in granting or selling any part of the **public domain** under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any other person without the consent thereto of said prior occupant or settler first had and obtained: Provided, That the prior right hereby secured to an occupant of land, who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract.

Pursuant to this grant of power, the Philippine Commission, on October 7, 1903, enacted the first Public Land Act (Act No. 926, hereinafter referred to as the PLA I), which allowed the disposition of lands of the public domain through homestead, sale, and lease. Sections 1, 10, and 22 thereof stated:

CHAPTER I
Homesteads on the **Public Domain**

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of **unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands**, as defined by the Act of Congress of July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands, shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said Islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

CHAPTER II
Sales of Portions of the **Public Domain**

SECTION 10. Any citizen of the Philippine Islands, or of the United States or of any insular possession therefor, or any corporation or like association of persons organized under the laws of the Philippine Islands or of the United States or any state, territory, or insular possession thereof, and authorized to transact business in the Philippine Islands, may purchase any tract of **unoccupied, unappropriated and unreserved non-**

> **mineral agricultural public land** in the Philippine Islands, as defined in the Act of Congress of July first, nineteen hundred and two, not to exceed sixteen hectares for an individual or one thousand and twenty-four hectares for an individual or one thousand and twenty-four hectares for a corporation or like association, by proceeding as hereinafter provided in this chapter, *provided*, that no association of persons not organized as above and no more partnership shall be entitled to purchase a greater quantity than will equal sixteen hectares for each member thereof.
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> CHAPTER III
> Leases of Portions of the **Public Domain**
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> SECTION 22. Any citizen of the United States, or of the Philippine Islands, or of any insular possession of the United States, or any corporation or association of persons organized under the laws of the Philippine Islands, or of any state, territory, or insular possession thereof, authorized by the laws of its creation and any by the laws of the Philippine Islands and the Acts of Congress applicable thereto to transact business in the Philippine Islands, may lease any tract of **unoccupied, unreserved, nonmineral agricultural public lands**, as defined by sections eighteen and twenty of the Act of Congress approved July first, nineteen hundred and two providing a temporary government for the Philippine Islands, and so forth, not exceeding one thousand and twenty-four hectares, by proceeding as hereinafter in this chapter indicated; *Provided*, That no lease shall be permitted to interfere with any prior claim by settlement or occupation until the consent of the occupant or settler is first had and obtained, or until such claim shall be legally extinguished; *And provided, further*, That no corporation or association of person shall be permitted to lease lands hereunder which are not reasonably necessary to enable it to carry one the business for which it was lawfully created and which it may lawfully pursue in the Philippine Islands.

The PLA I, in setting forth the rules on lease, sale, and acquisition of "homesteads on" or "portions of the public domain," referred to **unoccupied, unreserved, nonmineral agricultural public lands**. Stated differently, the PLA I deliberately defined its area of application, *i.e.*, the "*public domain*," to be "**unoccupied, unreserved, nonmineral agricultural public lands**."

In 1919, under the regime of the Philippine Autonomy Act,[7] the Philippine Legislature passed Act No. 2874 (hereinafter referred to as the PLA II), which repealed the PLA I and introduced several important changes to the public land management system. The PLA II provides for the following modes of acquiring public land:

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7 More popularly known as the Jones Act, Public Law 64-240, 39 Stat. 545 (1916).

CHAPTER IV
Homesteads

SECTION 12. Any citizen of the Philippine Islands or of the United States, over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in said Islands or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippine Islands by the United States, may enter a homestead or not exceeding twenty-four hectares of **agricultural land of the public domain**.

CHAPTER V
Sale

SECTION 23. Any citizen of lawful age of the Philippine Islands or of the United States, and any such citizen not of lawful age who is head of a family, and any corporation or association of which at least sixty-one per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippine Islands or of the United States, and which is organized and constituted under the laws of the Philippine Islands or of the United States or of any State thereof and authorized to transact business in the Philippine Islands, and corporate bodies organized in the Philippine Islands authorized under their charters to do so, may purchase any tract of **public agricultural land disposable under this Act,** not to exceed one hundred and forty-four hectares in the case of an individual and one thousand and twenty-four hectares in that of a corporation or association, by proceeding as prescribed in this chapter[.]

CHAPTER VI
Lease

SECTION 34. All citizen of lawful age of the Philippine Islands or of the United States and any corporation or association of which at least sixty-one *per centum* of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippine Islands or of the United States, and which is organized and constituted under the laws of the Philippine Islands or of the United States or of any State thereof and authorized to transact business in the Philippine Islands, may lease any tract of **agricultural public land** available for lease **under the provisions of this Act**, not exceeding a total of one thousand and twenty-four hectares: x x x

Corporations or associations not having all and each of the requirements established in the preceding paragraph of this section may, with the express authorization of the Legislature, lease **agricultural public lands** available for lease the total area of which shall not exceed one thousand and twenty-four hectares.

CHAPTER VII
Free Patents

SECTION 41. Any native of the Philippine Islands who is not the owner of more than twenty-four hectares, and who since July fourth, nineteen hundred and seven, or prior thereto, has continuously occupied

and cultivated, either by himself or through his predecessors in interest, a tract or tracts of **agricultural public land subject to disposition**, shall be entitled under the provisions of this chapter, to have a free patent issued to him for a tract or tracts of such land not to exceed twenty-four hectares in all.

CHAPTER VIII
Judicial Confirmation of Imperfect or Incomplete Titles

SECTION 45. The following described citizens of the Philippine Islands and the United States, occupying **lands of the public domain** or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of **lands of the public domain** under the laws and royal decrees then in force and have instituted had prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have complied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of **agricultural lands of the public domain**, under a bona fide claim of acquisition of ownership except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

CHAPTER IX
Classification and Concession of Public Lands Suitable for Commerce and Industry

SECTION 55. Any tract **of land of the public domain which, being neither timber nor mineral land, shall be classified as suitable for residential purposes or for commercial, industrial, or other productive purposes or for commercial, industrial, or other productive purposes other than agricultural purposes**, and shall be open to disposition or concession, shall be disposed of under the provisions of this chapter, and not otherwise.

While the PLA II removed the reference to "unoccupied, unreserved, nonmineral agricultural public lands," it nevertheless retained the term "public" as the key descriptor for the lands under its ambit, thus: "agricultural land of the **public** domain" (Section 12), "**public** agricultural

land disposable under this Act" (Section 23), "agricultural **public** land" (Sections 34 and 41), and "[agricultural] lands of the **public** domain" (Sections 45 and 55). Moreover, it retains the concept of "**public domain**" as its realm of operation (Sections 1-10) without providing for an express definition thereof.

By the 1930s, the concept of *public domain* had firmly taken root in our jurisprudence, so much so that the 1935 Constitution incorporated the concept into the enunciation of the state dominion principle, *viz.*:

> SECTION 1. All **agricultural**, timber, and mineral **lands of the public domain**, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of **public agricultural land**, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.
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> SECTION 2. No private corporation or association may acquire, lease, or hold **public agricultural lands** in excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.[8]

Barely a year after the ratification of the 1935 Constitution, the Philippine Legislature passed Commonwealth Act No. 141 or the PLA III, which repealed the PLA II. The PLA III, which continues to be the prevailing law on public land disposition, essentially retains the modes of acquisition of public land first introduced in the PLA II.[9] It also retains the terms "*public*" and "*public domain*" as the key thematic descriptors for lands within its coverage.

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8 1935 CONSTITUTION, Article XIII.

9 *Secretary of the Department of Environment & Natural Resources v. Mayor Yap*, 589 Phil. 156, 181 (2008); Separate Opinion of Associate Justice (later Chief Justice) Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 941 (2000).

The aforecited provisions clearly illustrate the consistent use of the term ***public domain*** as the key descriptor for lands pertaining to the government under the principle of state dominion. The term is used not only in all the major public land laws of the Philippines under the American regime, but also in numerous other statutes from that period.[10] Such was the prevalence and persistence of the concept in the statute books that the 1934 Constitutional Convention integrated it into Article XIII, Sections 1 and 5 of the 1935 Constitution; and it is now retained in the present Constitution.

II.B.

As mentioned in the previous section, the term *public domain* was introduced into Philippine jurisprudence during the American regime. In American law, *public domain* has two interrelated meanings. In its regular usage, it denotes "government-owned land" in general.[11] An 1881 report commissioned by the United States House of Representatives states:

> The public domain embraces the area of the lands now owned or heretofore disposed of by the United States in nineteen States and eleven Territories and parts of Territories, and known as the land States and

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10 Act No. 554, Section 13 (1902); Act No. 648 (1903); Act No. 703, Section 13(a) (1903); Act No. 1111, Sections 11 & 15 (1904); Act No. 1224, Section 1 (1904); Act No. 1258, Section 2 (1904); Act No. 1448, Sections 11 & 15 (1906); Act No. 1459, Sections 56 & 86 (1906); Act No. 1497, Section 1 (1906); Act No. 1510, Section 1 (1906); Act No. 1700, Section 2(a) (1907); Act No. 1835, Section 2 (1908); Act No. 2053, Section 1 (1911); Act No. 2062, Section. 4 (1911); Act No. 2273, Section 1 (1913); Act No. 2273, Section 1 (1913); Act No. 2281 (1913); Act No. 2282, Section 8(a) (1913); Act No. 2286 (1913); Act No. 2373, Section 1 (1914); Act No. 2361, Sectios 1 & 2 (1914); Act No. 2384, Section 2 (1914); Act No. 2485, Section 14(b) (1915); Act No. 2544 (1916); Act No. 2643, Section 10 (1916); Act No. 2662, Section 1 (1916); Act No. 2657, Sectios 80(d) & 977 (1916); Act No. 2711, Sections 64, 1838, 1844, 2089(g), 2753(b) & (c) (1917); Act No. 2719, Section 1 (1917); Act No. 2722 (1917); Act No. 2765, Section 8(a) (1918); Act No. 2777, Section 2 (1918); Act No. 2836, Section 1 (1919); Act No. 2848, Section 11 (1919); Act No. 3077, Sections 1 & 4 (1923); Act No. 3059, Section 1 (1923); Act No. 3178, Section 2 (1924); Act No. 3211, Section 1 (1924); Act No. 3399, Section 1 (1927); Act No. 3447, Section 3 (1928); Act No. 3518, Section 22 (1928); Act No. 3608 (1930); Act No. 3672, Section 1 (1930); Act No. 3673, Section 1 (1930); Act No. 3819 (1931); Act No. 3852, Sections 1 & 2 (1931); Act No. 3915, Section 1 (1932); Act No. 3982, Section 1 (1932); Act No. 4043, Section 1 (1933); Act No. 4062 (1933); Act No. 4107, Section 4 (1933); and Act No. 4195, Section 1 (1935).

11 BLACK'S LAW DICTIONARY (9th edition) 1349 (2009). The concept of *public domain* has its roots in the Roman law concepts of *ager publicus* (public lands acquired through conquest by the Roman government which were made available to Roman citizens. Saskia T. Roselaar, PUBLIC LAND IN THE ROMAN REPUBLIC: A SOCIAL AND ECONOMIC HISTORY OF AGER PUBLICUS IN ITALY, 396–89 BC 1-2, 86-144 [2010]) and *dominium* (the Roman law concept of ownership which "indicated a full and absolute ownership or lordship over some subjected thing," including the powers and rights associated therewith. Daniel Lee, PRIVATE LAW MODELS FOR PUBLIC LAW CONCEPTS: THE ROMAN LAW THEORY OF DOMINIUM IN THE MONARCHOMACH DOCTRINE OF POPULAR SOVEREIGNTY, 70 The Review of Politics 370, 378 [2008]. Accessed May 23, 2021 at https://www.jstor.org/stable/20453014; Max Radin, FUNDAMENTAL CONCEPTS OF THE ROMAN LAW, 13 CAL. L. REV. (No. 3) 207, 210-215 (1925), accessed on June 10, 2021 at https://www.jstor.org/stable/3475643?refreqid=excelsior%3Aa10bbc96485881d40d91b2c8b7bb6ab5&seq=1#metadata_info_tab_contents; Lorenzo F. Miravite, HANDBOOK FOR ROMAN LAW 148-150 [1991]). Shosuke Sato, HISTORY OF THE LAND QUESTION IN THE UNITED STATES 10-14 (1886). Electronic book accessed on June 10, 2021 at https://archive.org/details/historylandques00satgoog/page/n4/mode/2up.

> Territories x x x, the United States being the sole owner of the soil, with entire and complete jurisdiction over the same. x x x[12]

In 1886, a Japanese scholar who was sent to the United States by the Japanese government "to investigate certain questions of agrarian and economic interest"[13] described the development of the public domain of the United States as follows:

> The public domain of the United States was acquired through cession, purchase, and conquest. Its acquisition had been precipitated by a combination of varied political and economical [sic] considerations. The desire of firm union and the safety of the whole confederacy peacefully terminated the disputed claims of the larger States to the western lands. The prospect of fishery and the development of natural resources must have prompted the action of President Johnson's administration in the purchase of Alaska. The first acquisition of public land took place on March 1, 1781, and the last acquisition on March 30, 1867. x x x[14]

This gradual accumulation of land by the United States federal government, which started with the cession of western lands by the thirteen founding states from 1785 to 1802,[15] then later followed by the Louisiana Purchase of 1803, the Florida Purchase of 1820, the annexation of Texas in 1845, the acquisition of Mexican lands through the 1848 Treaty of Guadalupe Hidalgo and the Gadsden Purchase of 1853, and concluded by the acquisition of Alaska (through an 1867 treaty with Russia) and Hawaii (through annexation in 1898),[16] had far-reaching effects. A senior official in the United States Department of the Interior pointed out that:

> Cession of the western lands probably did more to build a solid base of unity for the Nation than was realized at the time. The significance of this action was not so much the material gain to the Nation of the real estate itself, but the intangible contribution it made by giving the Nation something which was now held in common and could be used for the

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12 Public Land Commission and Thomas Donaldson, THE PUBLIC DOMAIN: ITS HISTORY WITH STATISTICS (1881), p. 13. Electronic book accessed on June 16, 2021 at https://archive.org/details/publicdomainits00donagoog/page/13/model/up (more commonly known as the Donaldson Report).

13 Shosuke Sato, supra note 11 at i.

14 Id. at 21.

15 Id. at 40.

16 Id. at 21-75. More detailed accounts of the territorial expansion of the public domain of the United States are found in Public Land Commission and Donaldson, supra note 12 at 89-163; Payson Jackson Treat, THE NATIONAL LAND SYSTEM, 1785-1820 (1910); Malcolm J. Rohrbough, THE LAND OFFICE BUSINESS: THE SETTLEMENT AND ADMINISTRATION OF AMERICAN PUBLIC LANDS, 1789-1837 (1968); Roy Marvin Robbins, OUR LANDED HERITAGE: THE PUBLIC DOMAIN, 1776-1936 (1942), electronic copy accessed July 1, 2021 at http://reader.library.cornell.edu/docviewer/digital?id=chla2890744#page/3/mode/1up; and Paul Frymer, BUILDING AN AMERICAN EMPIRE: THE ERA OF TERRITORIAL AND POLITICAL EXPANSION (2017).

> common good. A property right had been created in an entity which was more than a single state.
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> The estimated 222 million acres which were involved in this transaction was small in comparison with what would later become part of the public domain. At one time or another, the federal government has held title to 1.8 billion acres of land, or nearly ninety-five per cent of the acreage of the Nation exclusive of Alaska and Hawaii. Today, the federal government holds title to nearly 21.8 per cent of the land in the oldest forty-eight States and to about 99.7 per cent of the land in Alaska.[17]

This mass distribution of lands of the public domain has become one of the hallmark sagas of American history. It involved protracted political and legal struggles among the federal government, the state governments, private companies, land speculators, farmers, settler associations, military veterans,[18] indigenous inhabitants of the North American continent, among other parties.[19] This massive program for the distribution of the lands acquired by the federal government, which was regulated through legislation,[20] became the matrix which engendered the second definition of the term *public domain*, thus:

> The lands owned by the federal government are generally classified as either "public domain" or "reserved" lands. **The public domain includes lands open to settlement, public sale, or other disposition under the federal public land laws, and which are not exclusively dedicated to any specific governmental or public purpose**. See, e.g., *Federal Power Commission v. Oregon*, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215 (1955); *United States v. Minnesota*, 270 U.S. 181, 46 S.Ct. 298, 70 L.Ed. 539 (1926). **Public domain lands are, for the most part, managed by the United States Department of the Interior through its Bureau of Land Management.** Reserved lands are those that have been expressly withdrawn from the public domain by statute, executive order, or treaty, and are dedicated to a specific federal purpose. Pursuant to the authority vested in the United States by Article IV, Section 3 of the United States Constitution, Congress has frequently acted to reserve or withdraw lands from the public domain or to empower the President or his delegate to do so. See *United States v. New Mexico*, 438 U.S. 696, 98 S.Ct. 3012, 57 L.Ed. 2d 1052 (1978); *United States v. Midwest Oil Co.*, 236 U.S. 459, 35 S.Ct. 309, 59 L.Ed. 673 (1915). Among these reservations are national forests, national parks, national monuments, public springs and

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17 R. B. Held, WHOSE PUBLIC LANDS?, 7 Nat. Resources J. 153, 155-156 (1967). Accessed June 16, 2021 at https://digitalrepository.unm.edu/nrj/vol7/iss2/2.

18 The earliest distributions of lands of the public domain were made to officers and soldiers of the Continental Army. Shosuke Sato, supra note 11 at 131.

19 See Shosuke Sato, supra note 11 at 21-75; Public Land Commission and Thomas Donaldson, supra note 12; Paul W. Gates, THE JEFFERSONIAN DREAM: STUDIES IN THE HISTORY OF AMERICAN LAND POLICY AND DEVELOPMENT (1996); John D. McGowan, THE DEVELOPMENT OF POLITICAL INSTITUTIONS ON THE PUBLIC DOMAIN, 11 WYO. L.J. 1 (1956), Accessed June 11, 2021 at https://scholarship.law.uwyo.edu/wlj/vol11/iss1/1; Farris W. Cadle, GEORGIA LAND SURVEYING HISTORY AND LAW (1991); Vernon R. Carstensen (ed.), THE PUBLIC LANDS: STUDIES IN THE HISTORY OF THE PUBLIC DOMAIN (1968).

20 See Public Land Commission and Donaldson, supra note 12 at 209-239, 256-415.

> waterholes, and public mineral hot springs. x x x[21] (Emphasis and underlining supplied, citations omitted)
>
> The terms "public lands" and "public domain," which are regarded as synonymous, do not include all the land owned by the United States or the states. **Such terms are habitually used in the United States to designate such lands of the United States or of the states as are subject to sale or other disposal under general laws, and are not held back or reserved for any special governmental or public purpose**, and do not include lands to which rights have attached and become vested through full compliance with an applicable land law.[22] (Emphasis and underlining supplied, citations omitted)

The constitution of the United States, like ours, vests in the legislature the power to control lands of the public domain.[23] Thus:

> No appropriation of public lands may be made for any purpose except by authority of Congress. However, Congress was held to have acquiesced in the long-continued practice of withdrawing land from the public domain by Executive Orders. In 1976 Congress enacted legislation that established procedures for withdrawals and that explicitly disclaimed continued acquiescence in any implicit executive withdrawal authority. The comprehensive authority of Congress over public lands includes the power to prescribe the times, conditions, and mode of transfer thereof and to designate the persons to whom the transfer shall be made, to declare the dignity and effect of titles emanating from the United States, to determine the validity of grants which antedate the government's acquisition of the property, to exempt lands acquired under the homestead laws from previously contracted debts, to withdraw land from settlement and to prohibit grazing thereon, to prevent unlawful occupation of public property and to declare what are nuisances, as affecting such property, and provide for their abatement, and to prohibit the introduction of liquor on lands purchased and used for an Indian colony. Congress may limit the disposition of the public domain to a manner consistent with its views of public policy. x x x[24] (Citations omitted)

During this "frontier era" in the history of the United States, the United States federal government enacted numerous statutes and executive issuances regulating the public domain,[25] the most significant of which are: 1) the donation and land grant acts, through which portions of the public domain were distributed *gratis* for settlement, irrigation, road-building,

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21 *United States v. City and County of Denver*, 656 P.2d 1 (Supreme Court of Colorado) (1982).

22 73 C.J.S. §1, p. 647.

23 U.S. CONSTITUTION, Article IV, Section 3, paragraph 2.

24 Congressional Research Service, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 988-989 (2017). Accessed May 13, 2021 at https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf. Citations omitted.

25 For a full account of the various policies for the distribution of the United States' public domain, see Public Land Commission and Thomas Donaldson, supra note 12; Shosuke Sato, supra note 11; and works cited in footnotes 15 and 18, supra.

school and railroad construction, among others;[26] 2) the Pre-emption Acts, which gave settlers in lands of the public domain a pre-emptive right to the lands they were occupying;[27] and 3) the Homestead Acts, which allowed American citizens to enter into and acquire title to government lands, subject to the requirement that the applicant shall personally occupy and cultivate the land.[28] At this point in time, clearly, the American land law regime favored distribution of the public domain as the general rule, and conservation thereof as the exception.

The basic principle of allowing settlers to acquire title to portions of unreserved government lands essentially through occupation and cultivation for a certain amount of time[29] was carried over to this jurisdiction through the PLA I,[30] as illustrated by a comparison of the provisions of the Homestead Act of 1862 and the PLA I:

Homestead Act of 1862	PLA I
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States**, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne	SECTION 1. **Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands**, as defined by the Act of

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26 Public Land Commission and Thomas Donaldson, supra note 12 at 209-213 (donations and grants to specific groups and persons); 223-237 (educational land grants, military, and naval land bounties); 257-288 (canal, wagon, and railroad grants); 295-297 (general grant of lands to settlers in East Florida, Oregon, Washington, and New Mexico Territories).

27 Shosuke Sato, supra note 11 at 159-167; Malcolm J. Rohrbough, supra note 16 at 200-220. In Public Land Commission and Thomas Donaldson, supra note 12 at 214: "This pre-emption or preference right thus first established was a step toward abolishing the sale of unoffered land, and giving a settler the first right or preference as against a person desiring to purchase and hold for investment or speculation. The essential conditions of a pre-emption are actual entry upon, residence in a dwelling, and improvement and cultivation of a tract of land. The several pre-emption acts give a preference to the settlers. Pre-emption is a premium in favor of and condition for making permanent settlement and a home. It is a preference for actual tilling and residing upon a piece of land." Another author described it as "the right to settle on and improve unappropriated public lands and later buy them at the minimum price without compensation," which was first granted in a general manner in 1841. Owen J. Lynch, COLONIAL LEGACIES IN A FRAGILE REPUBLIC: A HISTORY OF PHILIPPINE LAND LAW AND STATE FORMATION WITH EMPHASIS ON THE EARLY U.S. REGIME, 1898-1913 391, fn. 5 (2011), citing Benjamin H. Hibbard, A HISTORY OF PUBLIC LAND POLICIES 144 (1939).

28 Homestead Act of 1862, 12 Stat. 392 (1862), Sections 1-3. Accessed June 17, 2021 at http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/llsl012.db&recNum=0423.

29 Shosuke Sato, supra note 11 at 176; John Bell Sanborn, SOME POLITICAL ASPECTS OF HOMESTEAD LEGISLATION, 6 The American Historical Review (No. 1) 19 (1900), accessed June 16, 2021 at https://www.jstor.org/stable/1834687?seq=1#metadata_info_tab_contents.

30 Owen J. Lynch, supra note 27 at 389-390, citing Roy Marvin Robbins, supra note 16 (1950 ed.) and Benjamin H. Hibbard, supra note 27.

arms against the United States Government or given aid and comfort to its enemies, **shall, from and after the first January, eighteen hundred and. sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands**, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: Provided, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.	Congress of July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands, shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.
SEC. 2. And be it further enacted, That the person applying for the benefit of this act shall, **upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual**	SECTION 2. Any person applying to enter land under the provisions of this chapter **shall file with such officer as may be designated by law as local land officer, or in case there be no such officer than with the Chief of the Bureau of Public Lands, an application under oath showing that he has the qualifications required under section one of this chapter, and that he possesses none of the disqualifications there mentioned that such application is made for his exclusive use and benefits: that the same is made for the purpose of actual settlement and cultivation, and not either directly or indirectly, for the use or benefit of any other**

settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: Provided, however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne rue allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: **And provided, further, That in case of the death of both father and mother, leaving an Infant child, or children, under twenty-one years of age, the right and fee shall ensure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being**	**person, persons, corporation or association of persons; that the land applied for is non-mineral, does not contain valuable deposits of coal or salts, is more valuable for agricultural than forestry purposes, and is not occupied by any other person**; and showing the location of the land by stating the province, municipality, and barrio in which the same is situated, and as accurate a description as may be given, showing the boundaries of the land, having reference to natural objects and permanent monuments, if any. Upon the filing of said application the Chief of the Bureau of Public Lands shall summarily determine, by inquiry of the Chief of the Bureau of Forestry and from the available land records, whether the land described is *prima facie* subject under the law to homestead settlement, and, if he shall find nothing to the contrary, the applicant, upon the payment of ten pesos, Philippine currency, shall be permitted to enter the quantity of land specified, *provided, however*, that the option of the applicant, payment of said entry fee and of the fee prescribed in section three hereof may be made it five annual installments of four pesos each. These payments may be made to the municipal treasurer of the locality who, in turn, shall forward to the provincial treasurer the amounts received on this account. In case of the delinquency of the applicant in the payment of any said installments, thirty days after having become delinquent, he shall lose *ipso facto* his rights to the land in question, shall not be entitled to the reimbursement of the installments which he may have paid, and the land shall

have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.	become vacant and open to entry by another.
	SECTION 3. No certificate shall be given or patent issued for the land applied for until the expiration of five years from the date of filing of the application; and if, at the expiration of such time, or at any time within three years thereafter, the person filing such application shall prove by two credible witnesses that he has resided upon the land for the last two years immediately preceding the day of such proof, and cultivated the land for the term of five years immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has borne true allegiance to the Government of the United States and that of the Philippine Islands, then, upon payment of a fee of ten pesos, Philippine currency, or upon the payment of the last of the five installments provided for in section two, to such officer as may be designated by law as local land officer, or in case there be no such officer then to the Director of Lands, he shall be entitled to a patent, **provided, however, That in the event of the death of an applicant prior to the issuance of a patent his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands as above set out; and in case the**

	applicant dies before the issuance of the patent and does not leave a widow, then the interest of the applicant in the land shall descend and patent shall issue to the persons who under the laws of the Philippine Islands would have taken, had the title been perfected by patent before the death of the applicant, upon proof, by the persons thus entitled, of compliance with said requirement and conditions. (As amended by Act No. 1864.)

Likewise, the PLA I incorporates in its chapter on "Free Patents"[31] another variation on the homestead principle which allows for the recognition of time immemorial occupation of lands by natives of the Philippines, still subject to the basic requirement of an application filed before the pertinent land administration office and subject to investigation of the claim.[32]

In the 1909 case of *Montano v. Insular Government*[33] *(Montano)*, which involved the registration of a fishpond, this Court ruled that the concept of *public domain* as used in the Philippine Bill of 1902 and the PLA I corresponds to the aforementioned "frontier" American definition of *public domain* as unreserved public lands that have been opened to settlement,[34] *viz.*:

> The point decided was that such land within the meaning of the Act of Congress of July 1, 1902, was agricultural, the reasoning leading up to that conclusion being that Congress having divided all the public lands of the Islands into three classes it must be included in one of the three, and being clearly neither forest nor mineral, it must of necessity fall into the division of agricultural land. In the concurring opinion, in order to avoid misapprehension on the part of those not familiar with United States land legislation and a misunderstanding of the reach of the doctrine, **it was pointed out that under the decisions of the Supreme Court of the United States the phrase "public lands" is held to be equivalent to "public domain," and does not by any means include all lands of Government ownership, but only so much of said lands as are thrown open to private appropriation and settlement by homestead and other**

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31 ACT NO. 926, Sections 32-35.

32 Id., Sections 33-34.

33 12 Phil. 572 (1909).

34 *Montano v. Insular Government,* id., also cited in the concurring opinion of Puno, *J.* in *Cruz v. Secretary of Environment and Natural Resources* (resolution on motion for reconsideration), 400 Phil. 904, 940 (2000).

> **like general laws.** Accordingly, ***"government land" and "public land" are not synonymous terms; the first includes not only the second, but also other lands of the Government already reserved or devoted to public use or subject to private right. In other words, the Government owns real estate which is part of the "public lands" and other real estate which is not a part thereof***.
>
> This meaning attached to the phrase "public lands" by Congress in its land legislation is settled by usage and adjudication beyond a doubt, and without variation. It is therefore doing the utmost violence to all rules of construction to contend that in this law, dealing with the same subject-matter in connection with these Islands, a different meaning had, without indication or motive, been imported into the words. They can not have one meaning in every other statute and a different and conflicting meaning in this statute. Where property in general is referred to therein, other and apt phrases are used in order to include it; for instance, section 12 [of the Philippine Bill of 1902] provides "that all the *property and rights* which may have been acquired in the Philippine Islands by the United States . . . are hereby placed under the control of the Government of the said Islands." Therefore, there is much real property belonging to the Government which is not affected by statutes for the settlement, prescription or sale of public lands. Examples in point are properties occupied by public buildings or devoted to municipal or other governmental uses.[35] (Emphasis, underlining and italics supplied)

A mere three months after *Montano*, this Court, deciding a case involving the applicability of Section 54, No. 6 of the PLA I, reiterated the ruling therein, *viz.*:

> Given the above legal provisions and the data contained in the record, it is seen that the land, the registration of which is claimed, was of the class of **vacant crown or public land which the State could alienate to private persons**, and being susceptible of cultivation, since at any time the person in possession desired to convert it into agricultural land he might do so in the same manner that he had made a building lot of it, **it undoubtedly falls within the terms of the said Act of Congress, as well as the provisions of the above-cited section 54 and paragraph 6 thereof of Act No. 926**, for the reason that the said land is neither mining nor timber land.[36] (Emphasis and underlining supplied)

As earlier demonstrated, the PLA II and the still-prevailing PLA III retain the use of the term *public domain*. Both iterations likewise retain the provisions on homesteads and free patents as legacy implementations of the homestead principle.[37]

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35 Id. at 574-575.

36 *Ibañez de Aldecoa v. Insular Government*, 13 Phil. 159, 163 (1909).

37 ACT NO. 2874, Chapter IV on "Homesteads" and Chapter VII on "Free Patents"; Commonwealth Act No. 141, Chapter IV on "Homesteads" and Chapter VII on "Free Patents."

Turning back to the United States, when the "frontier" phase of American history came to a close, the United States Congress started to close the public domain to further disposition,[38] marking a reversal of policy whereby conservation of state-owned lands became the general rule and distribution thereof became the exception. In 1934, the Taylor Grazing Act reserved all remaining available public domain lands pending their reclassification;[39] and in 1976, the Federal Land Policy and Management Act[40] repealed all homestead and public land disposal laws in the contiguous United States.[41] Thus, upon the close of the frontier era, with the wealth of the United States secured after its industrialization and rise as an imperial world power, and in line with a policy shift in favor of the conservation of the natural environment,[42] the American legal conception of the *public domain* returned to its original roots as an all-embracing term for all government lands, *i.e.*, lands belonging to the State under the principle of state dominion.[43]

As earlier mentioned, this conservationist trend persists in the 1935 and 1987 Constitutions, both of which explicitly lay down conservation of state-owned lands as the rule, and the distribution thereof as the exception.

The foregoing discussion illustrates the historical antecedents of the concept of the *public domain,* with special focus on its development in the United States and its later transplantation into Philippine jurisprudence. The concept of *public domain* was introduced into this jurisdiction at a time when *distribution of state-owned land was the rule and conservation thereof was the exception*. The continued use of the term *public domain* in subsequent Philippine public land legislation after the PLA I and its subsequent enshrinement in the 1935 and 1987 Constitutions clearly demonstrates the constitutional intention to continue using the concept — including the historical context and the legal significations thereof — as a key component of our land regulation regime, even if that land regulation regime is at odds with the initial legal context in which the concept was first introduced to this jurisdiction.

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38 David H. Getches, MANAGING THE PUBLIC LANDS: THE AUTHORITY OF THE EXECUTIVE TO WITHDRAW LANDS, 22 Nat. Resources J. 279, 281-287 (1982), accessed June 11, 2021 at https://core.ac.uk/download/pdf/151600234.pdf; Roy Marvin Robbins, supra note 16 at 398-423; Congressional Research Service, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, supra note 24. See also 42 AM. JUR. §1 (1942).

39 R. B. Held, supra note 17 at 156; David H. Getches, id. at 280.

40 Pub. L. 94–579, 90 Stat. 2743, 43 U.S.C. ch. 35 § 1701 et seq. Accessed June 19, 2021 at https://www.govtrack.us/congress/bills/94/s507/text.

41 Sections 702 and 703.

42 David H. Getches, supra note 38 at 283-284; Roy Marvin Robbins, supra note 16.

43 BLACK'S LAW DICTIONARY (9th ed.) 1349 (2009).

III.

Having established the meaning of the concept of the *public domain*, we now proceed to an inquiry into its relation with the civil law concept of *public dominion*. On this point, the draft *ponencia* opines:

> While the Civil Code adopts the term "public dominion" instead of "public domain" as employed in the Constitution, both these terms refer to property subjected to the control of the State. The distinction appears to lie in usage, for while dominion is understood to pertain to "perfect control in right of ownership", domain may be alternatively understood as the subject of such right, as in "the real estate so owned". (Corollary to this, it has also been observed that "property of public domain" is not used [in the Civil Code] in the sense of ownership by the State, but a right of property which carries with it juridical prereogatives [*sic*] in favor of the State.) To be sure, the term "public dominion" presently adopted in the Civil Code originates from the term "dominio publico" which also refers to "public domain" under the pertinent Articles of the Spanish Civil Code of 1889 x x x.
>
> There is no doubt that forest lands, timber lands, mineral lands, and national parks which are lands of the public domain under the Constitution fall under property of public dominion under Article 420(2) of the Civil Code, as do agricultural lands. Clearly, public land that is classified as agricultural (and subject to the State's current or intended use) is property of public dominion. x x x[44]

Public domain, as used in the Constitution, can either mean all State-owned lands as a whole; or the subset of these lands which have been set aside for disposition. Meanwhile, *public dominion*, as used in the Civil Code provisions on property, has a distinct signification. In his commentaries on Articles 338 and 339 of the 1889 Civil Code of Spain,[45] Justice Jose Maria Manresa wrote:

> Pero ¿qué clase de relación jurídica mantiene el Estado con estos bienes de dominio público? Por de pronto, se ve que no es una relación de propiedad, sino de pertenencia, que trae como consecuencia ciertas prerrogativas jurídicas en favor del Estado como soberano territorial. **La propiedad de estos bienes, con los caracteres especiales de una propiedad colectiva y de un uso y disfrute general, en virtud de la aplicación de aquéllos á la satisfacción de necesidades colectivas, corresponde, mientras están en tal posición, á la sociedad nacional (ó provincial ó municipal, según los casos). «Su destino», dice Ihering, »no es servir al Estado como persona jurídica, sino á los ciudadanos».** Están adscritos á un servicio común y público, que les impide, advierte Laurent, «ser objeto de verdadera apropiación por el Estado ó por los particulares».

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44 *Ponencia*, pp. 13-14; footnotes 62 and 63.

45 Articles 338 and 339 of the 1889 Civil Code of Spain form the basis for Articles 419 and 420 of our Civil Code.

> La función que en definitiva ejerce el Estado respecto de estos bienes á consecuencia de la relación jurídica especial que implican, nace de ser el Estado el representante *jurídico* de la sociedad. Es una verdadera función de *policía* social y administrativa, ya de seguridad, ya de servicio general. El Estado tiene bajo su acción soberana todos esos bienes; para que respondan á un fin de interés general, los cuida, los conserva y regula cuando es preciso el uso de los mismos. Son, en suma, tales bienes un patrimonio nacional, provincial ó municipal, que está bajo la salvaguardia del Estado respectivo.
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> x x x x
>
> x x x En rigor, concibiendo al Estado como debe concebirse, cabe entre él y los bienes que el Código enumera tres relaciones diferentes, en vez de dos, á pesar de lo que por otra parte opinan algunos comentaristas. La relación jurídica de dominio público, según el concepto más racional de éste, comprende los bienes que son de la nación, de la comunidad social; respecto de ellos el Estado no tiene más que la función representativa ya indicada. El Código italiano dice que no son enajenables. En nuestro Código son los que se enumeran en el núm. 1.° del presente artículo. Pero hay otra relación jurídica en la que se encuentran bienes (núm. 2.° del art. 339), que no son, en rigor, de dominio público, al menos en el concepto y forma que los anteriores; son del dominio del Estado, como representante social que realiza el derecho, y para poder prestar aquellos servicios públicos que le están encomendados, así como para que contribuya al fomento de la riqueza nacional que está bajo su custodia. No son estos bienes patrimoniales, porque están como adscritos á un servicio necesario, ó bien los tiene el Estado en espera de un empleo oportuno (las minas mientras no se otorgue su concesión), ni constituyen una fuente especial de riqueza, fuente de ingresos ó medio en disponibilidad para atender la satisfacción de sus necesidades.[46]

It is clear that the civil law concept of *public dominion* is somewhat related to the concept of the *public domain*, as both pertain to the principle of state dominion. However, the scope of *public dominion*, as used in the Civil Code, is limited to state properties for public use, for public service, or the development of national wealth.[47] Unlike *public domain*, which connotes full ownership,[48] *public dominion* "*is not a relationship of ownership, but of belonging, which brings as a consequence certain legal prerogatives in favor of the State as territorial sovereign.*"[49] These "legal prerogatives" over *public dominion* properties are vested by law in the State either because of: 1) the utility of these properties to the State in the discharge of its functions; or 2) their potential contribution to the national wealth. Moreover, these justifications correspond to the constitutional principles of police power and

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46 3 José Maria Manresa *y* Navarro, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 53-54, 55-56 (1893). Citations omitted, emphasis and underlining supplied.

47 CIVIL CODE, Article 420.

48 *Weatherly v. Jackson*, 123 Tex. 213, 71 S.W.2d 259 (1934); *Langdon v. Mayor, etc., of City of New York*, 93 N.Y. 129 (1883); *Union Mill & Min. Co. v. Ferris*, 24 F. Cas. 594, 2 Sawy. 176, 16 Int. Rev. Rec. 114 (1872).

49 3 José Maria Manresa *y* Navarro, supra note 46 at 53. See also 2 Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 30, 36 (1992).

natural resource control.[50] Justice Manresa goes on further to state that the public use properties of *public dominion* under Article 420(1) comprise property that belongs to the nation, to the social community; with respect to it the State has only "the aforementioned legal prerogatives";[51] while the *public dominion* properties intended for public service or the development of national wealth under Article 420(2) are given to the State because these properties are either: 1) "attached to a necessary service"; 2) "held by the State awaiting an opportune use"; or 3) "a special source of wealth, a source of income or a means available to meet the satisfaction of its needs."[52] Verily, lands of public use under Article 420(2) roughly correspond to the concept of reserved lands under American federal law.

These distinctions were recognized, albeit in rather vague terms, by this Court in a case for nullification of a lease over a portion of land owned by the San Lazaro Hospital, thus:

> As to the first contention, it is not stated in defendant's brief in what sense the words "public lands" are used. It seems, however, that the defendant refers to lands of the public domain. He testified at the trial that the lands of the San Lazaro Hospital belonged to the Government of the United States. If such were the case his interpretation of these words would be erroneous. **That property belongs to the public domain which is destined to public use or which belongs exclusively to the State without being devoted to common use or which is destined to some public service or to the development of the national resources and of mines until transferred to private persons. (Art. 339[53] of the Civil Code.)** The land in question does not pertain to any of these classes. The best proof of it is that the defendant himself had been using it for his own personal and exclusive benefit. **So that, assuming without deciding that the land in question belonged to the Government of the United States, it would be nevertheless private property under the provisions of articles 340 and 345 of the Civil Code,[54] and as such, unless provided for by special legislation, is subject to the provisions of those articles.** The defendant has not called our attention to any special law providing a method different from that contained in the Civil Code for the leasing of the lands belonging to the San Lazaro Hospital, and we do not know of the existence of any such law. [55] (Emphasis. Underlining and footnote supplied)

As is implied in the foregoing excerpt, this Court has already recognized, as early as 1906, that the constitutional concept of *public*

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50 3 José Maria Manresa *y* Navarro, id. Justice Eduardo P. Caguioa goes even further to state that these properties are held by the state in consequence of its territorial sovereignty, implying that these properties are held by the state not by virtue of *dominium* but by *imperium*. 2 Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW: CIVIL CODE OF THE PHILIPPINES 30 (1966).

51 3 José Maria Manresa *y* Navarro, id. at 56.

52 Id.

53 Now Article 420 of the Civil Code.

54 Now Articles 421 and 425 of the Civil Code.

55 *Tipton v. Martinez*, 5 Phil. 477, 478-479 (1906).

domain is broader than the civil law concept of *public dominion*, for *public domain* embraces both state properties of the public dominion under Article 420 and state patrimonial (*i.e.*, private) properties under Article 421 of the Civil Code. Thus, properties of the public dominion can become patrimonial property; but in becoming such, they remain within the public domain, unless and until they are transferred to parties other than the State.

IV.

With the foregoing disquisitions in mind, we now reconsider the pertinent parts of Article XII, Sections 2 and 3 of the Constitution, which we reproduce again for clarity:

> Section 2. **All lands of the public domain x x x 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. x x x
>
> 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 to 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**.

In formulating the provisions of Article XII, the 1986 Constitutional Commission deliberately retained the term *public domain*, including the legal history and signification of the concept, *viz.*:

> MR. MONSOD: Madam President, I think the intent of line 13, Section 4 is that there are now four classifications in the generic sense of agricultural lands: agriculture, forest, mineral and national parks.
>
> So, we would be willing to entertain an amendment that will insert the word "AGRICULTURE" before "lands" on line 13.
> MR. SUAREZ: That is in Section 4.
>
> MR. MONSOD: Yes.

MR. SUAREZ: And does the Commissioner think that this will be consistent with the provision of Section 6?

MR. MONSOD: Yes, and also with line 2 of the same section.

MR. SUAREZ: Yes. And would the Commissioner not think of changing the phrase "lands of the public domain" to "PUBLIC AGRICULTURAL LANDS" or something in order to jibe and harmonize with Section 4?

MR. MONSOD: Does the Commissioner mean line 26?

MR. SUAREZ: I am referring to line 26, Madam President.

MR. MONSOD: That is also agricultural land, Madam President.

MR. SUAREZ: Yes, that is it. Is the Commissioner not thinking of changing the term "lands of the public domain" to "AGRICULTURAL LANDS"?

MR. MONSOD: We are also willing to entertain an amendment to that effect in order to clarify the intent of the article.

MR. SUAREZ: May I suggest that to the members of the Committee, Madam President?

MR. VILLEGAS: All right.

THE PRESIDENT: Is Commissioner Suarez proposing an amendment?

MR. SUAREZ: With respect to Section 6.

THE PRESIDENT: Yes, Section 6.

MR. SUAREZ: If it is reflective of the thinking of the Committee insofar as Section 4 is concerned, we propose that the words "lands of the public domain" appearing on line 26 of Section 6 be changed to "PUBLIC AGRICULTURAL LANDS"; but basically, it is "agricultural land."

MR. MONSOD: Maybe to be consistent and to harmonize, we just use the same phrase as we used in Section 4: "AGRICULTURAL LANDS of the public domain."

MR. SUAREZ: Thank you.

MR. RODRIGO: Madam President, may I call attention to the fact that the words "public domain" are the words used in the 1935 as well as in the 1973 Constitutions.

MR. VILLEGAS: We retained it that way.

MR. RODRIGO: **So, they have already adopted a meaning and I suppose there is even a jurisprudence on this matter. Unless it is absolutely necessary, I do not think we should change that.**

> MR. SUAREZ: What we are suggesting, Madam President, is to retain the words "public domain" but qualify the word "lands" with "AGRICULTURAL lands of the public domain."
> MR. VILLEGAS: **We are retaining "public domain**."
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> MR. CONCEPCION: Madam President.
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> THE PRESIDENT: Commissioner Concepcion is recognized.
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> MR. CONCEPCION: If the Committee does not intend to change the original implication of this provision — and by original I mean the Constitutions of 1935 and 1973 — may I suggest the advisability of retaining the former phraseology. Otherwise, there might be a question as to whether the same meaning attached thereto by jurisprudence will apply or another meaning is sought to be imparted to this provision.
>
> MR. VILLEGAS: As long as it is clear in our record that we really mean agricultural lands, can we ask Commissioner Suarez to just retain the existing phraseology?
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> MR. SUAREZ: I would have no objection to that. I just want to make it very clear, whether in the record or in the constitutional provisions, when we speak of "lands of the public domain" under Section 6 we are thinking in terms of agricultural lands.
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> THE PRESIDENT: So, there will be no need anymore to insert the word "AGRICULTURAL"?
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> MR. SUAREZ: That is right. We will not press on our amendment, Madam President.
>
> THE PRESIDENT: We already have that interpretation.
>
> MR. SUAREZ: Thank you, Madam President. [56] (Underlining and emphasis supplied)

It is therefore clear that when the Constitution speaks of *lands of the public domain*, such term can only have two meanings: 1) all lands owned or held by the state; or 2) unreserved state-owned lands which have been opened for disposition. However, Article XII, Section 3 further qualifies that "**[l]ands of the public domain** are classified into agricultural, forest or timber, mineral lands, and national parks." Likewise, Article XII, Section 2 provides that "[w]ith the exception of **agricultural lands**, all other natural resources, [including forest lands, mineral lands, and national parks], shall not be alienated." Given these textual parameters, the inescapable conclusion is that the term "lands of the *public domain*," as used in the Constitution, pertains to ***all* state-owned lands, *regardless* of their classification.** It should also follow that when the Constitution speaks of *alienable lands of the public domain*, the basic law refers essentially to **the subset of the larger set of all**

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56 3 RECORD OF THE CONSTITUTIONAL COMMISSION (No. 063, August 22, 1986) 596-597.

state-owned lands regardless of their classification that share the common attribute of alienability, subject to further qualification in Section 2 that this subset shall only include agricultural lands, thereby excluding forest lands, mineral lands, and national parks.

In turn, the Civil Code provides that all property, including *lands of the public domain*, are "either of public dominion or of private ownership."[57] Stated differently, *lands of the public domain*, which are also property, are also either of public dominion or of private ownership. Consequently, pursuant to Article 420 of the Civil Code, *lands of the public domain* that are either: 1) intended for or in actual public use (such as public streets,[58] plazas and public squares,[59] foreshore lands,[60] reclaimed lands,[61] lands on which public works under Article 420(1) are built, and national parks[62]); 2) not for public use, but intended for public service (such as national security infrastructure,[63] military reservations,[64] and buildings constructed and used by the government[65]) or 3) not for public use but intended for the development of national wealth, *i.e.*, "a special source of wealth, a source of income or a means available to meet the satisfaction of [the State's] needs" (such as mineral, timber, and forest lands[66] and reserved agricultural lands of the public domain that have not been declared alienable and disposable[67]), are all embraced within the set of lands of *public dominion*. Likewise, pursuant to Article 421 of the Civil Code, all lands of the public domain that do not fall within these three classes should be considered patrimonial, *i.e.*, **private property** of the State.

In view of the foregoing discussion, it is ineluctably clear that when a parcel of land of the public domain is declared "*alienable and disposable*," either by legislative act or by delegated authority, such declaration has two effects: first, the land is rendered "capable of being transferred to the ownership" of entities other than the State; this also means that the land moves into the subset of **alienable lands of the public domain**, without

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57 CIVIL CODE, Article 419.

58 *Alolino v. Flores*, 783 Phil. 605, 613 (2016); *Macasiano v. Judge Diokno,* 287 Phil. 517 (1992); *Dacanay v. Mayor Asistio, Jr.*, 284 Phil. 548 (1992).

59 *Bishop of Calbayog v. Director of Lands*, 150-A Phil. 806 (1972); *Harty v. Municipality of Victoria*, 13 Phil. 152 (1909).

60 *Baguio v. Heirs of Ramon Abello*, G.R. Nos. 192956 & 193032, July 24, 2019; *Francisco v. Government of the Philippine Islands*, 28 Phil. 505 (1914).

61 *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002).

62 CONSTITUTION, Article XII, Section 3; REPUBLIC ACT NO. 7586 (1992) and REPUBLIC ACT NO. 11038 (2018).

63 *Municipality of Hinunangan v. Director of Lands*, 24 Phil. 124 (1913) (fortresses); *Ignacio v. Director of Lands*, 108 Phil. 335 (1960) (lands needed for coast guard service); COMMONWEALTH ACT NO. 1, Section 97, Purpose V (1935).

64 *Republic v. Southside Homeowners Association, Inc.*, 534 Phil. 8 (2006).

65 *Laurel v. Garcia*, 265 Phil. 827 (1990); Justice Eduardo P. Caguioa, supra note 50 at 36.

66 CONSTITUTION, Article XII, Section 3.

67 Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PROPERTY 43 (2003), citing *Chavez v. Public Estates Authority*, supra note 61; PRESIDENTIAL DECREE NO. 705 (as amended), Sections 3(a), (b), & (c), and 13.

being taken out of the larger set of **lands of the public domain**.[68] Concomitant to this first effect is the second effect: the land is placed into the subset of patrimonial property under the Civil Code, *without* being taken out of the all-encompassing set of constitutional *public domain*, which is broad enough to encompass both *public dominion* and *patrimonial* properties of the State. Stated differently, when the Constitution refers to "*alienable and disposable lands of the public domain*," it can only mean patrimonial lands of the State under the Civil Code, since these are the only properties still within the *public domain* that are alienable (*i.e.*, capable of being transferred to the ownership of another), since lands of the *public dominion* are outside of the commerce of man[69] and are therefore inalienable.[70]

Consequently, the pronouncement in the second *Heirs of Mario Malabanan v. Republic*[71] ruling that:

> Alienable and disposable lands of the State fall into two categories, to wit: (a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural x x x.[72]

is not quite accurate. First, the Constitution does not use the phrase "alienable and disposable lands of the State," but rather "alienable and disposable lands **of the public domain**." While the two phrases are practically synonymous, the Constitutional intent to use the modifier "of the public domain" must be respected, and the historical-legal signification of the phrase must be taken into account in interpreting the provisions of the basic law. Second, "lands of the public domain" are the universal set to which both patrimonial and public dominion lands of the State belong; and since public dominion lands of the State are inalienable, the set of "*alienable and disposable lands **of the public domain***" is limited to patrimonial lands of the State. As pointed out by an eminent Filipino legal scholar:

> Public lands of the Philippines are designated as "Lands of the public domain" in Commonwealth Act No. 141, and formerly in Act No. 2874. Are they property of public dominion as understood in article 420 of the Civil Code?

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68 BLACK'S LAW DICTIONARY (9th ed.) (2009), p. 84.

69 *Tensuan v. Heirs of Vasquez*, G.R. No. 204992, September 8, 2020; *PNOC Alternative Fuels Corp. v. National Grid Corporation of the Philippines*, G.R. No. 224936, September 4, 2019; *Republic v. Spouses Alejandre*, G.R. No. 217336, October 17, 2018; *Land Bank of the Phils. v. Cacayuran*, 709 Phil. 819 (2013); *MIAA v. City of Pasay*, 602 Phil. 160 (2009); *Villanueva v. Judge Castañeda, Jr.*, 238 Phil. 136 (1987).

70 *Land Bank of the Phils. v. Cacayuran*, id.; *Municipality of Cavite v. Rojas*, 30 Phil. 602 (1915).

71 717 Phil. 141 (2013).

72 Id. at 162.

> The Supreme Court has already called attention to the difference in meaning in the Spanish law and in American-patterned legislation of apparently the same terms. "It is to be noted, however," it said, "that in the two languages terms ordinarily equivalent are not in this relation employed in the same sense, and that lands *de dominio publico* signify quite a different thing from the arbitrary English phrases 'public lands' or 'public domain'." x x x
>
> From this conclusion of the Supreme Court, it seems that "public lands" [*i.e., lands of the public domain*] may, under the criterion of the Civil Code, be classified as private property of the State, as soon as they are available for alienation or disposition. Before they have been declared so available for disposition, they would partake of property of public dominion, under article 420, paragraph 2, "for the development of the national wealth," just like "mines before their concessions have been granted."[73]

V.

Turning now to the case at bar, we consider the implications of the foregoing discussion on the provisions of the Property Registration Decree (PRD), especially Section 14(1) and (2) thereof. In the original *Heirs of Mario Malabanan v. Republic*[74] decision, this Court held that Section 14(1) of the PRD is "virtually the same as"[75] Section 48(b) of the PLA III, as the former provision operationalizes the latter, thus:

PLA III Section 48(b)	PRD Section 14(1)
Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit: x x x x (b) **Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or**	SECTION 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: **(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.**

73 Arturo M. Tolentino, supra note 48 at 37-38.

74 605 Phil. 244 (2009).

75 Id. at 266.

ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter. (As amended by PD 1073.)	

As discussed earlier, the PLA III, its predecessor statutes, and the related laws that were enacted during the American occupation were all enacted during the "frontier" phase of American history, when the United States government was still actively distributing the lands of the public domain, and the contemporary land laws were enacted to facilitate this process. These statutes were therefore crafted to: 1) embody distribution of the public domain as the general rule; and 2) to operationalize the concept of *public domain* as state-owned lands that have been opened to disposition. Thus, the legislature, in using the phrase "agricultural lands of the public domain" in Section 48(b) of the PLA III, could only have referred to state-owned patrimonial lands which have been opened to disposition, which at the time of the enactment thereof, comprised an overwhelming majority of the public domain as a whole.

In view of our discussion in the previous section, this conclusion does not change even under the currently prevailing legal regime in which distribution of the public domain is the general rule, rather than the exception, for we have already established that *alienable lands of the public domain* can refer only to the patrimonial lands of the State under the Civil Code. It must be noted that Article XII, Section 3 of the Constitution limits *alienable lands of the public domain* to agricultural lands. In turn, Section 2 of the PLA III limits the scope of its operation to lands of the public domain which are not timber lands, mineral lands, friar lands, or previously private land.[76] Section 6 of the PLA III, in outlining the classificatory power of the President over the public domain, enumerates three classes of lands therein:

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[76] The full provision reads: "Section 2. The provisions of this Act shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws and nothing in this Act provided shall be understood or construed to change or modify the administration and disposition of the lands commonly called "friar lands" and those which, being privately owned, have reverted to or become the property of the Commonwealth of the Philippines, which administration and disposition shall be governed by the laws at present in force or which may hereafter be enacted." Given the explicit exclusion of mineral and timber lands, and the special laws enacted for national park lands, which cannot be alienated (see generally Republic Act No. 7586 [1992] and Republic Act No. 11038 [2018]), the scope of the PLA III is thus limited to agricultural lands of the public domain.

alienable or disposable, timber, and mineral lands.[77] Section 9 of the PLA III then places *agricultural lands* as a mere subset of the supposedly larger set of "*lands of the public domain alienable or open to disposition*," *i.e.*, the "*alienable or disposable*" lands under Section 6. Section 9 likewise enumerates the other sub-classes of alienable or disposable land *according to their "use or purposes*." Thus, the term "agricultural lands," as used in the PLA III, contemplates alienable lands of the public domain which have been classified by proper authority as suitable or destined for agricultural use or purposes.

Thus, in keeping with this general classification under the PLA III, Section 14(1) of the PRD substitutes the phrase "*alienable and disposable*" as the descriptor for the main phrase "lands of the public domain," in place of the word "agricultural" used in Section 48(b) of the PLA III, for two reasons: 1) the phrases "agricultural public lands" or "agricultural lands of the public domain," as used in the PLA III, pertain strictly to lands *destined* for agriculture **as classified** under Sections 6 and 9 thereof, as opposed to the broader constitutional sense of "agricultural lands;"[78] and 2) it has already been established that, under the Constitution, no other class of land within the public domain can be declared alienable and disposable but agricultural public lands.

Our foregoing discussion neither affects the distinctions between the registration of land under Sections 14(1) and 14(2) nor renders the PLA III inutile. Senator Arturo M. Tolentino correctly points out that:

> "**[P]ublic lands"** (*i.e.*, lands of the public domain) **may, under the criterion of the Civil Code, be classified as private property of the State, as soon as they are available for alienation or disposition.** Before they have been declared so available for disposition, they would partake of property of public dominion, under article 420, paragraph 2, "for the development of the national wealth," just like "mines before their concessions have been granted."
>
> According to Lomonaco and Ricci, **the State disposes of private property like any private person, but "naturally in accordance with special laws." This special law is Commonwealth Act No. 141 (formerly Act No. 2874) with respect to alienable or disposable public lands destined for agricultural, residential, commercial, industrial, or other similar productive purposes; for educational, charitable, or**

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77 This classification of lands in Section 6 of the PLA III is clear proof that the PLA III conceives of the "public domain" as state-owned lands that have been released for disposition. Essentially this classification corresponds to the US federal classification of *public domain lands* versus *reserved lands*. Confusion arises, however, because the first sentence of the provision seems to be using the term "public domain" in its expanded conception.

78 Agricultural lands are those which are not mineral or forest lands, regardless of whether the power of classification has been exercised thereover. *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Mapa v. Insular Government*, 10 Phil. 175 (1908).

> **other similar purposes; and for reservations for town sites and for public and quasi-public uses**. The friar lands, not classified as "public lands" under Commonwealth Act No. 141, are disposed of under the provisions of Act No. 1120; and the San Lazaro Estate, under Act No. 2360, as amended by Act No. 2478. These lands are private property of the State in the same manner that islands formed in navigable and floatable rivers are private property of the State.[79]

In the recent case of *Republic v. Bautista*,[80] this Court distinguished Section 14(1) from Section 14(2) in this manner:

> From their respective requisites, it is clear that the bases for registration under these two provisions of law differ from one another. Registration under Section 14(1) is based on possession; whereas registration under Section 14(2) is based on prescription. Thus, under Section 14(1), it is not necessary for the land applied for to be alienable and disposable at the beginning of the possession on or before June 12, 1945 — Section 14(1) only requires that the property sought to be registered is alienable and disposable at the time of the filing of the application for registration. However, in Section 14(2), the alienable and disposable character of the land, as well as its declaration as patrimonial property of the State, must exist at the beginning of the relevant period of possession.[81]

In keeping with its American statutory ancestors, Section 48(b) of PLA III, as implemented by Section 14(1) of the PRD, is essentially a grant of patrimonial land of the public domain which is based on possession; in effect, it is a special kind of donation with conditions imposed by special law for the effectivity thereof.[82] Among these conditions is that the land must have been classified as agricultural under the provisions of the PLA III. As held in the second *Heirs of Mario Malabanan*[83] ruling, the conversion of the claimed land into alienable-and-disposable/patrimonial status, as well as the classification thereof into agricultural land under the PLA III, can be made even after the commencement of the statutory period, as long as it is made before the application is filed. On the other hand, Section 14(2) of the PRD implements the general provisions of the Civil Code on prescription with respect to patrimonial lands of the public domain. Unlike in Section 15(1), lands sought to be registered under Section 15(2) need not be classified as agricultural under the PLA III, as long as such lands have been

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79 Arturo M. Tolentino, supra note 48 at 38. Emphases and underlining supplied.

80 G.R. No. 211664, November 12, 2018.

81 Id.

82 It appears that the classificatory agencies have the power to calibrate the fineness of the distinction between the two senses of the term "agricultural land" in the PLA III and the Constitution, in that the classificatory agencies can establish the criteria for "suitability" (PLA III, Section 11) or determine the "use or purpose to which [alienable and disposable lands of the public domain] are destined (PLA III, Section 9).

83 *Heirs of Mario Malabanan v. Republic*, supra note 71.

declared alienable-and-disposable/patrimonial prior to or at the commencement of the prescriptive period.

VI.

In sum, I submit that the PLA must be understood in its historical context. The core principles of the PLA are rooted in an American land law regime wherein the *distribution of the public domain was the rule* and conservation thereof was the exception. However, when these principles were introduced to the Philippines, it became incorporated into a legal regime where *conservation of the public domain was the rule* rather than the exception. This engendered the complications so poignantly illustrated in the *Heirs of Mario Malabanan*[84] and *Republic v. Court of Appeals and Naguit*[85] cases, and which, hopefully, may be obviated by the *ponencia*.

Under the Constitution and the Civil Code, the State does not exercise full ownership rights over public dominion lands of the public domain, precisely because these lands are inalienable and are held by the State strictly by virtue of its stewardship over natural resources under the modern principle of state dominion,[86] or in furtherance of the police power. As we have discussed earlier, the State only enjoys "certain legal prerogatives" over these lands. The Constitutional and statutory grants of power to declare public dominion lands of the public domain as *alienable and disposable* is one of these "legal prerogatives," by which the Constitution allows the State to exercise full ownership rights over such lands, by converting them into patrimonial, *alienable, and disposable lands of the public domain.*[87] Consequently, a declaration by competent authority that a parcel of land is alienable and disposable has the effect of removing such land from the public dominion; *but not* from the more expansive mass of the public domain.

SAMUEL H. GAERLAN
Associate Justice

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84 *Heirs of Mario Malabanan v. Republic*, supra notes 71 and 74.

85 489 Phil. 405 (2005).

86 CONSTITUTION, Article XIII, Section 6; Vicente G. Sinco, supra note 5; Hector S. De Leon and Hector M. De Leon, Jr., supra note 5.

87 See *Chavez v. Public Estates Authority*, supra note 61.