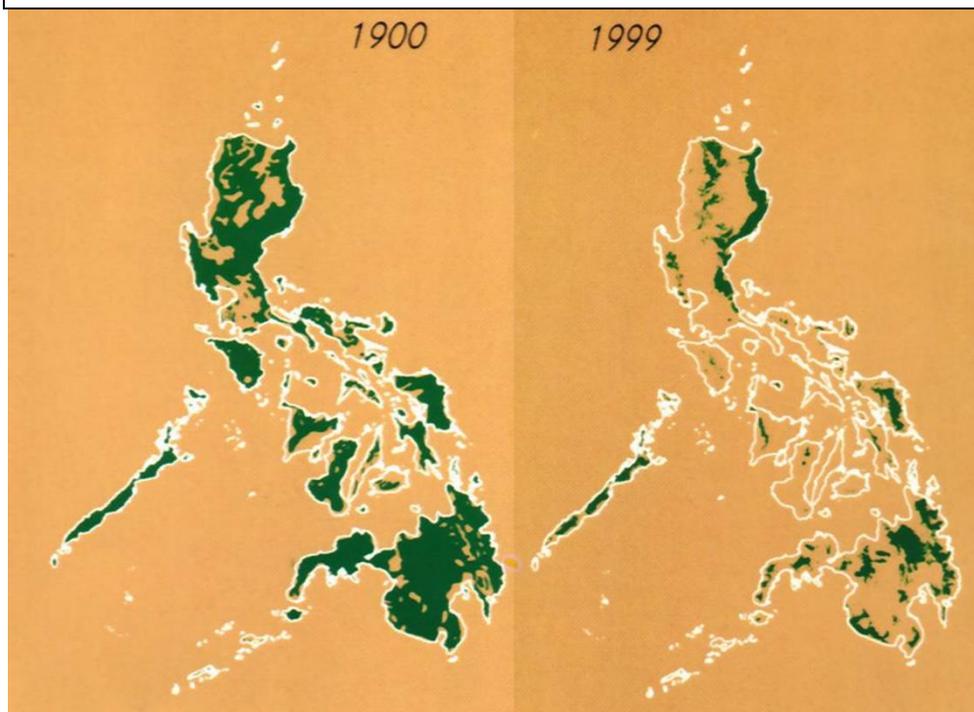


7.1 Children and Forests

Using the economic model of extraction and consumption, look what happened to the *Perlas* forests in less than 100 years. All for GDP and in the name of economic progress! Is this progress?



In the 1980s, there was much debate on the deforestation of Perlas. 1988, I uprooted my family from beloved Cebu City and moved to Manila to explore this then unknown field of law called Environmental Law.

With some like-minded spirits, we stumbled upon a few stark facts:

1. The land area of the Perlas is 30 million hectares
2. Barely 50 years before 1988, there were about 16 million hectares of virgin rainforests.
3. According to law, and considering the terrain and slope of the land, at least one-half of its land area (or 15 million hectares) must be devoted to forest cover. The other half may be for other land uses, i.e. for agricultural, residential, commercial, etc.
4. The policy was to log only in the virgin forests, an antiquated policy from when the Perlas was still full of old-growth forests
5. In 1988, only 800,000 hectares left of the old-growth forests, barely 3% of the entire land area.

6. Yet, the Perlas Government still allowed the cutting down the forests by 120,000 hectares per year.
7. Look: While only 800,000 hectares of the virgin forests remained, Government records showed that 92 logging companies were given an area covering almost 4 million hectares.
8. It does not take rocket science figure out that Government granted logging permits to areas more than what was available. And at that rate of cutting at 120,000 per year, we will practically wipe out the remaining old-growth forests of the country in less than 8 years.
9. My concern was fueled even more when I had the chance to talk to a holder of a logging permit. He said that their logging concession area does not have any forests left. They just go to other areas, cut down trees, and pay off the government authorities.

Need for Action

In the 1970, while I was in my early twenties, I walked up the mountains of the island province of Cebu in search of a forest. I did not find any. I recalled how bare and barren it felt to be in a land completely without forests. I also remember how alive and excited I feel when I was in a real forest around the Lake Danao in the mountains of Leyte.

With the numbers I saw, I felt sorry for my children. If this went on, in less than 10 years, the country will have no old-growth forests left. If this went on, my children -- two toddlers and an infant -- will not see any forests in their lifetime.

There was much debate going on in Congress on the issue of logging. Many members of Congress were holders of timber license agreements (TLAs). Thus the issue was untouchable. In the Senate, there were two well-meaning Senators on the opposite sides of the debate – whether to ban logging completely or selectively.

Environmentalists-friends and co-workers appeared on media to push for a stop to logging. It was the classic debate between the environment versus the economy. On one side of the issue was the business-as-usual scenario -- for the jobs and GDP revenues for the economy. On the other side, there were the 'environmentalists', a tiny



Lake Danao in the mountains of the province of Leyte. This is where I experienced the sight, sense, and splendor of being in a real forest.

minority who cared about difficult words like 'biodiversity', erosion, siltation, etc. These people truly cared for what remained of our old-growth forests. But as 'environmentalists', they were seen as a little better than hippies. It was a tug-of-war that had no resolution in sight.

Something had to be done about it.

Telling a Story

What can I do? I am only a lawyer? Even if I went to the media and shouted my lungs out to debate the issue, no one will listen. Even assuming they did, at best I will have 30 seconds of air time. How can I tell a story such that people concerned will listen?

I realized that I am not much of a lawyer, I am only a simple story-teller. But maybe I can use words as the paint-brushes with which I paint a story of the dire condition of our forests. Maybe I can use the Law as the medium and the courtroom as the canvass on which I can tell a story. And in a courtroom, art of storytelling is orderly, logical, and our arguments must be supported by evidence.

Simple as it sounds, the challenges were daunting. What case will I file? For what reason (what lawyers call 'cause of action'? What law will I rely on? Who will be the petitioners/plaintiffs? Who will be the defendants? Where will I file the case? How long will this take? Who will spend for it?

To all these questions I did not have any answer. All I knew was that something had to be done. It was made even worse when I asked lawyers for their advice. To a man, almost all said it cannot be done. When my grandmother, Mama Ing, would get mad at me for doing the exact opposite of what she wanted me to do, she would call me 'espírito de contradicción' (spirit of contradiction). I guess that came into play when people told me I cannot do it. I wanted to do it even more.

I wanted to file a case to cancel all the logging concessions in the country – all 92 of them that covered an area five times more than what was available. Perhaps it is like asking to fit in one bucket all the water in a lake. Common sense dictates that it cannot be done. Lawyers advised against it. So I did not seek their advice anymore.

One night I had a beer with a couple of friends -- one was a forester the other was an artist. The forester said that the danger of losing our forests altogether is clear and real. The artist advised that I should go ahead do what I wanted to do. When I asked how? The logical answer reached by consensus was "*Bahala na si Batman* (Batman will take care of it). Excellent advice!

But it was at that moment – on the advice of a forester who truly cared for the forests and upon the prodding of artist who did not care about the result – that I decided to do something, anything!

The lawyers were right. Search as I tried, I could not find any law or jurisprudence to support what I wanted to do. In the art of sailing, this is called 'dead reckoning' – no compass to follow, only the stars of the sky to guide me by. But perhaps Law begins with the fire of desire.

It took another year for me to draft the petition, word by word, sentence by sentence, paragraph by paragraph, page by page. It was not meant to be a legal document. It was a story. But then, because it was going to be filed in a court of law, it had to have the semblance of a legal document and the parts of a legal action. So I went through a self-searching exercise to chart the course of the case. Below is the summary of the difficult decision points I agonized over the course of the year.

Why: I had to be sure why I was going to do this. The answer was: The story must be told. If we went on with the rape of our forests – cutting down 120,000 hectares per year of the remaining 800,000 hectares -- in less than 10 years, they would all be gone.

What: A legal action to tell the story in a court of law. This way, whoever has a say in it must at least listen. Win or lose, it did not matter. Bringing the issue to the table is all that mattered.

Who:

Plaintiffs-petitioners: The proper petitioner – in law called the real-parties-in-interest- are those who stand to suffer irreversible injury and irreparable damage. Who are they? They are the children of today and those yet unborn. When they grow up, they will no longer enjoy, use, or benefit from the country's forests.

To make it more fun, I convinced my friends and relatives to allow their children to join in as co-plaintiffs. Perhaps out of respect or out of irritation, they agreed. However, no one wanted to be named the lead plaintiff. This left me with no other choice but to name my own children as the lead petitioners.

Defendants-respondents: One man filing a case against the 92 giant corporations which held the logging permits and which were backed up by the top-caliber law firms of the country would be like an ant picking a fight with an elephant. There had to be a better way. Think, think, think -- beyond the box. If Government granted logging concessions to areas more than what is available, is that not grave abuse of discretion. Can we sue government? Generally, no we cannot because it enjoys some immunity. But we will never know unless we try.

Counsel: There was only one lawyer who was determined enough to carry the case forward to its logical conclusion. He was the father of one set of the plaintiffs. With that assurance, the case will go on.

Where: Where will the case be filed? For the sole intent of telling a story, the proper forum is a trial court. In this forum, the issues can be discussed in a manner that is civil and orderly.

When: How long will the case take in the notoriously-slow grind of the judicial system of Perlas? My answer: I don't care.

How:

Petition for injunction to suspend and revoke all existing timber licenses and prohibit the grant of new licenses. Ridiculous demand? Yes! Insane, Certainly! Impossible? Absolutely!

In April 1990, I went ahead to dare the fates. Crafting the theory of the case and drafting the words and paragraphs of the petition may have been a little achievement of sorts. But the real effort and accomplishment was to connive my wife to allow my children to be named as the main plaintiffs. A lawyer who will dare sue the government for an impossible demand is itself outrageous. To allow her children to be main plaintiffs in the impossible case is perhaps a measure of her understanding and support to her lawyer-husband with only half of a working brain.

There were many twists and turns that led to the filing of the petition. Let me emphasize however, that when he learned of the plan to file this case, then Secretary Fulgencio (Jun) Factoran was very supportive of it. Secretary Factoran was a noted human rights lawyer before entering government. He was a graduate of the topnotch University of Perlas and held a Master of Laws from the Harvard Law School. He saw the higher purpose of the legal action and would later leverage it to a much greater good. He wanted to engage in the trial of the case.

However, the official government counsel -- the Office of the Solicitor General -- was afraid that the case would create a bad precedent of citizens suing government. Thus the Office opposed the case by filing a motion to dismiss.

There were more interesting sidelights and side 'events' that happened along the way to the filing and dismissal of the case. One day, I will write a fuller story. What happened is that after more than one year, and even without an oral hearing on the motion to dismiss filed by the Government, the case was ... dismissed.

Although not totally unexpected, this was a major setback.

Failure is an Orphan

There were a dozen lawyers who joined me in the filing of the petition -- it was even featured on CNN in its early days. When the case was dismissed, even my own shadow left me. Yes, failure is very lonely.

I then went through a very difficult process of decision-making. On one hand, I can move on with my life and with the revenue-generating cases in my fledgling law practice. On the other hand, I can pursue this effort to 'tell a story'.

This is the importance of knowing the 'why' – why was I doing this in the first place? If that anchor is sound and stable, the winds and waves of setbacks and failure render adrift the boat of one's will-power. I was not happy at the fact that I could not even present any evidence in the trial court of what is happening to our forests. I was also bothered by the claim of the Government in its motion to dismiss that the people (and the children) did not have right to sue the government. In legal language, the government in effect claimed the case 'failed to state a cause of action'. That means that the plaintiffs did not have the 'legal personality or standing to sue' in a court of law.

I was young lawyer with a very young family, struggling to make ends meet. The expenses attendant to an appeal to the Supreme Court would be staggering. I was alone, without any funding from anyone, and was ashamed to say that I lost. Smarter lawyers would only have one thing to say, "I told you so!"

But yes, the story needed to be told. So without even knowing how to write a proper petition on appeal, I went straight to the Supreme Court (and did not even go through the Court of Appeals. Who was it who said that the formula for success is ignorance and confidence? Well, I was confident of my ignorance, and was ignorant of my confidence. What a perfect recipe for a wonderful disaster.

So I went to the Supreme Court. It was after I had lost in the trial court and was struggling on appeal that I happen to be introduced to the work of the erudite Prof. Edith Brown Weiss of Georgetown University Law School. Through an interesting twist and turn of happy chance, I discovered that she had already written a book about it entitled "In Fairness to Future Generations" in which she coined the term – Inter-generational responsibility. When I first heard that, I could not even pronounce it.

I was so happy to know that my common sense idea had a sophisticated name after all. And I was even happier to know that another person – a famous law professor and obviously much more intelligent -- had already thought it through. So I and my theory of the case were not as dumb as we seemed!

After about a dozen motions for extension to file comment by the Government's lawyer (the Office of the Solicitor General), the Court finally decided that the children had the right to sue.

When I received a copy of the decision, I looked only at the last part, the summary of the court's opinion and the action point. This is called the 'dispositive portion' of the decision – the portion that disposes of the case. The decision said that I must go back to the trial court and implead all the holders of the Timber License Agreements (TLAs). Of course, I had thought through that strategy before I filed the case, and realized that would be mission impossible. And now, here comes the Supreme Court ordering me to include all of them – 92 of the biggest logging companies as defendants in the case -- and start the case all over again?

Thank you, but no thank you!

I was so disappointed by the disposition of the case that I did not even bother to read the full decision. I only glanced at the concurring opinion, written by the illustrious Justice Florentino Feliciano (who later became a judge of the appellate court of the World Trade Organization). In his words:

“I join in the result reached by my distinguished brother in the Court, Davide, Jr., J., in this case which, to my mind, is one of the most important cases decided by this Court in the last few years. The seminal principles laid down in this decision are likely to influence profoundly the direction and course of the protection and management of the environment ...”

Frankly, I found it funny. What is so seminal about having to redo the case all over again and implead an impossible number of defendants?

It was time to cut my losses and move on.

The case did not even make the news. It was not until a few days after I received the decision that I bothered to read the whole judgment of the Court. Only then did I discover that it dwelt on the issue that I was impossibly ‘forcing through’ the judicial juggernaut – the right of the children and future generations to sue for the protection of the environment. The *ponente* (writer) of the decision was Justice Hilario Davide Jr., in 1993 the most junior justice. He would later rise to become Chief Justice of the Supreme Court and to become Ambassador to the United Nations.

Perhaps it was the case of a seed happening to land on good soil. The writer of the decision is man who truly has the heart for the Earth, who I later discovered tends to his backyard vegetable garden every day. He was also part of the Constitutional Commission that wrote the landmark environment provision of the 1987 Philippine Constitution. Thus he wrote the words of his decision not from the mind, but as if they were waters that sprang from his inmost heart of hearts.

Some lines of the decision

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

“... the judicious ... management of the natural resources (is) to (ensure) that (they) be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony (of nature) for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a

sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

Petitioners claimed that their right to a balanced and healthful ecology is stated in section on Principles and Policies of the Constitution. The Office of Solicitor General was of a different mind. It claimed that this environmental right is at best amorphous and nebulous (unclear). In fact, it was the contention of the Government that this so-called 'Environmental Right' is not even part of the Bill of Rights; it is only a general statement of principles and policies. To this argument, the Supreme Court said:

"While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation ... the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind."

"If these rights are now explicitly mentioned in the fundamental charter, it is because of the fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself...

"the day would not be too far when all else would be lost, not only for this generation but also for succeeding generations, generations which stand to inherit nothing but a parched earth incapable of sustaining life."

The lines that tremble on the brink of poetry is now a fact of prophecy.

Those lines rang true in 1993. It rings truer today and will be louder in the many years to come. As this is being written, the entire country of Perlas is undergoing a severe drought resulting from the El Nino phenomenon made more intense by the climate crisis. The entire island province of Cebu has declared a state of calamity and water rationing has begun. The land in many of the provinces and practically the whole island of Mindanao is a perfect example of a prophecy gone wild.



Picture of farmer on a rice field that has now become a "parched earth incapable of sustaining life."

But today, one generation after the case was filed, the case seems to have attracted some attention and inspired action. Believe me, I am still slightly embarrassed every time the case is mentioned. It was a case that was actually lost. The issue of legal personality – the issue that has created quite a stir was to me so basic, so apparent, and so common sense it did not even have to be tackled by the Court.

Maybe the message has reached many because of its simplicity: If we use up everything today, nothing will be left for our children and for the children yet unborn. How difficult can that be to understand? Is that not pretty obvious? I guess "that is the difference between the obscure and the obvious: The obscure is figured out sooner or later. It is the obvious that takes a lot longer."

But we express our eternal thanks to the Perlas Supreme Court. Among all the courts of the world, it had the sensitivity to touch on and explain the story of something so basic, so elementary, and so clear. Indeed, "humanity does not need to be taught. It needs only to be reminded." __ (I forget who is the author of this line).

The Stars Aligned

Then Secretary of the Department of Environment and Natural Resources (DENR) Mr. Fulgencio Factoran, the best DENR Secretary ever, used the case leverage to do what was right. While the case was pending, Secretary Factoran he seized the chance to pass a landmark piece of regulation that banned all logging in the country's remaining old-growth forests beginning in 1992.

Although the petition was audacious in its goal – to cancel all the logging concessions in the country – the near-term dream was really only to protect the remaining 800,000 hectares of old-growth forests left in the country.

By virtue of the Department Order, logging will only be done in the secondary growth forests. In effect, by the bold and creative administrative action by the good Secretary Factoran, the objective of the judicial action was achieved.

In the meantime, while I was battling my case in the Supreme Court in 1992, another landmark piece of legislation was passed – with the dedicated efforts of former DENR Undersecretary Celso Roque – the National Integrated Protected Areas System Act. Under that law, passed in June 1992, the remaining virgin/old-growth forests will become the initial components of the protected areas of *Perlas*.

Serendipity and synchronicity at play.

Lesson learned. Do what you must, maybe with a little brains, but always with all your heart. Sometimes, when you least expect it, the stars will align and magic happens!

It took another 20 years -- one generation -- for all the logging to be stopped in *Perlas*. In the meantime, the tide is shifting. Today, more of our people – *Perlinos* -- dare to stand and speak up when trees and forests are cut down. Today, there is a massive National Greening Program that seeks to reforest and restore the vegetation of our bald mountains. Restorative economics, Yes!

We are not there yet. But thank you to all the saints and the angels in heaven and elsewhere – Finally, finally, finally, we are on the way.

End Notes: Source of Picture

<http://panaynewsphilippines.com/wp-content/uploads/2016/01/region-el-nino-ant.jpg>

Department Administrative Order (No. 24, series of 1991)