

**ANG BATAS AT ANG BALAI (THE LAW AND THE HOME):
ESTABLISHING THE RIGHT TO THE CITY AS A PATH
TOWARDS LIBERTY AND SUSTAINABLE PROSPERITY***

*JYRUS B. CIMATU***

ABSTRACT

As globalization continues to entrench itself as the impetus in which political systems, economic trade, and sociocultural norms are hinged upon in various jurisdictions, cities have become the locus and hubs from which this operates. Cities became the spaces from which this global order is realized wherein political power is wielded and exercised, and also where business and economic trade is centered which leads to the massive exodus from one place and a continuous influx to the city which links, connects, and in turn provides the person to access the wider and greater society, market, and eventually – to the world.

With the influx of the people towards the physical terrain of the city comes the need for effective management of the resources in order to sustain the security, health, and economy to those accessing and utilizing the space of the city, whether working, residing, or even sojourning therein. Urban agglomeration, however, essentially grounds the discussion on land and the allocation of spaces which seeks to espouse sustainable development that caters all stakeholders in the city.

Through critical analysis, political economy analysis and Black Letter approach, this paper seeks to firstly investigate and elaborate the legal framework and foundations upon which urban planning – the discipline of land use planning and allocation of spaces, is operated in the Philippines which reveals that the authorities, empowered by the enabling laws, is entangling and mired with political and private motives to further ulterior purposes over public interests which only serves to widen the gap of inequality which can be illustrated through the gentrification of spaces, having lack of access to political discourse and government service, and the accumulation through

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** Juris Doctor: University of Santo Tomas Faculty of Civil Law (2021); Research Editor: UST LAW REVIEW Volume 64 (2020); AB Legal Management, University of Santo Tomas, Faculty of Arts and Letters;

dispossession of land – turning the discipline of allocation of spaces to an allocation and expansion of powers.

Ultimately, this paper seeks to advance sustainable urban development by putting forward that there exists within the penumbra of laws, from international covenants and rights to domestic statutes and rulings a Right to the City – a right of holistic participatory governance wherein different stakeholders, is equipped with the right to be in the political discourse concerning the allocation of spaces in the city – thereby protecting and securing their political freedoms (liberty) and promoting their economic liberation (prosperity) – a virtuous cycle that nurtures democracy and freedom.

I. INTRODUCTION

“The Constitution does not contemplate palliatives as the solution to our economic woes... What the spirit and letter of the Constitution demands is the institutionalization of social justice... The systematic exclusion of any social group from the blessings of prosperity constitutes social injustice.”
Chief Justice Artemio Panganiban¹

A. Background of the Study

As globalization continues to be the driving force that shapes structural and systemic changes in world order, cities serve as the sites from which the arena of “development” is realized as it is in this physical locus of the State wherein political power is consolidated, the economic backbone – where capital, labor, and trade is produced and accessed, and the sociocultural center continues to be fabricated is manifested. Due to this confluence of factors, the

¹ PANGANIBAN, ARTEMIO C.J., Vol. II Liberty and Prosperity, 2006

spaces of the cities are constantly transformed and shaped in accordance with the ebb and flow of globalization and modernization.

Along with the integration of the free market continues to command the systems of society, the urbanization of the spaces within the city continues to be relevant, if not significant, in the transformation of the community – and eventually of the State, as it is within these places where discourse is held about how the development of society is to transpire. It is within the *agora* of Greece which proved to be the fertile place where free discourse among men gave birth to the seeds of democracy which in turn shaped the course of history and humankind²; the *salons* of France where the ideals of political philosophy and aesthetics flourished proving it to be a space from which art could be exhibited and freely produced and manufactured³; and the *plazas* globally where it became the sites not only of and for free speech and expression but of revolutions and social movements.⁴

Due to the development of the city that connects it to globalization and the free market, the city has become immeasurably essential not only in the functioning of the State, as it is from where it exercises and flexes its political power to compel order, but also since it possesses the economy, services and resources, and the places of production which people access for their livelihood, education, and welfare.⁵ Because of the concentration and further accumulation of resources in the city, the natural phenomenon would be the rural exodus and urban agglomeration due to job creation and income generation.⁶

With the unprecedented urban agglomeration due to the driving force of capitalism within the cities, the spaces to which the public traditionally has access is undergoing a period of reckoning as it continues to be shaped, modified, altered, removed, and dispossessed from utilization in favor of wealth-generating developments and infrastructures such as malls, industries, and businesses in favor of the State, local government, and corporations. As the spatial allocation of the city tends to favor these developments, this subsequently affects the means of not only how the public as a collective can participate in the discourse and formulation of policies but as to who has the

² ARENDT, HANNAH, *The Human Condition*, 1958

³ HABERMAS, JURGEN. *The Structural Transformation of the Public Sphere*, 1991

⁴ HART, DONN *The Philippine Plaza Complex: A Focal Point in Culture Change*, 1955

⁵ HENRI LEFEBVRE, *State, Space, World* 2009

⁶ ASIAN DEVELOPMENT BANK, *Fostering Growth and Inclusion in Asia's Cities* 2019, September 2019

authority that can influence as to how development is to be made and consequently, how the city and its spaces is to be designed.⁷

Therefore, the control and allocation of space in the city is equivalent to the allotment of resources which is tantamount to a designation of power in the public sphere thus restructuring the relationships in the system and thereby establishing that there exists a nexus or cycle between the structural formation of the society and the urban design.⁸ This merely echoes that there is an intimate relationship as to how the material space of cities affect power relations among social classes and vice versa.⁹ The imperative for development however continues to reverberate, but as the access to the public sphere is limited and/or too much regulated, such prosperity is at the prejudice of resource/s and would be extractive and hence not sustainable that would provide as social justice to all which begs the question¹⁰: How should cities – the space for which the blueprint of society is established – be designed so as to afford social justice and provide sustainable development?

As the political center of the Philippines, Metro Manila constitutes the economic center and trade capital of the country¹¹ leading all regions in production as manifested by its 32% share in the Gross Domestic Product (GDP)¹², an econometric measurement that identifies a country's economic health and status. Other metropolitan cities in the Philippines such as Metro Cebu and Metro Davao are comprised as business hubs that foster economic growth.

Modernization and development promote gradual economic growth as indicated in the GDP. This is manifested by the urban agglomeration and the concentration of resources and production in the city, illustrated by massive real estate developments which is mostly characterized by malls, commercial establishments, high-rise condominiums, and residential gated communities whose economic profiles belong to the upper middle class and upwards. While the rising economy tends to indicate that the society as a whole is doing better, income inequality is prevalent in the urban and rural regions, as evidenced by

⁷ Anna Domaradzka, *Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization*, International Society for Third Sector Research, 608 – 616, (2018)

⁸ Philip F. Kelly, *Urbanization and the Politics of Land in the Manila Region*, *The ANNALS of the American Academy of Political and Social Science*, 170 – 187 (2003)

⁹ LEFEBVRE, HENRI, *The Production of Space*, 1974

¹⁰ Garrett Hardin, *The Tragedy of the Commons*, *Science* 1243, 1243 – 1248, (1968)

¹¹ Lambino, John XXV Paragas, *The Economic Role of Metro Manila in the Philippines: A Study of Uneven Regional Development Under Globalization*, 79 No. 2 *The Kyoto Economic Review*, 67 – 106, (2010)

¹² Philippine Statistics Authority, 2017 – 2019 Gross Regional Domestic Product Report, accessible at <https://psa.gov.ph/content/gross-regional-domestic-product>, last accessed on April 08 2021, 2020

the Gini coefficient, a statistical measurement that determines economic inequality in a given population, which remains high, denoting that while wealth is generated in the cities, the distribution of resources is bottlenecked and concentrated in the hands of the few and the quality of life remains impoverished and dismal.¹³

While economic growth is imperative to have a stable fiscal capacity to readily address public interest, urban agglomeration and development only maintains the image of economic progress and generation of wealth in which the towering heights of skyscrapers in business districts, expansion of gated communities and privatized real estate developments serves as the façade of growth in and around the metropolis as fabricated by the urban skyline. This conglomeration of spaces however effectively conceals the urban landscape comprising mainly of informal and public spaces which oftentimes literally stretches along the margins of the developed area which are typically comprised and occupied by the urban slums, disenfranchised workers peddling their goods and services thru pushcarts and makeshift stalls that informally forms as the annexes of sidewalks and pedestrian stretches, oftentimes in derelict conditions and operate devoid of sanitary regulations, which accurately depicts the genuine condition of the economy and the communities that is constricted by the urban design that is underpinned by the tenets of development through liberalization of the economy shaped by privatization.¹⁴

Unraveling the spatial blueprint of cities in the Philippines, in particular Metro Manila and its peri-urban fringe, reveals the nexus of land use and the operation of development brought about by liberalizing the economy, privatization, and deregulation. This brings to life the stark inequality of urban living which is captured by the statistics of economic development wherein even though there is a progressive GDP, poverty, inequality, and the uneven distribution of wealth continues to fester the communities and the persons living and accessing the city, hampering the exercise of civil and political freedoms made evident by the gentrification of spaces.¹⁵ This begs the question, if sustainable development is the anthem of economic progress, which seeks to be inclusive and beneficial for all, – how was the city unequally developed?

¹³ Tuano, Philip Arnod and Cruz, Jerik, *Structural Inequality in the Philippines: Oligarchy, (Im)mobility, and Economic Transformation*, 36 No. 3 Journal of Southeast Asian Economics 304, 304 – 328, (2019)

¹⁴ Ortega , Arnisson Andre, *Manila's Metropolitan Landscape of Gentrification: Global Urban Development, Accumulation by Dispossession, and Neoliberal Warfare Against Informality*, 70 Geoforum 35, 35-50, (2018)

¹⁵ Michel, Boris, *Going Global, Veiling the Poor: Global City Imaginaries in Metro Manila*, 58 Philippine Studies 383, 383 – 406, 2010

Scrutinizing the blueprint of the city reveals the urban transformation in accordance with the dictum of globalization and studying the system and structures of urban governance and land use planning in the Philippines exposes further the dark underbelly of privatized and exclusive developments in the cities which is dominated by socio-political elite landowners during the colonial period and corporate entities which seeks to diversify and expand their estates through properties more inclined with global development such as rental and commercial establishments.¹⁶ This is fueled by the fact that it is enabled by the policies of decentralization from the governing law which allowed them to hold more influence in the planning process and that the public officials responsible belong to the landowning elite.¹⁷ The result of ownership and development blurred the distinction between public and private sphere where albeit accessible by the public, the design of the space is limited wherein its usage and access is designed to primarily generate wealth acquired through the access and use of the property and funnel it to the ones who developed and also who effectually beneficially owns the property, with general utility of the spaces also being regulated by management policies.

The design of the cities and urbanization thus forms an integral part of the of the society wherein it dictates not only the people's right but also its access to life, liberty, property, health, and exercise of their civil, political, economic, and sociocultural freedoms.¹⁸ It is then realized that the design of the city and the makeup of its spaces has its foundations on the policies of decentralization, deregulation, privatization and ultimately, liberalization of the economy, originally meant for the general welfare has been exploited by the private interests of the few who centered its development in accordance with their perceived profitable aspirations.

The emphasis in creating and promoting resilient, sustainable, and socially just communities is made even more imperative and crucial during the COVID-19 pandemic wherein cities became the central theater of the health crisis. While there is a national emergency powers law enacted¹⁹, local autonomy and responsibility, as dictated by the policy of the Local Government Code²⁰, remains to be the name of the game as the resources and capability of the cities in handling the public health crisis are scarce and reveals

¹⁶ Murphy, Peter and Hogan, Trevor Laurence, *Discordant Order: Manila's Neo-Patrimonial Urbanism*, 112 Thesis Eleven 10, 11 – 34, (2012)

¹⁷ ORTEGA, ARNISSON ANDRE, *Neoliberalizing Spaces in the Philippines*, 2018

¹⁸ HARVEY, DAVID, *Justice, Nature, and the Geography of Difference*, 1996

¹⁹ Bayanihan To Heal As One Act (BaHO Act), R.A. No. 11469, (2020)

²⁰ Local Government Code (LGC), R. A. No. 7160, (1991)

the lapses of its powers in providing its services to curb the tide of transmission and prevent casualties of the virus.

The incapacity of the city to properly operationalize services justifies the assumption that spatial design of the city revolves around commercial development and gentrification of communities by not considering the sustainability of its policies with regard to other facets of its public in exchange for development promised by the corporations and the socio-political elite, thereby creating a bottleneck and logistical concern in manifesting good governance.²¹ To solve modern challenges which determines the life, liberty, and security of the people, new tools and policies must be developed in light of the constraints that impedes the formulation of a solution. The increasing growth and expansion of urbanization under the current status quo not only threatens food security, but also resiliency of the communities against natural calamities, and therefore incapacitated to be economically free. Necessitous men cannot be free men.

The rise of community pantries²² being established by the community divulges such incapacity and gentrification wherein the city has not been able to fully access its communities as it is literally left at the margins and fringes of the city, which is illustrated in the fiasco of distributing *ayuda* (aid) and the social amelioration program (SAP)²³. It highlighted the essential nature of the cities as when the public health crisis soon also contemplated a food shortage crisis, further cementing the interdisciplinary significance the city which serves as the space where power, rights, and the access to a person's rights fundamental to their existence is lived. The city serves as the critical space which determines the people's *gubo* (ruin) or *ginbawa* (prosperity) vindicating the importance of the spatial design and land use planning of the city in institutionalizing social justice.²⁴

By recognizing the transcendental importance of the cities and communities, this paper seeks to explore legal innovations in the Philippine jurisdiction with regard to the Right to the City – wherein it seeks to

²¹ Porio, Emma, *Citizen Participation and Decentralization in the Philippines* in *Citizenship and Democratization in Southeast Asia*, 2017

²² Calonzo, Andreo, *Free Food Pantries Sprout in Philippines as Aid Delayed*, BLOOMBERG, 19 April 2021, <https://www.bloomberg.com/news/articles/2021-04-19/free-food-pantries-sprout-in-philippines-as-state-aid-delayed>

²³ Aceron, Joy, *[ANALYSIS] Challenges facing the Social Amelioration Program for the Coronavirus*, RAPPLER, 2 April 2020, <https://www.rappler.com/voices/thought-leaders/analysis-challenges-government-social-amelioration-coronavirus>

²⁴ MITCHELL, DON, *The Right to the City: Social Justice and the Fight for Public Space*, 2003

institutionalize social justice through systematic inclusion²⁵ of the people in urban governance thereby sharing with them the gifts of genuine freedom, as affirmed and resonated by the twin beacons of liberty and prosperity as espoused by enacted statutes and established jurisprudence.²⁶

The paper navigates the tumultuous landscape of establishing the Right to the City by grounding and orienting the reader in the basic concepts of urban planning and spatial design and how it shapes not only the terrains of the city but also the people making use of it and eventually the systems and society upon whom it serves and answers to. It will proceed to situate the *status quo* locally where it will tackle how the regulation of spaces serves as a weaponization of policies and the law to establish social order and behavior the system wants to legitimize. This will take a brief tour and analysis on Spain's method of *reduccion* formalized by the legal instruments enacted through the *Leyes de Indias* and how it was integral in the makeup of the cities and communities in its pursuit to proselytize the faith and colonial interests.²⁷ It will then transition to the American period which radically transformed the design of the cities to serve and expand its own colonial interests in instituting the City Beautiful project enabled by the ideals of "Benevolent Assimilation" and "Manifest Destiny".²⁸ It will transition to the post-war development and subsequently the current state of the city being shaped by amalgamation of political policies and dominated by market forces which eventually led to the fractured state of the city.²⁹

The paper will then tackle the Right to the City which began with French philosopher Henri Lefebvre³⁰ where it will tackle the roots and *ethos* behind the concept of such right that seeks to be recognized and how it has evolved today. It will take into consideration legal instruments which has recognized the Right to the City in the international jurisdiction and tackle the effects of its enactment to the holistic development and progress of the society.

The paper will then proceed with a critical analysis of the legal foundations of land use planning and city design in the Philippines which reveals that the

²⁵ PANGANIBAN, ARTEMIO C.J., Vol. II Liberty and Prosperity, 2006

²⁶ Panganiban, Artemio C.J., *Unleashing Entrepreneurial Ingenuity*, FOUNDATION FOR LIBERTY AND PROSPERITY, 26 February 2015, <https://libpros.com/2015/03/03/unleashing-entrepreneurial-ingenuity/>

²⁷ RAFAEL, VICENTE, *Contracting Colonialism: Translation and Christian Conversion in Tagalog Society Under Spanish Rule*, 1988

²⁸ WISE, EDWIN, Manila, *City of Islands: A Social and Historical Inquiry Into the Built Forms and Urban Experience of an Archipelagic Megacity*, 2019

²⁹ *Ibid.*

³⁰ LEFEBVRE, HENRI, *Le Droit a la ville* (The Right to the City), 1996

fragmented design of the cities owes it ailments due to the incohesive and fractured policies established in law³¹ which either failed to address possible loopholes³², overlapping mandates of authorities and policies,³³ or did not provide incentives or support for capacity-building which would enable the local government to initiate public interest-centered development, or all of the above.³⁴

The paper will situate the Right to the City under the lens of the twin beacons of justice as the classic legal philosophy under Philippine jurisdiction. In navigating the tumultuous landscape in establishing the Right to the City, it must first be recognized that our altar of democracy enshrines the twin beacons of justice³⁵, namely – liberty and prosperity. The discussion in this portion of the paper advocates that the Right to the City is bestowed by the twin beacons of justice as enshrined in our altar of rights, and not only within the umbrella of enacted statute and jurisprudential pronouncements, as the Right to the City is a human right which contemplates both liberty and prosperity wherein its genuine operation and exercise depends upon the virtuous cycle and synergy of both to properly institutionalize social justice.

This virtuous cycle exhibits that the Right to the City secures social justice holistically wherein it provides not merely security of political freedoms but economic ones as well wherein the deprivation of the other causes the impairment and hampering of the exercise of rights. Genuine social justice and the fulfilment of the *ethos* of liberty and prosperity contemplate the full exercise of our political freedoms without the presence of hunger, poverty, and inequality, and the exercise of socio-economic and cultural rights without threat of deprivation and arbitrariness which only enslaves the individual in a tyrannical and repressive system.³⁶

Finalization of the study involves discussing as to how the Right to the City can be operationalized in the Philippine context and concomitant proposals in legislation to formally recognize such right through the

³¹ SEROTE, ERNESTO, *Property, Patrimony, and Territory: Foundation of Land Use Planning in the Philippines*, 2004

³² ORTEGA, *supra* note 17

³³ WISE, *supra* note 28

³⁴ SEROTE, *supra* note 31

³⁵ Panganiban, Artemio C.J., *Visionary Leadership by Example*, FOUNDATION FOR LIBERTY AND PROSPERITY, 7 February 2009, <https://cjpanganiban.com/2007/02/07/visionary-leadership-by-example-2/>

³⁶ Panganiban, Artemio C.J., *Safeguarding the Liberty and Nurturing the Prosperity of the Peoples of the World*, FOUNDATION FOR LIBERTY AND PROSPERITY, 18 October 2006, <https://cjpanganiban.com/2006/10/18/safeguarding-the-liberty-and-nurturing-the-prosperity-of-the-peoples-of-the-world/>

amendment of city charters, or by legislating a National Land Use Act, taking into account the factors affecting the ineffective strategizing of sustainable development in the Philippines.

As a final approach to provide for the legal mechanics of the Right of the City, the paper proposes that mere enactment of the law by the participation and initiative of the political branches is not enough as the full operation of the right also entails the engagement from the judiciary who is mandated under the Constitution to protect fundamental liberties and rights. Foraging into the jurisprudence of the judicial branch reveals that the Supreme Court of the Philippines was pro-active in its approach and judicialized the Right of the City in the case of *Bayan v. Ermita*³⁷ where it decreed the establishments of freedom parks for the exercise of the Constitutional right of the freedom of expression and assembly without impediment. Taking further into account the multi-faceted characteristic of the Right to the City as embracing human right which contemplates liberty and prosperity also qualifies the Supreme Court to promulgate rules and writs necessary for the right to be immediately protected and promoted when threatened.

B. Research Design and Statement of the Problem

The study is focused in exploring and establishing evidence and literature collected from international and domestic sources whereby the technical, political, and social dimension of land use planning is intimately linked with its legal perspective as can be found from established laws, policies, and jurisprudence.

This approach allows for a critical analysis³⁸ and political economy analysis³⁹ of the Right to the City to transpire which by its nature is interdisciplinary, interdisciplinatory, and transdisciplinatory, wherein its concept and evolution is discussed which can be solidified further and can be established as a uniform concept by contextualizing it in the Philippine jurisdiction wherein the laws, policies, and jurisprudence is analyzed using Black Letter Approach and Law-In-Context.⁴⁰

To duly support and solidify the definition of the Right to the City in the Philippine context, a holistic review of the related literature will be made which

³⁷ *Bayan v. Eduardo Ermita*, G.R. No. 169838, 25 April 2006

³⁸ WODAK, RUTH AND MEYER, MICHAEL, *Methods for Critical Discourse Analysis*, 2009

³⁹ Australian Government – Department of Foreign Affairs and Trade, *Guidance Note – Political Economy Analysis*, January 2016

⁴⁰ MCCONVILLE, MIKE and WING CHONG HUI, *Research Methods for Law*, 2007

shall utilize multiple sources including but not limited to descriptive, critical analysis, and quantitative investigation.

To duly aid the study in its endeavor, the following questions will serve as a light post which will be discussed and answered by the paper:

- 1) Are there existing or perceived problems on sustainable land use that threatens liberty and prosperity?
- 2) How is the *Right to the City* understood under the context of existing legal system?
- 3) How does the *Right to the City* fall within the penumbra of the twin beacons of justice – liberty and prosperity?
- 4) How does/will the *Right to the City* manifest and operationalize in international and Philippine jurisdiction?

The paper seeks to holistically formulate a legal mechanism wherein the Right to the City may be rightfully realized in the Philippine jurisdiction, taking into account its interdisciplinary nature which hopefully is adequately provided for in this study.

1. REVIEW OF RELATED LITERATURE

A. Geography v. Design is Destiny: How Shaping Lands Shape Society

Primordial consideration first lies in understanding the essential concepts surrounding urbanization. This section provides the basic premise and purpose of urban planning wherein it will define and explore the various dimensions of land, exploring the concept of land use, and tackling the rationale and importance of land use planning and its relationship in shaping not only the architecture of the city but the people and systems it is bound to.

Undertaking to arrest the concept of land in a single definition is illusory as it partakes of many perspectives. Traditional conceptions of land begin with its legal definition where it is ordinarily defined and perceived with regard to property in relation to right of ownership. The legal interpretation is restrictive in a sense that it merely defines land as any ground, soil, or earth that can be capable of ownership and everything annexed to it whether by nature or by labor of man, which also includes the bundle of rights by virtue of such

ownership which contemplates the right to possess, abuse and consume, alienate, or even destroy⁴¹ everything within its breadth, depth, and height and contemplates basically anything vertically upwards or downwards.⁴²

Corollary to the discussion on property is the inherent nature of land to be an economic resource as it may be perceived traditionally as a space for consumption of goods or either as a site and factor in generation of wealth through production, or both.⁴³ Land contains either natural resources that can be consumed and utilized by whoever owns or has access but still maintain its raw form such as when it is a natural park or nature reserve.⁴⁴ On the other hand, land in the economic sense may be perceived as a site for production and generation of wealth wherein it is transformed to be a space where goods, services, and others may be produced, consumed, and exchanged.⁴⁵

It is land as the site of production in the economic perspective which is of vital importance to be discussed since characterizing land as such would entail its physical transformation according to the use it is designated with, whether it be commercial where goods and services are exchanged and consumed, residential – for the occupation of its inhabitants, industrial – for the production of goods, or otherwise institutional – which, instead of producing goods or services, generates economic power such as universities and academic institutions which spurs knowledge and innovation also centers of government, etc. This perception of land as a site of production contemplates the designation of estates of land according to different uses specified above⁴⁶ which is why it is colloquially associated with urbanization since the idea revolves around the participation of the public in the free market which is composed of different industries that is much more incentivized to participate and thus better integrated in the world economy and trade which thus, comprise the economic makeup of the country.⁴⁷

As land is an economic resource, the issue that arises when it comes to its appropriation concerns with scarcity and sustainability. The topography and type of land limits the type of development or modernization that may be

⁴¹ Pangalangan, Raul, *Property as a "Bundle of Rights": Redistributive Taking and the Social Justice Clause*, 71 Philippine Law Journal 141, (1996)

⁴² SEROTE, *supra* note 31

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ SEROTE, *supra* note 31

⁴⁷ Annez, Patricia Clarke & Buckley, Robert, *Urbanization and Growth: Setting the Context*, Urbanization and Growth, 1 – 46, (2009)

undertaken. Its exploitation is limited to sustain the increased influx of people who makes use of the land. Studies and analysis must be undertaken in order that the exploitation of the terrain is safe for human use and continued access.⁴⁸ Also taken into account is the development of land are factors which determines land values that contributes to the sustainability of urban living in the cities, such that if unequal development of land is made, the resources inside the city may only be accessible to the few who are privileged and hence may only foster inequality and unsustainable growth.⁴⁹

Finally, land is most importantly viewed with reference to its socio-political dimension which recognizes that the land is the site and space which links the people and stakeholders to the market and system. It is political due to a myriad of reasons. Firstly, the land, as established by law, signifies the territorial jurisdiction of the authority which demarcates the exercise of sovereignty and government powers.⁵⁰ A subject beyond the metes and bounds of the land of a given authority is not within the realm of jurisdiction and as such, cannot be subjected to the powers of the government. Conversely speaking, the operation of a government's law is valid when it is within its territorial jurisdiction.⁵¹

The political dimension of land with regard to territory is furthermore revealed through the tensions with regard to boundary disputes between and among different local governments^{52,53} as a large portion of the Internal Revenue Allotment – the share of local government units in the revenue of the national government which is largely comprised of taxes – is hinged upon the size of the territory and its population as provided by Sec. 284 of the Local Government Code of 1991.⁵⁴ The size of the territory is crucial as it also determines the budget allocation to the local government unity wherein rectification or resolution of territorial boundaries is usually not resorted to as it may only reduce the current allotment of the national government to the

⁴⁸ SEROTE, *supra* note 31, at 7

⁴⁹ Brigham, Eugene, *The Determinants of Residential Land Values*, No. 4 Vol. XLI Land Economics 324, 324 – 334

⁵⁰ GOROSPE, RENE B., POLITICAL LAW, 2016 citing *Magallona v. Ermita* 655 SCRA 476 (2011)

⁵¹ *Reagan v. Commissioner of Internal Revenue* 30 SCRA 968 (1969)

⁵² Bacungan, VJ, *Court rules in favor of Taguig in Bonifacio Global City territorial dispute*, CNN PHILIPPINES, 9 March 2017, <https://cnnphilippines.com/news/2017/03/09/court-of-appeals-taguig-makati-bonifacio-global-city-dispute.html>

⁵³ *City of Makati, et. al. v. City of Taguig, et. al.*, G.R. No. 208393, 15 June 2016

⁵⁴ An Act Providing for a Local Government Code of 1991, Republic Act 7160, Sec. 284 & 285, (1991)

LGUs. This is evident from the fact that the aggregate of all land area of local government units exceed the land area of the country.⁵⁵

Finally, the political dimension of land is primordial as it is the architectural design of the city which largely influences the behavior of its citizens and inhabitants. City design, as the material space, which includes matters regarding provisions of public spaces, development of transport infrastructure, network accessibility, market connectivity, water and food service, housing programs which form part of the cities effective and productive circuits and structures dictate the social order among people, lifestyle, culture, and overall development of its citizens.⁵⁶

In this regard, it is the local government who is tasked under the law to demarcate and design the city by delineating the use of lands within its territories to pursue its goals and agendas in its development projects to raise revenues while also balancing the economic and social interest of the persons who are interested in the spaces being the sites of goods, services, and resources being utilized and accessed by the people.⁵⁷

The political dimension of land reveals the rationale of land use planning in the context of globalization and further modernization of the city. Land use planning, albeit defined in many ways is firstly defined as “proper management of land resources to promote public interest” wherein the definition of “public interest” is an elastic concept that can be hammered to fit modern standards where it may be subject to the wisdom and discretion of the authorities.⁵⁸

Land use planning is one of the legal toolkits of the State, via its police powers, to institutionalize social justice and general welfare as established by the Constitution.^{59,60} Following the observations made earlier where the material space occupied in the land has an intimate relationship with the structures and relationship of the people which has a reciprocal effects with each other, land use planning can be specifically interpreted to be the method by which the authorities seek to balance relationships and networks of power

⁵⁵ SEROTE, *supra* note 31, at 16

⁵⁶ LEFEBVRE, HENRI, *The Production of Space*, 1974

⁵⁷ R.A. 7160, Sec. 16

⁵⁸ *Planters Products, Inc., v. Fertiphil Corporation*, 548 SCRA 485 (2008)

⁵⁹ SEROTE, *supra* note 44, at 31

⁶⁰ 1987 CONSTITUTION, Art. XIII, Sec. 1

– thereby influencing society and its sociocultural fabric through the transformation of the material space which is represented by the land.⁶¹

While the traditional dictum holds that “geography is destiny” – wherein the determinant of what makes and breaks societies’ economic development is dictated by their physical environment,⁶² a criticism however refutes such analysis by stating that topography and characteristics of the place is merely a factor and that the creation and promotion of solid institutions that respects basic human rights fosters innovation and participation not only in the political discourse but also in the market, engineering a stable political climate and prosperous economic development.⁶³

The legal toolkit of land use planning captures both the dilemma posed by the constraints of the physical terrain, and the cultivation of a climate that fosters participatory governance in the creation of strong institutions as impediments towards economic development and solves it by transforming material territory and built forms to calibrate not only the allocation of resources contained in the city but also provide support for challenges to established power relations to promote and incentivize stakeholders in taking an active part in the architecture of spaces.⁶⁴

B. [DIS]Place-Me(a)nt: Weaponization of the Law and Regulation of Spaces

The general perception and empirical evidence states that law and legal institutions are significant factors in providing basic human rights, economic growth, development, and access and security of justice.⁶⁵ ⁶⁶ While such is the case, wherein the law is meant to be exercised in the pursuit of public interest and social justice, legal-historical scholarship shows that the law is a double-

⁶¹ van Dijk, Terry & Beunen, Raoul, *Laws, People, and Land Use: A Sociological Perspective on the Relations Between Laws and Land Use*, Vol. 17 No. 12 European Planning Studies 1812, 1797 – 1815, 2009

⁶² DIAMOND, JARED, *Guns, Germs, and Steel: The Fates of Human Societies*, 1999

⁶³ ROBINSON, JAMES & ACEMOGLU, DARON, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, 2012

⁶⁴ WORLD BANK GROUP, *Governance and the Law*, 2017

⁶⁵ BESLEY, TIMOTHY and PERSSON, TORSTEN, *Pillars of Prosperity: The Political Economics of Development Clusters*, 2014

⁶⁶ La Porta, Rafael, Lopez-de-Silanes, Florencio, Shleifer, Andrei, and Vishny, Robert, *Legal Determinants of External Finance*, Vol. 52, No. 3 *Journal of Finance*, 1131-1150, (1997)

edged sword which can be also weaponized wherein it may function as a State apparatus to obtain the government's interests – instead of justice.⁶⁷

The following would illustrate how law in the regulations of spaces was weaponized in pursuit of its political and ulterior interests which shall correspondingly tackle how it was an instrument of policy that weaves the social fabric of its subjects to attain its aim: either thru its coercive or coordination.

***Reduccion* and Bajo de las Campanas: Geopolitics and the Christianization of the Spanish Empire**

Long before the Spaniards conquered the Philippines, there was already an existing civilization in the Philippines characterized by different *rahananates*, *sultanates*, and *barangays* engaging in maritime trade with different countries such as China, Malaysia, and Brunei.⁶⁸ Prior to colonization, there was no centralized or uniform policy of planning human settlements; indigenous people like the Igorots who are situated in the mountains of the Cordilleras live together as a community wherein spaces for communal activities, mediation of disputes among and between different tribes, and other events of significant importance are manifested in the built form of *bugnay* and *lucong*.⁶⁹

As one of the thrusts of the Spanish empire is strongly focused on the proselytization of the Catholic faith, the sparse and scattered settlements of different communities which are situated in the mountains is proving to be a Herculean task as the topography is proving to be a big constraint in the exercise of its political powers. This also means that the administration and enforcement of laws is only limited to where the resource of the empire is connected and thus, the rest of the Philippines is disconnected from Spanish rule.⁷⁰

Drawing from their colonial experiences in Latin America, the Spanish Crown enacted *Leyes de Burgos* (Laws of Burgos) in 1512 which was the first codified set of laws that seeks to regulate the relations and interactions between

⁶⁷ Lund, Christian, *Access to Property and Citizenship: Marginalization in a Context of Legal Pluralism*, Legal Pluralism and Development: Scholars and Practitioners in Dialogue, 197 – 214, (2012)

⁶⁸ SCOTT, WILLIAM HENRY. *Barangay: Sixteenth-Century Philippine Culture and Society*, 1997

⁶⁹ SCOTT, WILLIAM HENRY, *Cordillera Architecture of Northern Luzon*, 1962

⁷⁰ RAFAEL, VICENTE, *Contracting Colonialism*, 1988

the colonialists and the natives and the subsequent *Leyes Nuevas* (New Laws)⁷¹ in 1542 which were instituted reforms by King Charles I of Spain that sought to introduce humane laws which was culminated in the overall codified law known as the *Recopilacion de las leyes de los reinos de Indias* (Laws of the Indies) in 1684 by King Phillip II.⁷² It was in these laws that instituted the system of *reduccion* that formed as the foundation of city planning in the Philippines so that the exercise of authority in the Philippines would be effective.⁷³

Reduccion as a system of city planning, seeks to establish the authority of the Spanish Crown by conquering the communities from far-flung areas and organize them under the administration of the government where they belong to a *pueblo* (township) or *cabecera* (capital). The *poblacion* is laid out into a grid pattern and the urbanization of spaces was an administrative and military-political necessity to make up for the lack of resources and manpower in ensuring the security and vise-like grip of the Crown on its colony.⁷⁴ Urbanization and the arrangement of the public space was utilized by the Spaniards in reconfiguring the social order. The forcible re-arrangement of the public space meant that there will be a modification of the barangay social structure within a colonial administrative hierarchy wherein social hierarchies are determined by the spaces of the city. This spatio-political structure is illustrated in that if one is closer to the *pueblos* it symbolizes the social status of the person as part of the *principalia* who holds massive influence and is taken in the colonial social fabric as an *alcalde*, *cabeza de barangay*, etc., and the people living near or within the peripheries (*barrios*) indicate low social stature which may be subject to *polo y servicios* (forced labor), wherein if one is outside the administrative space, one is branded as a *remontado* or uncivilized, an enemy of the Church and State, being an infidel.⁷⁵

In implementing *reduccion*, natives residing in the mountains and countryside are uprooted and displaced from their homes to live in settlements that are planned and established by the government in the lowlands or near ports and forts that are military bases of the Spanish Crown to easily quell dissent. Thus, establishment of the social order became easier as subjects are

⁷¹ *Recopilacion de Leyes de los Reynes de las Indias* (4th edition) (1791)

⁷² LICO GERARD AND DE VIANA, LORELEI D. C., *Regulating Colonial Spaces: A Collection of Laws, Decrees, Proclamations, Ordinances, Orders and Directives on Architecture and the Built Environment During the Colonial Eras in the Philippines*, 2017

⁷³ Pilar, Chias and Abad, Tomas, *Colonial Urban Planning and Land Structures in the Philippines, 1521 – 1898*, *Journal of Asian Architecture and Building Engineering*, (2012)

⁷⁴ WISE, *supra* note 28

⁷⁵ ORTEGA, ANDRE ARNISSON. *Neoliberalizing Spaces in the Philippines: Suburbanization, Transnational Migration, and Dispossession*, 130-131, 2018

under the close guard of authorities and the Church who holds influential power. The *Leyes de Burgos* has thirty-five (35) decrees most of which are related to the planning of spaces which is key in the governing of public affairs and civil relations. Pertinent to which are the forced, albeit “voluntary” displacement of natives into *encomiendas*, mandatory erection of Church structures, and that in the establishment of an estate, it is imperative that a church must be built which must be equidistant and thus being the center of the town or city.⁷⁶

Of significant importance is the concept of *bajo de las campanas*. In the establishment of cities, *bajo de las campanas* or “under the reign of the bells”, wherein every inhabitant is within hearing range of the bell, symbolizing church authority, civic life and social interaction is centered around the church which serves as the focal point of interactions with and among the people. Everything - from the material space to the personal relationship - revolved around the Church as an institution and the church as a built form. It was the built structure and as an institution from which authority was exerted and articulations of rights and powers were exercised. It was the tolling of the bells that indicated the state or activity of a community which may signal not only ecclesiastical activities such as the hearing of mass or recitations of the Novena or Angelus, but also civic affairs such as the ringing of the bells along with the singing of *Te Deum* at the sailing of the ships due to the Manila Galleon trade.⁷⁷

⁷⁸

It is clear that the Spaniards utilized the law in planning of spaces to consolidate their power over its subjects to further its colonial grip. *Reduccion* as a law allowed the Spanish Crown to exert their sovereignty and political power by reconfiguring the social makeup community by transforming the topography and material spaces of the land. It allowed the colonial power to efficiently manage their limited resources within cities and compel social obedience from the masses wherein they were able to enact edicts and *bandos* that regulated the use of spaces within.

The nature of the role of law was coercive in this regard wherein it is the traditional rationale for people to obey policies. Coercive nature of the law either incentivizes the people in limiting their freedom to act or making such option too costly. Cost-benefit analysis of the law provides that people will

⁷⁶ LEYES DE BURGOS (1512-1513)

⁷⁷ *The Galleon Trade*, <http://www.thegalleon.ph/the-galleon-trade/> (last accessed February 26, 2020)

⁷⁸ Ocampo, Ambeth, *When people lived 'bajo de la campana'*, Inquirer.net, (May 27, 2016), <https://opinion.inquirer.net/94927/when-people-lived-bajo-la-campana>

systematically adhere to the law if the cost of non-compliance is higher than its benefits wherein it depends on the capacity of the State to operationalize with commitment its regulatory powers and the standards by which non-compliance is regulated is tight wherein eluding it would be only futile and the benefit of following the law is much more favorable.⁷⁹

In contextualizing the coercive role of *reduccion* and regulation of spaces, non-compliance with the system imposed identifies the individual as a *remontado* or enemy of the Crown wherein they can be subject to punishment. *Reduccion* reveals the interdependence of spaces and how it creates a symbiotic relationship with social order, either by enabling or making each other prosper or by providing security and exerting authority thereof in order to impose social order, with the ultimate objective of proselytizing the faith, exploitation of resources to fulfill the mandate of the Church and Crown. It is also apparent that not only are spaces and built forms interdependent with each other but also multi-sectoral as the modification of spaces spills over and affects norms, ethics, traditions and thus dictates social order.

Benevolent Assimilation and the City Beautiful: Designing the Imperial American Empire

After more than 300 years of subjugation by the Spanish Empire, the Philippines was subsequently colonized by the United States of America after Spain relinquished sovereignty and control when it signed the Treaty of Paris.⁸⁰

The *casus belli* or justification of the United States in its expansion of territory is known as “Manifest Destiny” which holds that it is their utmost obligation, as the foremost model of a democracy that has perfected civil liberties, to indoctrinate the world and spread the principles of governance of the people, by the people, and for the people with the concomitant obligation of espousing the values of equality and liberty.⁸¹

Seeking to disassociate the actions of the State from the oppressive image of colonialism which received a negative backlash in the mainland, President McKinley espoused Benevolent Assimilation which attempts to persuade that the building of the American empire is justified by fulfilling their Manifest

⁷⁹ SCHAUER, FREDERICK, *The Force of Law*, 2015

⁸⁰ KALAW, MAXIMO MANGUIAT *The Political Constitution of the Philippine Republic*, 430-445, 1927

⁸¹ STRONG, JOSIAH *Our Country: Its Possible Future and Present Crisis*, 107-108, 1885

Destiny as harbingers of democracy and sages of self-governance, and American governance is the best power to govern the islands as it is guided by principles that respect private property, assurance of their labor and employment, guarantees freedom from displacement and trespass in homes, wherein the overall objective is to perceive American rule as the champion of rights and justice instead of the arbitrary exercise of power which is attributed to the traditional notion of colonialist expansion.⁸²

The building of the American empire was legitimized by the Supreme Court of the United States in what are known as the Insular Cases wherein the High Court, ruled in favor of the legitimacy of the acts of State in its policy of colonial expansion, treaties executed which necessitated the relinquishment, transfer, exchange, and accumulations of land, and the administrative policies that governs the operations and continued exploitation of the territories.⁸³

In justifying its reasons that the Philippines is not yet politically mature to govern itself and function as a democratic country, the United States ratiocinated its grounds based on the economic despondency of the Philippines which is materialized in the spaces and facilities which, in the context of the times, was unfit for sustaining lives within the frame of the American lens that is primarily focused on the efficient and effective operations of the market to accumulate wealth, promote industrialization, and mass production of goods.⁸⁴

The discussion and analysis below portray the general agenda of Benevolent Assimilation wherein contrasted against Spanish rule, the Americans did not only enact a single defining code of law but myriad of policies that strategically created a system that supplanted institutions and power relations towards the development of a market-driven economy empowered by exploitation of resources and labor and the production of goods which is pacified and legitimized by urban design.

The blueprint behind Manifest Destiny is titled as the City Beautiful by its proponent Daniel Burnham, which is the aestheticization of space and city living wherein it is grounded on the belief that transforming the physical terrain of the city is essential in not only pacifying social unrest and promoting civic spirit but to ultimately make the city function as an effective apparatus of the State wherein it shall be the physical locus of the free market for the colonial

⁸² ILETO, REYNALDO, *Knowledge and Pacification: On the U.S. Conquest and the Writing of the Philippine History*, 10-11, 2017

⁸³ Torruella, Juan. *Ruling America's Colonies: The Insular Cases*, 32 *YALE LAW & POLICY REVIEW*, 57 – 95 (2013)

⁸⁴ ILETO, *supra* note 82

aspiration of America to gain profits and resources would be accessed.⁸⁵ The cholera epidemic which plagued the country after the Philippine-American war however loomed over such project wherein the outbreak wreaked havoc and is blamed on the deplorable state of public space wherein it revealed itself as one of the methods by which America will legitimize its rule by the transformation of space wherein it introduced mass housing, improvements in sanitary infrastructure.⁸⁶

By politicizing the public health crisis wherein solving the epidemic is the utmost importance, spaces became targets wherein it allowed them to also quell social disorder. Control allowed custodians of the public space to conduct surveillance due to public health and monitor socio-spatial conduct of the citizens to quell social disorder that is disruptive to colonial rule. This includes the enactment of ordinances which regulates acts and practices may be done in the public space. The extent of politicizing the health crisis reached its peak when under the premise of public health, officials are authorized to declare premises and facilities infested with rats as menace to public safety wherein an enacted ordinance ordered remodeling of such facilities in accordance with the standard set. This in turn led to the remodeling of almost six hundred facilities and buildings (600). In exercising its police powers, the Americans destroyed the Farola District by arson when it was determined to be a site of infestation thereby displacing many residents and inhabitants therein.⁸⁷

Daniel Burnham envisioned the aestheticization of the City Beautiful and patterned the layout of the city after Paris and installed public works such as sewage systems, clean water supply, electricity networks, and transportation infrastructure which increased mobility within the city. He sought to maintain and promote its beauty through zonification which delineated the uses and limitations in the specific area. Institutions and programs like the *pensionado* were established to supervise and have oversight of the erection of buildings and facilities which would serve as vital cogs in the engineering of the market, preservation of colonial social order, and the successful conditioning and institutionalization of America's legitimacy to rule over the Philippines.⁸⁸

America formulated policies that is not directly relating to the formation of the city but is nevertheless significant in shaping the social order in that is

⁸⁵ Lico, Gerard, *Spatial Regulation as Prophylaxis: Urban Hygiene and Colonial Architecture in the Age of American Imperialism in the Philippines*, Regulating Colonial Spaces, (2017)

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

primordial in the entrenchment of the concepts of private property, labor, and free trade which are the essential ingredients of the market and capitalism, the impetus behind America's working democracy.

The role of law in this regard is a coordinative and legitimizing wherein the law on zonification and policies regarding socio-spatial practices reflect that the institutionalization of the free market and capitalism brought urban transformation which radically changed social order in favor of the ruling class. By successfully integrating circuits of the market in the public sphere through laws wherein it promotes culture and behavior, citizens are more inclined to comply with the law in order to yield greater benefits from it. The more who follows and coordinate with the law tends to legitimize its use as a toolkit for later development.⁸⁹

C. Crisis of Neo-liberalization of Spaces and the Archipelagic Cities

While previous sections discussed the role of law as wielded by the State, the post-war chapter up to the present period shifted the spotlight from the national government to the local government and private sector as chief developers in the design of the city due to the tide of globalization which has brought up the ideas of neo-liberalism to be entrenched in legal frameworks to pursue the various economic outcomes sought to be attained.⁹⁰ Preliminary considerations must first be discussed on the neoliberal restructuring to understand how the spaces of the cities has been shaped and carved up by the private sector as enabled by the State which in turn blurs the distinction between the private-public sphere.

Neoliberalism as generally espoused is a concept wherein general welfare can be best advanced by liberating entrepreneurial freedoms and skills within an institutionalized framework characterized by strong private property rights, free markets, and free trade.⁹¹ The ideological tenets of neoliberalism lies in establishing the market that shall be the central space where man would be able to exercise freedom and realize their potential which commands that the market is the highest good as it becomes the social order of the society.⁹² Man in the pursuit of happiness is centered around the idea of *homo economicus* where he is self-interested and incentivized to contribute to the development of the

⁸⁹ SCHAUER, *supra* note 85

⁹⁰ Arnisson Andre, *Manila's Metropolitan Landscape of Gentrification: Global Urban Development, Accumulation by Dispossession, and Neoliberal Warfare Against Informality*, 70 *Geoforum* 35, 35-50, (2018)

⁹¹ HARVEY, DAVID, *New Imperialism*, 2005

⁹² BROWN, WENDY, *Edgework: Critical Essays on Knowledge and Politics*, 2005

society by being productive in order to gain profits.⁹³ This mandates the authorities that in the creation of neo-liberal order it is imperative that it be preserved and promoted by policies and law so that every member of society would be interested to participate and take part in its further development.⁹⁴

The onset of globalization during the late 80's which opened the world for borderless boundaries and free trade fanned the flames of neo-liberalization to spread across countries which principally advocated for the free flow of goods and services, decentralization and devolution of powers, deregulation of the market, state minimalism, and privatization of public facilities.⁹⁵

As it can be observed during the previous discussions, the establishment of social order in the Philippines required the articulation of consent to legitimize the placement of laws which binds freedoms and conditions behavior. In the case of Spanish rule, the system of *reduccion* and *bajo de las campanas* coerced the citizens to adhere to live in the cities – uprooting them from their homes and appropriating lands and resourced under the control unless they suffer pain of punishment while in America, it managed to articulate consent and legitimize rule over the colonized in its installation of public facilities and institutions as it not yet ready to manage democracy due to the deplorable conditions of living wherein the ruling power is obligated to benevolently assimilate itself being the prime example of democracy – all the while exploiting natural resources in exchange for the administration of the colony.⁹⁶

In the case of post-war development and current period, the Philippines managed to articulate consent and plant the seeds of the need to undertaking neo-liberal restructuring during the aftermath of Martial Law wherein urgent rehabilitation of the economy is necessary due to the plunder made by President Marcos. It conflated the ideals of freedom and democracy in the political arena with a competitive market that harkens to the call of its successful neighbors and allies in the international community.⁹⁷

By framing together the image of the Philippines as a country in the Global South thereby needing economic rehabilitation and the revival of freedom and democracy through liberalization and opening of the markets, the country then undertook neoliberal restructuring as a policy to get rid of political and

⁹³ FOUCAULT, MICHEL, *The Foucault Effect: Studies in Governmentality*, 1991

⁹⁴ BROWN, *supra* note 96

⁹⁵ Kingfisher, Catherine and Maskovsky, Jeff, *Introduction: The Limits of Neoliberalism*, Vol. 28, No. 2 *Critique of Anthropology*, 115 – 126, (2008)

⁹⁶ RAFAEL, VICENTE, *White Love and Other Events in Philippine History*, 2000

⁹⁷ ORTEGA, ARNISSON ANDRE, *Neoliberalizing Spaces in the Philippines*, 2018

economic ills which saw the concepts of neoliberalism permeating in our laws such as the decentralization of powers – where powers of the national government is devolved to the local government is present in the Local Government Code⁹⁸, deregulation of businesses is found in the Oil Deregulation Act of 1988⁹⁹, and privatization of public facilities – most notable of which is the establishment of the National Grid Corporation of the Philippines which privatized the operation of the country’s electronic power grid¹⁰⁰ and the granting of concessionaires which privatized the distribution of water to Maynilad and Manila Water.¹⁰¹

The neoliberal restructuring in the legal framework is abstract but has its revelation in the spatial design of cities which has been transformed wherein the circuits of effective production (residential, commercial, industrial, and institutional zones) that contributes to the economy and market are integrated. As labor and capital are concentrated into the cities which has allowed it to become engines for economic development due to its contribution to the GDP¹⁰², further accumulation of capital and urban agglomeration has brought the need for urban expansion where city clusters and the development of mega-regions now become machines for further economic growth.¹⁰³

While neo-liberal restructuring has alleviated economic concerns brought about by the 2008 Wall Street Crash and made the country more globally competitive in the market where the government relied heavily on real estate developments and investments from Overseas Filipino Workers (OFWs) making the State capable and more fiscally viable due to its rapid growth,¹⁰⁴ political-economy analysis uncovers that the spatial make-up of the cities on which these industries are based offers a dim perspective as increased privatization of State obligations are mostly controlled by the landowning

⁹⁸ R.A. 7160, Sec. 2

⁹⁹ Downstream Oil Industry Deregulation Act of 1998, Republic Act 8479, 1998

¹⁰⁰ An Act Granting The National Grid Corporation Of The Philippines A Franchise To Engage In The Business Of Conveying Or Transmitting Electricity Through High Voltage Back-Bone System Of Interconnected Transmission Lines, Substations And Related Facilities, And For Other Purposes, Republic Act No. 9511(2008)

¹⁰¹ Dumol, Mark, *The Manila Water Concession: A Key Government Official's Diary of the World's Largest Water Privatization*, Directions in Development, (2000)

¹⁰² KELLY, PHILIP, *Landscapes of Globalisation: Human Geographies of Economic Change in the Philippines*, 2000

¹⁰³ Ortega, A. A., Acielo, J. M. A. E., & Hermida, M. C. H., *Mega-regions in the Philippines: Accounting for Special Economic Zones and Global-Local Dynamics*. *Cities*, 48, 130–139. (2015)

¹⁰⁴ Tomacruz, Sofia *Philippines overtakes China in economic growth again*, RAPPLER, 16 November 2017, <https://www.rappler.com/business/gross-domestic-product-philippines-q3-2017-economic-growth-asean-china>

political elite dating back during the colonial period and business *taipans* which only increased inequality and regressive development such as capital outflows and exploitation of labor.¹⁰⁵ Due to the extent of their estates and land owned, private individuals were able to consolidate and establish political and economic power which they used to further expand their profits and network.¹⁰⁶ Diversification of assets by the modern *principalia* in capital-generating business ventures coupled with their election or appointment in key political positions and the neoliberal fever allowed for the design of vast tracts of land used by the public according to their private aspirations which primarily focuses on capital accumulation and profits, all the more maintaining their vise-like grip on power relations and social order.¹⁰⁷

Although conceived of as a panacea to solve the economic woes of the State, the institutionalization of neoliberalism comes into question as the public interest is held hostage by the capitalist accumulation of the private sphere with little to no focus on public space. The development of cities focused on the generation of profits by promoting real estate developments is now reckoned with issues of distinction with the public sphere as its private nature, being a development of a non-State actor directly restricts or places constraints on the exercise of fundamental rights enshrined in the Constitution – which only protects infringement done by the State.¹⁰⁸

The development and expansion of the cities and its design towards generation of profits exposes its own issues on sustainability where capitalist tendencies to develop space is limited to different cyclical crises such as boom-bust, accumulation-over-accumulation, which is continued urban expansion, construction-destruction, or rather the extreme form of accumulation by dispossession or accumulation of space by displacing its inhabitants.¹⁰⁹

The continued urban sprawl reveals myriad of contemporary legal issues first concerning with the right to life as urban tensions with regard to development enable private developers in the militarization of space leading to killings in communities.¹¹⁰ Also, in connection with regard to the neo-liberalization of spaces, issues concerning the right of liberty of the person

¹⁰⁵ Beja, Edsel Jr., *Capital Flight and the Hollowing Out of the Philippine Economy in the Neoliberal Regime*, Vol. 21 No. 1 Kasarinlan: Philippine Journal of Third World Studies, 55 – 74, (2006)

¹⁰⁶ ORTEGA, ARNISSON ANDRE, *Neoliberalizing Spaces in the Philippines*, 2018

¹⁰⁷ Murphy, Peter and Hogan, Trevor Laurence, *Discordant Order: Manila's Neo-Patrimonial Urbanism*, 112 Thesis Eleven 10, 11 – 34, (2012)

¹⁰⁸ *Serrano v. National Labor Relations Commission*, G.R. No. 167614, 27 January 2000 (Panganiban, J., *separate opinion*)

¹⁰⁹ LEFEBVRE, HENRI, *The Production of Space*, 1991

¹¹⁰ ORTEGA, *supra* note 106

wherein areas undergoing development or of interest has its communities subject to surveillance and militarization¹¹¹, akin to that of community surveillance during colonial period.

Due to the asphyxiation of available space in the cities, where commercial establishment, industrial complexes along with establishment of central business districts thrive, issues surrounding the right to freedom of expression, assembly, and self-organization¹¹² are also questioned as areas developed although accessible by the public is developed by private non-State actors where spaces developed are regulated and places constraints on the full exercise of such rights under the Constitution. Fortunately, however, the author posits that the Supreme Court has repeatedly resolved this issue in its jurisprudence which will be discussed later.

Issues surrounding the status of socio-economic and cultural rights are also put into question. As the operation of society devolved the power of governance mostly to the private sector due to neoliberalism where the market is enshrined as the highest good, must these rights such as the right to housing be viewed as justiciable in the same status and level as those of civil and political rights as this determines continued dignified living wherein uneven development and gentrification affects the quality of life and capability of the citizen to participate in political discourse¹¹³ and also as in the case of continued urban expansion which threaten food security.¹¹⁴ Interlinked to such right is the right to a balanced and healthful ecology as recognized in our legal system.¹¹⁵

In sum, while neoliberalism is touted to be the panacea to the economic woes of the State to distribute prosperity to advance the general welfare of man, it merely served to facilitate distribution of wealth and capital to the modern *principalia* and private corporations which allowed them to not only consolidate their political and economic powers but to also reinforce their interlinkages within and among each other.¹¹⁶ The funneling of wealth to the elite class reveals itself in the uneven and unequal development of cities which is filled with commercial and industrial complexes geared towards the optimum operation of the market and profitability but littered with gentrified communities and asphyxiated informal spaces not within the circuits of

¹¹¹ *Ibid.*

¹¹² 1987 CONSTITUTION, Art. III, Sec. 4

¹¹³ HARVEY, DAVID, *Justice, Nature & the Geography of Difference*, 1996

¹¹⁴ Szabo, Sylvia, *Urbanisation and Food Insecurity Risks: Assessing the Role of Human Development*, Vol. 44 No. 1 Oxford Development Studies, 28 – 48, 2016

¹¹⁵ 1987 CONSTITUTION, Art. II, Sec. 16; *Oposa v. Factoran*, G.R. No. 101083, 30 July 1993

¹¹⁶ ORTEGA *supra* note114

production – which limits the exercise of fundamental freedoms and impedes the institutionalization of social justice thru spatial inequality.

What differentiates neo-liberalism from the previous policies which shaped the space of cities is that colonial policies sought to establish social order and reconfigure instituted power relations by the transformation of space.¹¹⁷ The inverse is applicable in the case of neo-liberalization of spaces which highlighted establishment of power relations which eventually transformed and developed sites that consolidated their political and economic power. This then begs the question: As the private and public sphere distinctions are blurred by the neo-liberalization, what protections or State interventions must be instituted for the people in light of violations of fundamental rights by private wrongs?

D. Right to the City: Origins and Practices

The Right of the City is the philosophy and rallying cry espoused by French philosopher Henri Lefebvre to reclaim the city from being dictated by capitalism and the effects of commodification of living which reduces the value of human dignity.¹¹⁸

In coming up with the Right to the City, it is important to understand Lefebvre's conception of space as not merely reduced into a single physical plane which is conceived as a *tabula rasa* or empty receptacle in geometric terms and subject to the intervention of man where all ideas and goods interact, exchanged, and built upon. Lefebvre refuses to acknowledge such conception of space and denounces its simplistic analysis which brought about different disciplines and practice of profession in subjugating terrains according to human will – utilized by capitalism to optimally extract profits and gains therefrom and also leaving lapses of law with does not substantially thresh out issues of public-private distinction and contractual relations.¹¹⁹ Instead, Lefebvre posits that space is constituted of three dimensions which acknowledges the social dimension of space and bridges it with the physical and mental characteristic of the space.¹²⁰

Dissecting the composition of space reveals that it is made up of *spatial practices* which is composed of the various ways as to how the social life is

¹¹⁷ SCHAUER, FREDERICK, *The Force of Law*, 2015

¹¹⁸ BUTLER, CHRIS, *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City*, 2012

¹¹⁹ LEFEBVRE, HENRI, *The Production of Space*, 1991

¹²⁰ *Ibid.*

produced and reproduced in the space. This is generally perceived as the thesis of the space which comprises the conventional uses and practices within the area and its accessories. The second dimension are *representations of space* which comprise the institutional apparatus of powers involved in spatial design such as architects and developers. This dimension determines what and how the space should be use. Finally, the third dimension of space involves in acknowledging its anti-thesis which are *representational spaces* which are the actual and lived experience in the space. It molds the social imagination of the space, whether it conforms to the traditional conceptions of space and allows the space to be dictated by the product of human experience.¹²¹

Acknowledging the dimensions of space allows one to recognize that space is comprised of relationships that establish social order in each community or society. Recognizing the multiple facets and functions reveals its interdisciplinary aspect wherein it is a means of production; space is a commodity and resource in itself in where it may be extracted or goods manufactured or labor utilized; space is a political-legal tool to establish social order; space as rationale in itself that orders for its classifications through legal systems; and space as a means for human expression and sites of social resistance.¹²² With this in mind, the design of spaces contemplates not only the balancing of economic resources and power relations but of different disciplines wherein it interdisciplinary and transdisciplinary, and that the *Right to the City* is a key component in fully realizing this as it gives the power to “transform life by transforming the city.”¹²³

The Right to the City has evolved and has taken on a different meaning and has been reclaimed by social movements around the world. It was given international recognition via the New Urban Agenda during the United Nations Habitat III process which recognized the strategic importance of cities in sustainable development.

This is especially so of the movements in Latin America where the Right is associated with the concept of *buen vivir* (good life) where the development of the economy must firstly take into consideration the conditions of living of its citizens. While the Right as conceived by Lefebvre continues to prevail, cities and states co-opted such right within their own context such as in the case of Brazil which enacted a statute that provided for legal mechanisms for urban governance to provide equitable land access which provided residents with affordable housing. It prioritized the social function of land which

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ LEFEBVRE, HENRI, *Le Droit a la ville* (The Right to the City), 1996

focused on its use value – the capability to be utilized by the public instead of its exchange or market value. The same is copied by the Ecuadorian Constitution and the enactment of the Mexican City Charter which recognizes the different responsibilities of stakeholders in the development of cities which recognizes that sustainable development would only be possible if there is support towards just urban governance and democratization of spaces.¹²⁴ Following the institution and recognition of these rights saw the decrease of inequality and overall economic development in the cities.¹²⁵

In the context of the Philippines, the city is a space for urban and sociological transformation and holds a paramount importance where it is not only concerned with the concept of *buen vivir* or living the good life. It contemplates the interplay of multiple facets of liberty and prosperity which forms a symbiotic relationship with each other as essential ingredients for true social justice. As the free expression of fundamental freedoms which can be done only if there is a viable structure and space to which this may be communicated remains asphyxiated by the physical space and social order established by private non-State actors, access to economic prosperity is thwarted which prevents the institutionalization of social justice. As such, the Right to the City in the Philippines concerns itself with the right to life, liberty, and prosperity in urban living whereby it seeks to holistically democratize living in the cities through reforms which can cure the abused political-legal order set in stone by our policies. The Right to the City thus principally involves the right to envision it through sustainable, inclusive, and capable urban governance that tempers the policies of decentralization and private wrongs.

2. DISCUSSION AND ANALYSIS

A. Legal Foundations of Philippine Land Use Planning

Deconstructing the legal framework of spatial design begins with acknowledging that the State is the supreme owner of all public lands and national resources located within its territorial jurisdiction by virtue of the Regalian Doctrine as manifested in Sec. 2, Art. XII of the 1987 Constitution:

¹²⁴ Deboulet, Agnes, et. al., *Competitive Metropolises and the Prospects for Spatial Justice*, Laboratoire Architecture Ville Urbanisme Environnement, (2018)

¹²⁵ Zarate, Lorena, *The Right to the City: Struggles and Proposals for the Urban Reform* in *Claiming the City: City Mobilisation by the Urban Poor*, 2014

“All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.”¹²⁶

The Regalian Doctrine as interpreted by the Supreme Court states that all public lands belong to the State and occupation of such does not ripen to title unless it is shown that it belongs to private dominion.¹²⁷ Interpreting the Regalian Doctrine also reveals that there is generally a dual classification of land – one is it belongs to the public dominion which is subject to State supervision or by private ownership, which is subject to limitations on property set by law.

The Constitution in recognizing the role of property in institutionalizing social justice established in Sec. 1, Art. XIII that it mandates the Congress with the enactment of laws that would regulate the acquisition, ownership, and use of property and increments:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.¹²⁸

Thus, the enabling law in institutionalizing social justice by spatial design is enacted through the Local Government Code of 1991 which tasks the respective local government unit (LGU) which is either municipality or city. It banks its rationale in decentralizing and devolution of powers as an important instrument in nation-building which primarily empowers communities by giving them local autonomy and thereby the power to forge their own

¹²⁶ 1987 CONSTITUTION, Art. XII, Sec. 2

¹²⁷ *Republic v. Sps. Benigno*, G.R. No. 205492, 11 March 2015

¹²⁸ 1987 CONSTITUTION, Art. XIII, Sec. 1 par. 2

development and gets rid of the perils of bureaucracy and dependency on a central authority which delays progress.¹²⁹

In the creation of a city, the Local Government Code mandates under Sec. 448 that "... it shall serve as a general-purpose government for the coordination and delivery of basic, regular, and direct services and effective governance of the inhabitants within its territorial jurisdiction."¹³⁰

The legal toolkit which operates as the local government's aid in the creation of the city is the Comprehensive Land Use Plan (CLUP)¹³¹ as mandated under Sec. 20 (c) which states that:

"The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: Provided. That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

In the establishment of the Comprehensive Land Use Plan of the city or municipality, the task primarily falls on the *Sanggunian Bayan* in the case of municipalities or *Sanggunian Panlungsod* in the case of cities, which acts as its legislative body that must duly enact the CLUP as an ordinance. The legislative clause is hereby reproduced which are identical regarding the functions of the *Sanggunian Bayan* and *Sanggunian Panglungsod* in the formulation of the CLUP:

"(vii) Adopt a comprehensive land use plan for the municipality/city: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;"¹³²

The CLUP is essentially described as an ordinance which prescribes the use of land in the LGUs territorial jurisdiction. Pursuant thereto, the LGU is tasked with delineating whether the land should be classified as residential, agricultural, commercial, industrial, mineral, timberland, or special.¹³³ Conversely speaking, the *Sanggunian's* exercise of enacting a zoning ordinance constitutes a limitation on a private person's property and his bundle of rights

¹²⁹ *Alvarez v. Guingona, Jr.*, 252 SCRA 695, (1996)

¹³⁰ R.A. 7160, Sec. 448

¹³¹ SEROTE, ERNESTO, *Rationalized Local Planning System in the Philippines*, 2008

¹³² R.A. 7160, Sec. 447 (2) (vii) & Sec. 458 (2) (vii)

¹³³ R.A. 7160, Secs. 215 – 216

and they may only use such lands in accordance with the prescriptions set by the CLUP.

In the overall formulation of the CLUP, it must adhere to the higher policy framework as embodied in the National Framework for Physical Planning (NFPP) provided by the National Economic and Development Authority (NEDA) and Regional Physical Framework which is subject to the approval of the *Sangguniang Panlalawigan* due to its regulatory powers and oversight of the *Sangguniang Panlalawigan* – in case of municipalities and regions covered by it under Sec. 468 (2) (vii) in relation to Sec. 56 which reads:

“(vii) Review the comprehensive land use plans and zoning ordinances of component cities and municipalities and adopt a comprehensive provincial land use plan, subject to existing laws.”¹³⁴

Also exercising supervisory and oversight over the LGUs creation of CLUPs is the newly established Department of Human Settlements and Urban Development which is provided with the task of formulation of policies and strategies on urban development which shall follow the National Framework for Physical Planning provided by NEDA, providing technical expertise and guidance, and creating measures and assessment to standardize formulation of CLUPs.¹³⁵

An exception to the power of establishing CLUP however exists. Zoning ordinance and the powers of the LGU however does not fall entirely in the jurisdiction within its territorial jurisdiction wherein it may only coordinate as when it is an ecozone which is within the authority of the administrator duly appointed by the Philippine Economic Zone Authority by virtue of the Special Economic Zone Act¹³⁶; or if it is an enterprise zone duly delineated by the Tourism Infrastructure and Enterprise Zone Authority¹³⁷. Estates falling within such national government agencies shall be developed in accordance with their own plan and separate from the CLUP which is formulated by the LGU although the latter still retains local autonomy in keeping peace and order.

¹³⁴ R.A. 7160, Sec. 468 (2) (vii)

¹³⁵ An Act Creating the Department of Human Settlements and Urban Development, Defining its Mandate, Powers and Functions, and Appropriating Funds Therefore, Republic Act 11201, Sec. 5 (2018)

¹³⁶ An Act Providing For The Legal Framework And Mechanisms For The Creation, Operaton, Administration, And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (Peza), And For Other Purposes, Republic Act 7916 (1994)

¹³⁷ An Act Declaring A National Policy For Tourism As An Engine Of Investment, Employment, Growth And National Development, And Strengthening The Department Of Toumsm And Its Attached Agencies To Effectively Efficiently Implement That Policy, And Appropriating Funds Therefor, Republic Act 9593 (2008)

B. Analysis

Combining Black Letter analysis and political-economy analysis reveals the main hindrance in the implementation of land use planning of cities in the Philippines. The Black Letter analysis firstly reveals the lack of obligatory consultation on the part of the *Sanggunian* in the formulation of the CLUP which goes against the very nature of CLUP as comprehensive which is not limited to geographical boundaries but is meant as multi-sectoral and inclusive.

Sectoral committees are only recognized but not mandatory in the creation of Comprehensive Development Plans (CPD) which are the socio-economic projects to be implemented by the LGU as allocated within the CLUP.¹³⁸ Sectoral committees that comes from different sectors of society has technical expertise on data gathering, analysis, and policy recommendations can veer the LGU towards a holistic development of the city which incentivizes public participation in the public sphere instead of mostly being dependent on commercial expansion and private development which limits their capacity to control the resources within the city and relegates the citizens' capacity to exercise fundamental freedoms by making urban living and aspects only secondary to private gains.

With no capacity building efforts that can equip the LGU with the necessary expertise in crafting its own spatial design and institutionalization of social justice, it is left crippled and left to depend on private developers equipped with technical expertise instead. This is realized in the case of several private developments where the LGU, seeking to modernize its territorial jurisdiction, centered its land use and development around a private estate duly studied and prepared for by the private developer which usually comes from the modern *principalia* or landed elite as it lacks the capacity to undertake studies in the first place.¹³⁹ Without sectoral participation in the land use planning process, holistic development would not be possible as the interest pursued are mainly the private developer's profits and the local officers who exercise political control over the area – to the prejudice of solving water shortage, traffic congestion, etc.¹⁴⁰

¹³⁸ R.A. 7160, Sec. 109

¹³⁹ Cruz, Jerik, *Great Transformations: The Political Economy of City-Building Megaprojects in the Manila Peri-Urban Periphery* in *Making Sense of the City: Public Spaces in the Philippines*, 2019

¹⁴⁰ Magno-Ballesteros, *Land Use Planning in Metro Manila and the Urban Fringe: Implications on the Land and Real Estate Market*, Philippine Institute for Development Studies, (2000)

Critical discourse analysis would also uncover that the decentralization of powers as manifested through the law is not coordinated with each other wherein institutional overlaps only engrain bureaucracy and that there is no uniformity in the spatial design of the city-region leaving the city in a fractured state. The Marcos era saw the institution of Metro Manila as one province which centralized its power under Imelda Marcos who oversaw the capital region's development.¹⁴¹ The Metro Manila Council is vested with police power and is allotted with share in the taxes of different cities that enable to enact ordinances that significantly affected the uniform design of Metro Manila – thus crowning it the City of Man. The fall of the dictatorship however saw the fall of centralization of powers which was largely blamed for the downfall of democracy. This saw the rise of decentralization of powers which empowered local autonomy to local governments but at the same time led to the fractured city design of highly urbanized regions.

In contrast with the Metro Manila Council then, Metro Manila Development Authority (MMDA) is not vested with police power that would enable it to establish a cohesive and uniform city design. It is only limited to carrying out metropolitan-wide services as long as it does not interfere with the local autonomy of the LGU. With the widespread development of the mega-regions and the inter-dependence of cities with each other, the lack of a unifying city design that links basic services and infrastructures tends to only compound the problems of accessing the communities wherein it contributes to uneven development that contributes to promotion of community resiliency, traffic congestion, mobility, etc.¹⁴²

Black Letter analysis of the legal foundations of land use planning gives the view that their planning process which are inter-dependent on each other are not aligned with each other as in the case where the National or Regional Physical Framework Plan is not submitted nor the Barangay Development Plan which reveals vertical frictions in its enactment as a zoning ordinance which is cited often as the bureaucratic problem in the formulation of CLUPs which causes housing unaffordability and threatens sustainable growth.¹⁴³ As cited by a study, the absence of either, especially the Barangay Development Plan renders nugatory the aims of the Local Government Code when the

¹⁴¹ Presidential Decree 824 of 1975

¹⁴² WISE, *supra* note 28

¹⁴³ Helble, Matthias, and Kwan Ok Lee, and Arbo, Ma. Adelle Gia, *How (Un)affordable is housing in Developing Asia*, Vol. 25 International Journal of Urban Sciences, (2021)

enactment of the CLUP by the LGU only assumes the development of the barangay which does not fully reflect local representation.¹⁴⁴

A glaring loophole is also exploited wherein the CLUP is not synergized with the Comprehensive Development Plans (CPD). Analogically speaking, as the CLUP is the spatial allocation of land and resources, the CPD comprises the socio-economic programs the LGU has in store and to be implemented. Due to the long-term development of the CLUP however, LGUs most often resort to merely relying on the CPD and injecting facets of the CLUP that are oftentimes inconsistent. This leads to more politicized decisions as when allies of the ruling administration will justify the allocation and updating of the CLUP and pertinent zoning ordinances due to the established plans of the CPD.¹⁴⁵

This confluence of factors, decentralization of powers coupled with lack of State mechanism and support and the increased privatization of spaces due to developments undertaken by politico-landowners led to the creation of a privatized city which is characterized by the importance of market value and profitability with the rise of malls, gated communities, and industrial estates without much priority to the social function of space. Due to the creation of the privatized city, there is little to no public realm left¹⁴⁶ that would serve as the sites for negotiation and challenges for power relations to clamor for social justice. The continued rise and expansion of privatized development in the cities and the lack of participation in the spatial design, access or provision of public spaces wherein the city becomes the space upon rights intersect, is left to the whims and discourse of the few which restricts and threatens our fundamental freedoms including the rights to which the public can freely exercise.

The author therefore proposes that due to the strategic importance of the city as the space where democracy is at its fringes due to different interests and where the exercise of rights and freedoms is underpinned, the Right of the City is the right to a sustainable and inclusive urban governance¹⁴⁷ which seeks to include multiple sectors from the public to genuinely determine public interest

¹⁴⁴ Lech, Malte and Leppert, Gerald, *Current Issues of the Philippine Land Use Planning and Management System*, German Institute for Development Evaluation, (2018)

¹⁴⁵ Porio, Emma, *Citizen Participation and Decentralization in the Philippines* in *Citizenship and Democratization in Southeast Asia*, 2017

¹⁴⁶ Hogan, Trevor, et. al., *Asian Urbanisms and the Privatization of Cities*, 29 *Cities* 59, 59 – 63, (2012)

¹⁴⁷ Karaos, Anna Marie, *Urban Governance and Poverty Alleviation in the Philippines*. In E.Porio (ed.), *Urban Governance and Poverty Alleviation in Southeast Asia: Trends and Prospects* (1997)

in the formulation of land use planning and ultimately the institutionalization of social justice.

C. Justiciability of the Right to the City Under the Lens of Liberty and Prosperity

The author advocates that the Right to the City is not only ideologically parallel and consistent with the twin beacons of justice, but it is also justiciable and is found within the penumbra of Philippine statutes, jurisprudence, and treaty obligations.

To begin with, the author posits that the Right to the City has already been championed by the Supreme Court in the case of *Bayan v. Ermita*¹⁴⁸ wherein due to the lack of public spaces or freedom parks where rallies may be held, noting that only *Fuente Osmena* of Cebu City is the only established park, acted as the vanguard of fundamental rights and mandated the Department of Interior and Local Government to take steps for the immediate compliance with the Public Assembly Act which sought to erect public and freedom parks and ultimately imposing that unless *suitable* parks are built, no permit to rally is needed to exercise the right to peaceably assemble, acknowledging the impossibility that such is only futile in the absence of public spaces to cater to such right. As the Court has said in *Ynot v. Intermediate Appellate Court*, “The vitality of democracy lies not in the rights it guarantees but in the courage of the people to invoke them whenever they are ignored or violated.”¹⁴⁹ If there is no democratic space to exercise such and is only possible if done by surveillance in private properties as this needs to have the consent of the owner, such only impedes and constricts the essence of democracy.

A plain reading of the law readily indicates that the Right to the City is already recognized in the Philippine statutory framework. The main enabling provision in the design of the city is enshrined in Sec. 20 (c) which provides that, “The local government units shall, *in conformity with existing laws*, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources...”

By virtue of necessary implication, the formulation of the CLUP therefore implies that it shall adhere to existing laws and policies of the government.

¹⁴⁸ *Bayan v. Eduardo Ermita*, G.R. No. 169838, 25 April 2006

¹⁴⁹ *Restituto Ynot v. Intermediate Appellate Court*, G.R. No. 74457, 20 March 1987

Tracing the landscape connotes that the CLUP shall conform to the mandate under Sec. 5 (I) (A) of R.A. 11201 or the Department of Human Settlements and Urban Development (DHSUD) Act which states that the DHSUD shall “Formulate a national housing and urban development policies, strategies and standards that are consistent with the Philippine Development Plan...” which is further reinforced by the fact that the Department is tasked to provide for standards and regulation in the LGUs formulation of the CLUP under Sec. 5 (II) (e) of the same law. The current policy guidebook still effective is the CLUP Guidebook¹⁵⁰ released by the defunct Housing and Land Use Regulatory Board by virtue of Executive Order 648 which exhorts the command of the law that it adheres to the Philippine Development Plan.

The mandate of the law being crystal clear that the CLUP shall adhere to the Philippine Development Plan (PDP), a cursory reading of the PDP formulated by NEDA reveals that it adheres to the Sustainable Development Goals and localized it into Philippine context under *Akasyon 2030*.¹⁵¹ The PDP initially recognizes the importance of land use rationalization, but it is within its National Framework for Physical Planning 2001 – 2030 which reveals the essential function of the city as a site that merges disciplines together as it fuses issues on sustainability on food security, environmental concerns and resiliency, production and industrialization, etc. and that to secure proper sustainable development, recognizes the importance of citizen participation in urban governance and empowerment of private and public sector partnership.¹⁵²

A more challenging test that needs to be overcome however is the status that the Right to the City merely advocates for urban governance is the justiciability of socio-economic right that is traditionally relegated below than that of civil and political rights, and that the Right is not enforceable as against the State as the evil sought to be rectified is done by a private non-State actor which does not meet the standards set by State action doctrine which restricts actions governing public interest to only infringements done by the State or through its agents.

¹⁵⁰ HOUSING AND LAND USE REGULATORY BOARD, CLUP Guidebook: A Guide to Comprehensive Land Use Plan Preparation (2013)

¹⁵¹ NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, Philippine Development Plan 2017 - 2022

¹⁵² NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, National Framework for Physical Planning 2001 - 2030

A criticism in Philippine legal theory is that there are two classifications of rights, one being the civil and political and the other as the socio-economic rights. These are enshrined in Philippine legal thought and is recognizable through the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESR) – known under our jurisdiction as liberty and prosperity. However, treatments of these rights under Philippine law are varying and inconsistent¹⁵³ wherein liberty is traditionally held as justiciable as it flows from natural law while prosperity needs an enabling law from which it must operate.¹⁵⁴

It is argued by the author however that socio-economic rights are justiciable even in the absence of a positive act as it forms an intimate relationship with civil and political rights as recognized by law and jurisprudence.

By virtue of the doctrine of incorporation, the rights enshrined in the ICESR are deeply embedded in our constitutional framework. Notwithstanding such, the author advocates the idea that the principles established in the ICESR has been realized into law in the enactment of various statutes that centers on social justice.¹⁵⁵

Most importantly, the Court has noted that socio-economic rights are justiciable as is deeply intertwined with that of civil and political rights and that both forms a virtuous cycle wherein it recognized not only the right to property and right to health, but that it acknowledged that the right to labor – characterized as the right to property that must adhere to due process.¹⁵⁶ Ultimately, the justiciability of socio-economic rights is settled in the case of *Oposa v. Factoran* which recognized that the right to a balanced and healthful ecology is self-executing and does not mean to equate that it is any less than civil and political rights.¹⁵⁷

On the other hand, issue on the State action looms which casts a cloud on the enforceability of the Right to the City. Traditional conceptions of the State Action Doctrine is delineated in the case of *People v. Marti* which proclaimed

¹⁵³ Pangalangan, Raphael, *Enforcing Liberty and Prosperity through the Courts of Law: A Shift in Legal thought from Juridification to Judicialization*

¹⁵⁴ GRIFFIN, JAMES, On Human Rights, 2008

¹⁵⁵ PANGALANGAN, *supra* note 153, at 14 – 15

¹⁵⁶ *Wallem Maritime Services, Inc., v. NLRC*, G.R. No. 108433, 15 October 1996

¹⁵⁷ *Oposa v. Factoran*, G.R. No. 101083, 30 July 1993

that the Bill of Rights serves as the vanguard of protection only as against the State and does not find application to wrongs done by private persons.¹⁵⁸

Modern jurisprudence shows the tension between the application of the traditional doctrine against new phenomena where violations of fundamental rights are committed by private non-State actors rendering protection futile. The catena of cases ruled upon by the Supreme Court illustrates these as in the case of *Vivares v. St. Theresa's College* – which ruled upon the issue of privacy.

The blurring of the public sphere with violations of the private sector continues to be a dilemma which the State Action Doctrine is ineffective against. As stated by Pangalangan, exhorting the case of *Duncan v. Glaxo Wellcome Philippines*:

“Private threats to public rights are all-the-more pervasive in the advent of government deregulation and privatization. Where the state has ceded its powers to the market forces, it opens the floodgates to new sources of abuse and threats to liberty and prosperity. Corporate powers have been used to subvert principles of individual autonomy and impair relationships of transcendental importance. What is more, the inherent economic inequality between labor and management has been given statutory and jurisprudential recognition. Today, the evil sought to be avoided—government abuse—has well passed on to the invisible yet coercive hand of the market forces.

With the private sphere empowered by neoliberalism posing a real threat to the people’s freedoms and the State Action doctrine proving incapable to answer for the legal lacuna, an innovation in legal thought must be conceived. As stated by Chief Justice Panganiban:

“Constitutions are designed to meet not only the vagaries of contemporary events. They should be interpreted to cover even future and unknown circumstances... The Constitution must be quintessential rather than superficial, the root and not the blossom, the base and framework only of the edifice that is yet to rise. It is but the core of the dream that must take shape, not in a twinkling by mandate of our delegates, but slowly in the crucible of Filipino minds and hearts, where it will in time develop its sinews and gradually gather its strength and finally achieve its substance. [It] must grow with the society it seeks to re-structure and march apace with the progress of the race, drawing from the vicissitudes of history the dynamism and vitality that will keep it, far from becoming a petrified rule, a pulsing, living law attuned to the heartbeat of the nation.”¹⁵⁹

¹⁵⁸ *People v. Andre Marti*, G.R. No. 81561, 18 January 1991

¹⁵⁹ *Tanada v. Angara*, G.R. No. 118295, 2 May 1997

To this end, judicial action may subject issues regarding private wrongs entangling with State involvement in various ways such as framing it by virtue of Public Interest – which mandates State intervention to protect and promote public policy and those impressed with public interest.¹⁶⁰

The Right to the City being a matter impressed with public interest certainly qualifies for the Supreme Court to take cognizance of this issue as the inclusive participation of urban governance determines the scope and extent of not only the development but also the exercise of freedoms of the people within the city, which by modern standards is largely dictated by the monopoly of the market.

1. RECOMMENDATIONS

Juridification: Enactment of Statutes and City Charters

Traditional methods on the recognition of rights typically stems from the enactment of a statute by Congress. As such, the author posits that the Right to the City, that is the right to sustainable and inclusive urban governance can be institutionalized by the passing of a National Land Use Act (NaLUA) which comprehensively addresses all logistical and legal pitfalls that the CLUP fails to address wherein citizen participation in the process of land use planning will be integrated into said law.

While decentralization has reaped benefits for mega-regions, it certainly cannot be said to other cities which lack the capacity and technical skills to undertake studies to have better data analysis and policy recommendations. In the enactment of the NLUA, it is hoped that it embodies the comprehensive use of all lands as it generally relates to one another.

The right to urban governance can also follow the movement in Latin America wherein respective city charters are enacted or ordinance passed by their local legislative body provided for the inclusion of sectoral committees in order to be consulted prior to the making of any policies or zoning ordinances.¹⁶¹

¹⁶⁰ PANGALANGAN, *supra* note 153, at 14 – 15

¹⁶¹ DEBOULET, *supra* note 127

**Judicial Activism: Supreme Court
as the Paragon Protector of Liberty
and Promoter of Prosperity**

While the conventional method of recognizing rights is by transforming them into duly enacted law by the legislature, the Supreme Court as the paragon protector of liberty and promoter of prosperity, by virtue of its rule-making power under the Constitution¹⁶² may enact writs, which the author may suggest as the *Writ of Balai* which shall seek to protect people facing immediate threat to life, liberty, or property or seeks to restrain the exercise of their civil and political rights and socio-economic rights in the city under the Constitution to which it has validated in *Bayan v. Ermita*.

2. CONCLUSION

Reforms of urban governance – the formulation of zoning ordinance through the Comprehensive Land Use Plan does not only contemplate the territorial breadth and extent of the cities, the different sectors involved in its operation, but the comprehensive support and affordability of protection given by the State itself.

Present phenomenon indicates the turbulent phenomenon the evolution of the market has given wherein it can determine the life, liberty, property, and freedoms of a person. To this end, a break from traditional legal thought and shift towards a new approach is needed. But perhaps, in solving contemporary issues, we need only look back from previous legal thinking and innovate upon the backs of giants and legal luminaries.

By protecting liberty, we are nurturing the seeds of prosperity, and by promoting prosperity, we allow opportunities for liberty to better develop. As aptly stated by Chief Justice Enrique Fernando, “Liberty does not consist solely in the absence of restraint. That is to view it in the negative sense. It has a positive aspect as well. It is not only freedom from but freedom for. It is not enough that one is let alone. It is equally important that one should have opportunity for achievement, to make something of himself. It thus becomes an aspect of right of self-realization

¹⁶² 1987 CONSTITUTION, Art. VIII Sec. 5 (5)