

# SOCIAL JUSTICE AND THE 1987 CONSTITUTION: AIMING FOR UTOPIA?\*

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## I. INTRODUCTION

Social justice seems to be a favorite word in Philippine politics. Everyone, from the leftmost of the Left to the rightmost of the Right, invokes social justice to justify any political decision that affects the people. But of course, they may not mean the same thing when they talk of social justice. In fact, it may be asked, when they talk about social justice, are they talking about the same social justice mandated by the Constitution? But then, propounding a more basic question, is the concept of social justice in the Constitution, particularly the 1987 Constitution, something that may be easily understood?

These questions inevitably arose when the author came across the latest governmental effort at social reform, through what is called the Social Reform Agenda, and realized that while the agenda ostensibly sought to deliver on the presidential promise of a better life for the most disadvantaged sectors of Philippine society, it curiously disregarded the structural framework implied by the provisions of the 1987 Constitution on social justice and instead set out to define its own programmatic paradigm.

This being the case, if the presidential Social Reform Agenda succeeds, will it now mean that the constitutional

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provisions on social justice, intended to be translated into legislation by Congress, are just mere ideals that make a constitution look good and nothing more? Stated otherwise, will it mean that social justice, contrary to the expectations of the framers of the 1987 Constitution, is too unwieldy for the legislative agenda?

On the other hand, if the Social Reform Agenda fails to meet its objectives, concurrently with the inability of the Congress to legislate a workable, comprehensive social justice package, will it mean that social justice in the 1987 Constitution is just a utopian aspiration?

It might be too much to expect ready answers to these questions, but a review of the road we have traveled and the highway we are currently cruising might just give us an idea of where we are really headed as far as the realization of social justice is concerned.

## II. THE CONCEPT OF SOCIAL JUSTICE

Much have been written about the concept of justice, in general. It has been the subject of many books, the thesis of several philosophies, the professed aim of perhaps all political institutions. And as initial impression, one might be led to launch an attempt to distinguish the concept of justice from that of social justice. However, such attempt may prove to be futile since one is an integral part of the other. Indeed, it can even be stated that at the same time that social justice draws breath from the general concept of justice, it is the former which makes the latter whole.

If there is any distinction that should be made in this regard, it may very well be between *particular justice* and *social justice*, as components of the general concept of justice.

The term *particular justice* pertains to the lexicon definition of justice, that is,

the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments.<sup>1</sup>

Likewise, in the legal sense, justice takes on a character of particularity as the end to which laws are implemented and judicial proceedings are held. It is defined as the

Proper administration of laws. In jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due.<sup>2</sup>

This notion of justice as that virtue rendering "every man his due" is perhaps the most popular conception of justice as a theoretical concept. This view is held primarily by the Catholic Church which states, in the words of St. Thomas, that

justice is a habit whereby *a man renders to each one his due* by a constant and perpetual will.... It exists whenever the norm of equality or of proportion is effectively respected in one man's dealings with another.<sup>3</sup>

Yet, Thomistic theorists were quick to add that there are two aspects to this special virtue of justice: one is called *particular justice*, which is present in the relationship between persons, and the other is *general justice*, which exists in the relationship between individuals and the social whole. Within the notion of particular justice itself, there are two components: *commutative justice*, which is the relationship of one individual to another, and *distributive justice*, which corresponds with the relationship of a society to its members.

It was distributive justice — not general justice — which was actually concerned with "distributing common goods proportionately." However, these concepts evolved within Church philosophy and the notion of general justice eventually took on the countenance of distributive justice. The principle governing these two aspects of justice being, "The good of the part ought to be

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<sup>1</sup> WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1989).

<sup>2</sup> BLACK'S LAW DICTIONARY (1990).

<sup>3</sup> CALVEZ AND PERRIN, THE CHURCH AND SOCIAL JUSTICE 140 (1961).

subordinated to that of the whole...(P)articular justice itself is subordinated to (general) justice insofar as it directs man to the common good."<sup>4</sup>

*Roman Catholic Thought*

The term *social justice* was first introduced and made part of the Roman Catholic Church's official doctrine in 1931 with the encyclical of Pope Pius XI, the *Quadragesimo Anno*. After recognizing the division of goods as effected by private ownership, Pius XI went on to state that

not every kind of distribution of wealth and property among men is such that it can at all, and still less properly, attain the end intended by God. Wealth, therefore...must be so distributed among the various individuals and classes of society, that the needs of all...be thereby safeguarded...By these principles of social justice, one class is forbidden to exclude the other from a share in what is produced...Each one, therefore, must receive his due share, and the distribution of created goods must be brought into conformity with the demands of the common good or social justice.<sup>5</sup>

From this perspective, social justice connotes a system of division of wealth so that it is not concentrated in the hands of a few. It is an economic concept as well as a political one and concerns itself with wages and employment policies, regulation of ownership, relations between capital and labor, and different kinds of permanent and transitory institutions. Ultimately, it involves the establishment of a "permanent organization of economic society."<sup>6</sup>

Explaining the concept further, Pius XI stated:

It is the function of social justice to require of each individual that which is necessary for the common good. Consider a living organism: the good of the whole is not being properly secured unless arrangements are made for every single member to receive all that it needs to fulfill its own function. Exactly the

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<sup>4</sup> CALVEZ AND PERRIN, at 140, 158-159.

<sup>5</sup> *Id.* at 148-149.

<sup>6</sup> *Id.* at 150.

same is true of the constitution and government of a community: the common good of a society cannot be provided for unless each individual member, a human being endowed with the dignity of personality receives all that he needs to discharge his social function."<sup>7</sup>

The idea which permeates the Church's notion of social justice is that of subscribing to the *common good*. It is meant to be an objective standard to which all the different obligations of justice must conform. It is not purely contractual in nature, i.e. that which the members of the community agreed upon as the common good, because, in the words of Pius XI, "(J)ustice demands that all recognize and respect the sacred rights of liberty and human dignity..." Yet, while presenting the *common good* as consisting of all the "elements which naturally constitute economic and social relations," the Thomistic conception fails to provide the standard of *common good* by which social justice may be measured.

Pope John XXIII, in the encyclical "*Mater et Magistra*," advocated the attainment of the Church's concept of social justice through popular capitalism. An idea of the Church's notion of how the ideal of the *common good* can be attained in broad economic terms is implied from his words:

It is not enough, then to assert that man has from nature the right of privately possessing goods as his own, including those of productive character, unless at the same time, a continuing effort is made to *spread the use* of this right through all ranks of the citizenry...It is especially appropriate that today, more than heretofore, *widespread private ownership should prevail*, since, as noted above, the number of nations increases wherein the economic systems experience daily growth. Therefore, by prudent use of various devices already proven effective, it will not be difficult for the body politic to modify economic and social life so that the way is made easier for widespread possession of such things as durable goods, homes, gardens, tools requisite for artisan enterprises and family-type farms, *investments in enterprises of medium or large size*. All of this has occurred satisfactorily in some nations with developed social and economic systems.<sup>8</sup>

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<sup>7</sup>CALVEZ AND PERRIN, at 152.

<sup>8</sup>THE SOCIAL TEACHINGS OF THE CHURCH, ed. by Fremantle, Anne at 242-243, as quoted in PHILCONSA READER, 163-164 (1979).

*Bentham, Hume, Mill and Utilitarianism*

The perceived weakness of the Church's doctrine is the strength of the school of thought known as Utilitarianism. The Utilitarians, led by Jeremy Bentham, gained favor and support in their presentation of a quantitative and democratic standard of the common good.

However, even before Bentham first coined the Utilitarian's maxim "the greatest happiness for the greatest number," the Scottish philosopher David Hume, in his essay *An Enquiry Concerning the Principles of Morals*, already espoused the ideas which later became the foundation for Bentham's thoughts. Firstly, Hume rejected the idea of an external and independent criterion of justice. He believed that, if it can indeed be determined what is "due" a person, it is to be determined from within the theory and not by some extraneous standard. If something is said to be "due" somebody, it is only so because it was agreed upon by the members of the community for their mutual advantage.

It has been asserted by some, that justice arises from Human Conventions, and proceeds from the voluntary choice, consent, or combination of mankind. If by *convention* be meant a *promise*... nothing can be more absurd than this position. The observance of promises is itself one of the most considerable parts of justice, and we are not surely bound to keep our word because we have given our word to keep it. But if by convention be meant a sense of common interest; which sense each man carries in his own breast, which he remarks in his fellows, and which carries him, in concurrence with others, into a general plan or system of actions, which tends to public utility; it must be owned, that, in this sense, justice arises from human conventions...<sup>9</sup>

Hume's arguments were premised on man's rationality and the presumption of "moderate selfishness."<sup>10</sup> He relied greatly on

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<sup>9</sup>Hume, *An Enquiry Concerning the Principles of Morals* in JUSTICE, ed. Ryan, Alan at 48 (1993).

<sup>10</sup>According to Hume: If men pursu'd the publick interest naturally, and with hearty affection, they wou'd never dream'd of restraining each other by these rules [of justice]; and if they pursu'd their own interest, without any precaution, they wou'd run head-long into every kind of injustice and violence. *as quoted in* Barry, THE THEORIES OF JUSTICE 157 (1990).

man's capacity to reason and the pursuit of his interest in the most advantageous set-up, that of an aggregate utility.

It is in this light that Bentham conceived of the Utilitarian tradition of maximization known as the *principle of utility*. It is based on the premise that man's dealings in this world consist of the currencies of pain and pleasure. The principle of utility presupposes that man's actions would be determined by the tendency to augment and diminish the happiness of the party in interest. While *utility* is the "property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness...", the *interest of the community* is taken to mean "the sum of the interests of the several members who compose (the community)." Therefore, that which is just is the option whose tendency to augment the happiness of the community is greater than any other.<sup>11</sup> Thus, the maxim *the greatest happiness for the greatest number*. This rationalization, to a great extent, suits well the idea of a democracy where the decision of the majority is supreme.

As the concept developed, however, Bentham's utilitarianism received much criticism for its inability to accommodate the concept of rights. Critiques asserted that since everything was contingent on the agreement or affirmation of the "greatest number," the concept left no room for values which people can inherently claim as their own simply by virtue of their being human or citizens, for that matter. To this end, the thoughts of John Stuart Mill became extremely significant in rescuing Utilitarianism. In his *On the Connection Between Justice and Utility*,<sup>12</sup> Mill's discussion focused primarily on utility as a standard of justice; however, his arguments were based on the premise he adamantly presented, that is, that justice necessarily implies the recognition of legal and moral rights.

In our survey of the various popular acceptations of justice, the term appeared generally to involve the idea of a personal right--a claim on the part of one or more individuals, like that which the law gives when it confers a proprietary or other legal

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<sup>11</sup>Bentham, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 11-13 (1982).

<sup>12</sup>J.S. Mill, in JUSTICE, at 51-72.

right...Justice implies something which it is not only right to do, and not wrong to do, but which some individual person can claim from us as his moral right...Wherever there is a right, the case is one of justice, and not of the virtue of beneficence...<sup>13</sup>

For Mill, a right resides in the person who suffers an injury; it is that for which he has a valid claim on society for its protection, "either by the force of law, or by that of education and opinion." As examples of such rights, Mill made mention of equal protection, and ownership and personal liberty, among others. And since these rights are common to all, "we ought to shape our conduct by a rule which all rational beings might adopt *with benefit to their collective interest*." Incorporating the notion of rights in the concept of justice in society, Mill thus explained:

If it is a duty to do to each according to his deserts, returning good for good as well as repressing evil by evil, it necessarily follows that we should treat all equally well (when no higher duty forbids) who have deserved equally well of us, and that society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge. But this great moral duty rests upon a still deeper foundation, being a direct emanation from the first principle of morals, and not a mere logical corollary from secondary or derivative doctrines. It is involved in the very meaning of Utility, or the Greatest Happiness Principle. That principle is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's...(However, this notion) bends to every person's idea of social expediency...All persons are deemed to have a *right* to equality of treatment, except when some recognized social expediency requires the reverse. And hence all social inequalities which ceased to be considered expedient, assume the character not of simple expediency, but of injustice, and appear so tyrannical, that people are apt to wonder how they ever could have been tolerated; forgetful that they themselves perhaps tolerate other inequalities under an equally mistaken notion of expediency, the correction of which would make that, which they

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<sup>13</sup> *Id.*



approve seem quite as monstrous as what they have at last learnt to condemn...<sup>14</sup>

### *Rawls and Justice*

For a long time--and perhaps, at present still-- many political philosophers and participants subscribe to the Utilitarian concept of social and distributive justice in the absence of a more plausible and proficient alternative. However, in the late 1960's, Harvard professor John Rawls began publishing a series of essays espousing his own theories on social justice, confronting head-on the traditional utilitarian concept. According to Rawls,

(T)he striking feature of the principle of utility is that it does not matter, except indirectly, how (the) sum of satisfactions is distributed among individuals, any more than it matters, except indirectly, how one man distributes his satisfactions over time. Since certain ways of distributing things affect the total sum of satisfactions, this fact must be taken into account in arranging social institutions; but according to his principle the explanation of common-sense precepts of justice and their seemingly stringent character is that they are those rules which experience shows must be strictly respected and departed from only under exceptional circumstances if the sum of advantages is to be maximized... There is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or why the violation of the liberty of a few might not be made right by a greater good shared by many...The principle of utility is incapable of explaining the fact that in a just society the liberties of equal citizenship are taken for granted, and the rights secured by justice are not subject to political bargaining nor to the calculus of social interests...<sup>15</sup>

Thus, Rawls' answer to this dilemma is a resort to the contract theories which hold that principles of justice arise out of agreement of every man in the society; individuals converge together and agree together what their conception of justice shall be. To determine what is just, he proposes that individuals should be brought back to the "original position of equality" where everyone is cloaked by a "veil of ignorance"--that is, they shall have

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<sup>14</sup> *Id.*

<sup>15</sup> RAWLS, A THEORY OF JUSTICE 26 (1971).

no knowledge of their status or position in society. Thus, whatever they agree upon is to the advancement of the least member or him who occupies the worst possible status in society. The view, then, of justice not only becomes expansive but pervasive as well as it is deemed to involve every member that comprises the community.

Rawls defined social justice as:

...the ways in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.<sup>16</sup>

Rawls appears to have spoken grand words of wisdom, as Philippine society's constitutional odyssey has been marked with attempts at a solution to political, economic and social inequalities through a gradual stockpiling of constitutional provisions on social justice — all in the name of the quest for the ideal.

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<sup>16</sup> RAWLS, at 7.

### III. SOCIAL JUSTICE IN PHILIPPINE LAW

#### *The 1935 Constitution*

The introduction of the concept of social justice into the 1935 Constitution was a concerted and deliberate effort in response to the needs of the times. The provisions on social justice were intended to address a particular social problem which the framers deemed as imperative and pressing: the problem of poverty and social inequality.

During the debates of the Constitutional Convention for the drafting of the 1935 Constitution, the inclusion of a provision on social justice was pushed by Delegate Locsin.<sup>17</sup> He conceived of social justice in very simple terms as

justice to the common tao, the "little man" so-called. It means justice to him, his wife, and children in relation to their employers in the factories, in the farms, in the mines, and in other employment. It means justice to him in the education of his children in schools, in his dealings with the different offices of government, including the courts of justice.<sup>18</sup>

Thus, the 1935 Constitution recognized the primacy of this universal aspiration and enunciated in the Declaration of Principles and State Policies that:

Art. II, Sec. 5. The promotion of Social Justice to insure the well-being and economic security of all the people should be the concern of the State.

The advent of this constitutional recognition of the ideal of social justice was considered to be inevitable. In fact, even before its inclusion in the Constitution, there were already pieces of legislation enacted to meet the requirements of various aspects of social justice, particularly in the area of labor and social welfare. The oldest of these was the Employer's Liability Act (Act No. 1874) enacted by the Philippine Legislature in 1908. There were also Act

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<sup>17</sup> 1 Aruego, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 146-148 (1936).

<sup>18</sup> *Ibid.*

No. 4123, the Eight-Hour Labor Law (1933), and Commonwealth Act No. 103 (1936) which created the Court of Industrial Relations empowered to fix minimum wages for laborers, maximum rentals for tenants and enforce compulsory arbitration.

According to the eminent constitutionalist Vicente Sinco, the modern and growing complexities of the times have called for a more expansive role for the government. It has assumed a function in addition to that of social control; government has become an instrument of public service.<sup>19</sup> This was primarily due to the then emerging reality where an individual left alone was an easy prey to the fast-paced and competitive modern life.

Under these circumstances, a new conception of justice becomes an imperative necessity, a conception that takes into account not only the individual, as an independent unit, and his legal rights as such but also his place as a member of the community, his relations with the social group, and the effect of his own social and economic condition upon the general welfare of the state and society. This, in brief, is the conception of social justice. Its administration is not merely a judicial matter but is the concern of the different organs of the government.<sup>20</sup>

In addition, other provisions of the 1935 Constitution indirectly provided the policy directions to effect the realization of the just societal order that the framers conceived of, to wit:

Art. IV, Sec. 1(1). No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Art. IV, Sec. 1 (12). No person shall be imprisoned for debt or non-payment of a poll tax.

Art. IV, Sec. 1 (13). No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted."

Art. IV, Sec. 21. Free access to the courts shall not be denied to any person by reason of poverty.

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<sup>19</sup> SINCO, PHILIPPINE CONSTITUTIONAL LAW 32-34 (1954).

<sup>20</sup> *Ibid.*

Art. XIV, Sec. 4. All educational institutions shall be under the supervision of and subject to the regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instructions shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for especially-gifted citizens.

These general provisions, according to Justice Laurel, were incorporated into the Constitution "to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as the *justitia communis*...to be secured through the counterbalancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*."<sup>21</sup>

Pursuant to this objective, therefore, Congress enacted several legislative measures. Most significant of which, in the area of labor, were Republic Act No. 875 or the Industrial Peace Act (1953) and Republic Act No. 602, known as the Minimum Wage Law of 1951. Of equal import in the matter of social welfare was the enactment of Republic Act No. 1161 in 1954 which provided for the creation of a social security system in the country giving sickness, unemployment, retirement, disability and death benefits for employees. Several other important pieces of legislation on labor relations were enacted pursuant to the social justice provisions of the 1935 Constitution, among which were: Rep. Act No. 946 (1953), prohibiting work on Sunday, Christmas Day, New Year's Day, Holy Thursday, Good Friday (known as the Blue Sunday Law); Rep. Act No. 1167 (1954), punishing obstruction and/or interference with peaceful picketing during any labor controversy; Rep. Act No. 1171 (1954), providing the venue of action on claims of employees, laborers and other workers; Rep. Act

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<sup>21</sup> Fernando, J. concurring in *Alfanta v. Noe*, 53 SCRA at 85-97 (1973).

No. 1826 (1957), establishing an apprenticeship training system and a National Apprenticeship Council; and Rep. Act No. 3600 (1963), prohibiting the employment and escorting of strikebreakers.

Notably, even in the absence of a provision on agrarian reform under the 1935 Constitution, several laws were enacted providing for a system of land and/or agrarian reform. In 1952, Congress enacted Republic Act No. 821 establishing the Agricultural Credit Cooperative Financing System to assist small farmers to secure liberal credits from the government. Also, in 1964, an Agricultural Land Reform Code was enacted (Republic Act No. 3844), providing for a system of agrarian reform in the country.

Elementary education was made compulsory by virtue of Republic Act No. 896 (1953) and the Magna Carta for Public School Teachers (Rep. Act No. 4670) was enacted into law.

Two legislative enactments addressed the problem of housing and homelessness, namely, Republic Act No. 1322 (1955), providing funds for the projects of the People's Homesite and Housing Corporation, and Rep. Act No. 3469 (1962), authorizing the construction of multi-storey tenement buildings for the poor and the homeless.

In the light of the prevailing circumstances then and the legislative enactments mentioned above, the concept of social justice, as enunciated by the 1935 Constitution, became firmly rooted in Philippine law.

It was in the case of *Calalang v. Williams*<sup>22</sup> that the Supreme Court seized upon the opportunity to define social justice. The Court, through Justice Laurel, stated in the now classic words:

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of the laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the

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<sup>22</sup> 70 PHIL. 726 (1940).

proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number."<sup>23</sup>

With the same clarity and conviction, the Philippine judiciary interpreted the constitutional provision on social justice and resolved controversies in favor of the socially and economically disadvantaged.

In labor cases, for example, the Court manifested an intentional bias to resolve cases in favor of the laborer or the labor union. As the Court noted in *Agustin v. Workman's Compensation Commission*,<sup>24</sup>

As between a laborer, usually poor and unlettered, and the employer, who has resources to secure able legal advice, the law has reason to demand from the latter stricter compliance. *Social justice in these cases is not equality but protection.*<sup>25</sup> (emphasis supplied)

This statement of the Court echoed an earlier declaration by the Court in 1956 when it said that "(E)very member of society must contribute to a common welfare according to his abilities. Justice (and especially social justice) is not equality but protection."<sup>26</sup> It would seem, therefore, that the constitution has mandated, through its social justice provisions, a new social policy

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<sup>23</sup> *Id.*, at 734-735.

<sup>24</sup> September 29, 1961.

<sup>25</sup> *Id.*

<sup>26</sup> *Interwood Employees v. Interwood Co.*, 93 PHIL 83 (1956).

in favor of the poor and the less powerful; it was a policy where even procedural rules are rendered flexible because "what is sought to be accomplished...is the effectiveness of the community's effort to assist the economically underprivileged."<sup>27</sup>

However, social justice, under the 1935 Constitution, was not without certain limitations. As it was wont to happen, controversies arose out of the inevitable conflict between the pursuit of social justice and the protection of property rights. In such instances, the Court declared as early as 1936 that "not even the principle of social justice...vital and salutary as it is, can be invoked to annihilate property rights."<sup>28</sup> In 1949, in the expropriation case of *Guido v. Rural Progress Administration*,<sup>29</sup> the Court saw it fit to set the parameters of social justice and to further clarify the constitutional mandate:

Social justice does not champion division of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production. As applied to metropolitan centers, especially Manila, in relation to housing problems, it is a command to devise, among other social measures, ways and means for the elimination of slums, shambles, shacks, and houses that are dilapidated, overcrowded, without ventilation, light and sanitation facilities, and for the construction in their place of decent dwellings for the poor and the destitute.

The condemnation of a small property in behalf of 10, 20 or 50 persons and their families does not inure to the benefit of the public to a degree sufficient to give the use public character.<sup>30</sup>

### *The 1973 Constitution*

The 1973 Constitution saw a more detailed and more vivid

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<sup>27</sup> *Carillo v. Allied Workers*, 24 SCRA 566, at 573 (1968).

<sup>28</sup> *Laurel, J.*, concurring and dissenting in *North Negros Sugar Co. v. Hidalgo*, 63 PHIL. 664, at 707 (1936).

<sup>29</sup> 84 PHIL. 847.

<sup>30</sup> *Id.*, at 852.



mandate for social justice. In addition to what has already been provided for in the 1935 Constitution, the 1973 Constitution included a provision on the regulation of the use of private property in order to promote social justice. Thus, it enunciated:

Art. II, Sec. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.

In *Alfanta v. Noe*, the Court said that the provision is a call for a "new social order, ... (where) property ownership has been impressed with a social function. This implies that the owner has the obligation to use his property not only to benefit himself but society as well."<sup>31</sup> However, it has been validly observed that the provision was, in reality, an express recognition of what has already been implemented and partly realized under the 1935 provision<sup>32</sup> and no real change in the concept of ownership of property was introduced.

In addition, the 1973 Constitution was replete with other provisions furthering social justice, to wit:

Art. II, Sec. 7. The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.

Art. II, Sec. 9. The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

Art. IV, Sec. 23. Free access to the courts shall not be denied to any person by reason of poverty.

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<sup>31</sup> *Supra*, at 84.

<sup>32</sup> BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 44 (1988).

Art. V, Sec. 3. It shall be the duty of every citizen to engage in gainful work to assure himself and his family a life worthy of human dignity.

Art. XIV, Sec. 2. The State shall regulate or prohibit private monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

Art. XIV, Sec. 12. The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.

Such program may include the grant or distribution of alienable and disposable lands of the public domain to qualified tenants, farmers and other landless citizens in areas which the President may by or pursuant to law reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding Section.

The State shall moreover undertake an urban land reform and housing program to provide deserving landless, homeless or inadequately sheltered low income resident citizens reasonable opportunity to acquire land and decent housing consistent with Section 2 Art. IV of this Constitution.

Art. XV, Sec. 8 (5). The State shall maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level.

Art. XV, Sec. 8 (6). The State shall provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students.

It is well to note that most of these provisions, especially those on labor and agrarian reform, are really constitutional affirmations of legislative enactments under the 1935 Constitution. What the 1973 constitutional provisions provided was an illustrative, though incomplete, plan to implement the ideal of social justice, supplying the programs the government needed to undertake for its realization.

Thus, pursuant to this constitutional command, and in furtherance of what was already commenced under the 1935 Constitution, several laws were enacted for the different areas of concern.

A Labor Code was promulgated in 1974, by virtue of Presidential Decree No. 442; the Thirteenth-Month Pay Law was enacted under Presidential Decree No. 851, as well as a law on Free Collective Bargaining under Presidential Decree No. 823.

To address the issue of agrarian reform, the President issued Presidential Decree No. 27 providing for the emancipation of tenants through the compulsory acquisition of private lands for distribution to tenant-farmers.

To tackle the issue of housing and urban settlement, several presidential decrees were issued to freeze rental rates and land prices (Pres. Decree Nos. 1642 and 1640) and expropriate private estates for distribution to the homeless (Pres. Decree Nos. 1669, 1670 and 1473). A program called the *Kilusan para sa Kabuhayan at Kaunlaran* (KKK) was also established by Executive Order No. 715 as a priority program of the government aimed at promoting livelihood projects for communities.

In its interpretation of the social justice provisions, the Supreme Court adhered to the same conceptualization under the 1935 Constitution. Liberality in favor of labor, for example, was still upheld as the rule of interpretation in cases when the law is susceptible of two or more interpretations.

But maturity in the appreciation of the requirements of social justice manifested itself in the Court's pronouncements in several leading cases. In *Victoriano v. Elizalde Rope Factory*,<sup>33</sup> the Court held that:

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<sup>33</sup> 59 SCRA 54.(1974).

natural conditions. Social justice guarantees equality of opportunity.<sup>34</sup>

More importantly, the Court traversed the path of defining the parameters of social justice in a more deliberate and definite manner. Although ever-mindful of its role in the promotion of social justice, the Court laid down the doctrine that "(S)ocial justice is thus defined and in its true meaning is not meant to countenance, much less perpetuate, an injustice against any group -- not even as against landholders..."<sup>35</sup> In the case of *Nilo v. CA*,<sup>36</sup> the Court was categorical in its pronouncement that:

The protective mantle of social justice cannot be utilized as an instrument to hoodwink courts of justice and undermine the rights of landowners on the plea of helplessness and heartless exploitation of the tenant by the landowner.<sup>37</sup>

But while the Supreme Court appeared to have adopted a more deliberate analysis of the considerations underlying the implementation of social justice, it had on the other hand sought to further the rather exaggerated view that the Philippines was a welfare state. Thus, in *Biscarra v. Republic*, it declared:

The conservative view limiting the right of the injured or ailing employee to only one surgical or medical service prevailing in some States of the American Union should not find adherence in our jurisdiction, because such States seem to be still dominated by the capitalistic philosophy as they do not provide in their respective constitutions any guarantee of social justice in favor of their citizens. If, on the other hand, the humanitarian view which sustains the right of the ailing or injured employee to continuous medical and surgical services until he has been fully rehabilitated, is espoused by the progressive states of the United States of America despite the absence of any social justice guarantee in their respective constitutions; *a fortiori* such compassionate approach should be followed in our jurisdiction, where our Constitution expressly guarantees social justice "to ensure the dignity, welfare and security of all people."

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<sup>34</sup> *Id.*, at 81.

<sup>35</sup> *Cabatan v. CA*, 95 SCRA 323, at 357 (1980).

<sup>36</sup> 128 SCRA 519 (1984).

<sup>37</sup> *Id.*, at 533.

The fear that this humane, liberal and progressive view will swamp the Government with claims for continuing medical, hospital and surgical services and as a consequence unduly drain the National Treasury, is no argument against it; because the Republic of the Philippines as a welfare state, in providing for the social justice guarantee in our Constitution, assumes such risk.<sup>38</sup>

But, as Fr. Bernas noted, "in the end, for purposes of the judiciary, the import of social justice which developed was that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be followed."<sup>39</sup>

#### IV. SOCIAL JUSTICE IN THE 1987 CONSTITUTION

If indeed it was properly observed that the 1973 Constitution clothed with legitimacy the then existing executive and legislative implementation and judicial interpretation of social justice, then, it would be easy to surmise that the 1987 Constitution followed the same path -- and went even further. The framers of the 1987 Constitution considered it best that the fundamental law itself provide a vivid picture of the policy guidelines and structural model to implement social justice. The result was an all-encompassing conception of social justice which permeates all sectors of the society and "covers all phases of national development but with emphasis not just on the socio-economic but also on political and cultural inequities."<sup>40</sup>

At the outset, under the Declaration of Principles and State Policies, the Constitution already provides for a formidable mandate:

Art. II, Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all.

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<sup>38</sup> 95 SCRA 248, at 279 (1980).

<sup>39</sup> BERNAS, *op. cit. supra* note 32, at 46.

<sup>40</sup> *Ibid.*

Art. II, Sec. 10. The State shall promote social justice in all phases of national development.

Supplementary and integrally related policies in support of such a tough order are also provided for in the subsequent provisions, to wit:

Art. II, Sec. 14. The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.

Art. II, Sec. 15. The State shall protect and promote the right to health of all the people and instill health consciousness among them.

Art. II, Sec. 16. The State shall protect and advance the right of the people to a healthful and balanced ecology in accord with the rhythm and harmony of nature.

Art. II, Sec. 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Art. II, Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Art. II, Sec. 21. The State shall promote comprehensive rural development and agrarian reform.

Art. II, Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

At the core of this broadened conception of social justice is still the concern for the prevailing economic inequality. Thus, the constitution ordains an economic policy that seeks to further social justice. In consideration thereof, the concentration in the ownership of property and the maldistribution of economic resources are the most basic and pressing concerns. Thus, the framers reiterated in the 1987 Constitution the admonition on the social purpose of property, defining the parameters of ownership

according to the demands of social justice. To reflect this perspective, the Constitution provides:

Art. XII, Sec. 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices. x x x

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

Furthermore, to erase, perhaps, any remaining doubts as to the Constitution's resolute stance on social justice, an entire article was devoted especially to this matter.

Article XIII of the Constitution expresses the fundamental objectives of the State's social justice program, and "commands a legal bias in favor of those who are underprivileged either economically or politically."<sup>41</sup>

Since social rights are not self-executory, unlike the rights provided under the Bill of Rights, the Congress was tasked to put the requirements of social justice into effect in the form of laws.

Art. XIII, Sec. 1. 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

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<sup>41</sup> BERNAS, *op cit*, *supra* note 32, at 469.

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.

Art. XIII, Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Bernas noted that the term "highest priority" with reference to social justice measures was deliberately used by the framers "to communicate the message that what is expected of Congress is not just the exercise of day to day police power but of powers needed to achieve radical social reform of critical urgency."<sup>42</sup>

In addition, these objectives of social justice were to be pursued on two tracks: the regulation of the acquisition, ownership, use and disposition of property, and the creation of economic opportunities based on freedom of initiative and self-reliance.<sup>43</sup>

The notion of regulation of the rights pertaining to property use is contained in the provisions already quoted above; at the same time, under the Declaration of Principles and State Policies, the idea held out by the second track was already intimated.

But the promotion of social justice cannot be divorced from the adoption of a pro-Filipino and pro-people economic policy, as can be implied from the following provisions:

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

Art. XII, Sec. 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

Art. XII, Sec. 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Id.*, at 468.



In detail, these fundamental concepts central to the constitutional prescription for social justice require the adoption of the policies and programs set forth in the following provisions:

Art. XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Sec. 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and

shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

x x x

Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program, the State shall respect the rights of small property owners.

Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

Sec. 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems.

Sec. 13. The State shall establish a special agency for disabled persons for their rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

Sec. 14. The State shall protect the working women by providing for a safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

Sec. 15. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People's organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

Sec. 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

Art. XIV, Sec. 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Art. XIV, Sec. 2 (2). (The State shall) establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged; x x x

Art. XV, Sec. 3 (3). (The State shall defend) The right of the family to a family living wage and income; x x x

Art. XVI, Sec. 7. The State shall provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.

Art. XVI, Sec. 8. The State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and the private sectors.

Art. XVI, Sec. 9. The State shall protect consumers from trade malpractices and from substandard or hazardous products.

*Implementing Legislations, Judicial Interpretations*

To comply with the arduous task of building upon this detailed blueprint, Congress has enacted several legislative measures dealing with *particular* aspects of social justice.

In 1987, the Comprehensive Agrarian Reform Law (Rep. Act No. 6657) was enacted setting into motion a ten-year program of distributing agricultural lands to landless farmer-beneficiaries. Of comparable importance is the Urban Development and Housing Act (Rep. Act No. 7279) promulgated in 1992 to deal with the problem of urban housing and shelter.

On the other hand, the principle of people empowerment was given a more definite form with the enactment of several laws such as Republic Act Nos. 6938 and 6939, enacted in 1990, providing for a Cooperatives Code and creating the Cooperatives Development Authority, respectively.

Some sectors previously marginalized were given a role in national development and progress through statutes like Republic Act No. 7432 (1992), which maximizes the contribution of senior citizens to national development, and R.A. No. 7192 (1992), which provides for the role of women in nation-building.

Republic Act No. 7882 (1995) provides for assistance to women engaged in micro and cottage business enterprises.

In the area of labor legislation, the Wage Rationalization Act (R. A. No. 6727) was enacted in 1989 to rationalize the fixing of minimum wages by amending certain sections of the Labor Code and setting forth certain standards or criteria for minimum wage fixing, among others. In 1990, the Productivity Incentives Act (R. A. No. 6971) was passed providing for incentives to both labor and management for the sharing of responsibility and fruits of production. The Tripartite Industrial Peace Council was established by Executive Order No. 25 to boost productivity

The Judiciary, on the other hand, fulfilled its share of the task of giving form and substance to social justice. In *ECP v. National Wages and Productivity Commission*, the Court declared that "(T)he Constitution is primarily a document of social justice, and...it has not embraced fully the concept of laissez faire."<sup>44</sup> This means that, in the eyes of the Judiciary--and indeed, of the government--social justice is to be achieved through the efforts of government, imposed or emanating from above, so to speak. Thus, the Court continued on with the practice of interpreting the laws in favor of the less fortunate, in the spirit of social justice. In *Rosario v. CA*,<sup>45</sup> the Court, in allowing the occupant to continue possession of land, subject to reimbursement, stated:

If the claim of the sublessee actually in possession would be ignored or disregarded, the result would be to heighten social tension and aggravate further the unrest that has its roots in so many of our countrymen being denied the opportunity of owning even a small piece of land...It has been the constant policy of this Court, in the construction of laws that find its origin in the social justice mandate of the Constitution, to assure that its beneficent effects be enjoyed by those "who have less in life."<sup>46</sup>

In resolving workmen's compensation cases, the Court continued with its liberal attitude in favor of employees "especially where there is some basis in the facts for inferring a work-connection with the incident."<sup>47</sup>

However, in certain cases, the Court sought to define more clearly the boundaries within which the concept of social justice operates. More significantly, in *PLDT v. NLRC*,<sup>48</sup> the Court made the pronouncement that:

(S)eparation pay shall be allowed as a measure of social justice only in those instances where the employee is dismissed for causes other than serious misconduct or those reflecting on his moral character.

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<sup>44</sup> 201 SCRA at 759. See also *ACCFA v. CUGCO*, 30 SCRA 649 (1969).

<sup>45</sup> 211 SCRA 384 (1992).

<sup>46</sup> *Id.*, at 388 citing *Tanag v. Executive Secretary*, 37 SCRA, at 806.

<sup>47</sup> *Nitura v. ECC*, 201 SCRA 278, at 283 (1991).

<sup>48</sup> 164 SCRA 671 (1988).

for causes other than serious misconduct or those reflecting on his moral character...

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best, it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor.<sup>49</sup>

With such a categorical statement, subsequent labor cases were decided using the standards thus set. In *San Miguel v. Ubaldo*, for example, the principle was affirmed that "(T)he employer may not be required to give the dismissed employee financial assistance, or whatever name it is called, on the ground of social justice where the employee is validly dismissed for serious misconduct."<sup>50</sup> Management rights were also recognized further in *NASUREFCO v. NLRC*<sup>51</sup> where it was held that fair play commands that the respect and reinforcement of the rights of the employer and that it should not be supposed that every labor dispute will be automatically decided in favor of labor.

But for all intents and purposes, the Supreme Court interpreted the social justice mandate under the 1987 Constitution in basically the same way it did under the 1973 Constitution. Where the language of the law called for some interpretation, the Court continued to do so in favor of the underprivileged.

### ***Social justice is not the equivalent of a Welfare State***

From the discussion above, it can be seen that the Constitution did not envision social justice to be effected through a welfare state, rather, the Constitution seeks to eradicate inequality and inequity and to diffuse wealth by giving every Filipino an

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<sup>49</sup> *Id.*, at 671.

<sup>50</sup> 218 SCRA 293, at 301 (1993).

<sup>51</sup> 220 SCRA 452 (1993).

economic power. It may even be said that the welfare state concept is antithetical to the concept of social justice in the Constitution.

The Welfare State system is simply and essentially a system of State charity, where the State taxes the rich to distribute goodies to the dispossessed. And charity of any kind undermines the spirit of self-reliance and self-respect of the people. It can only provide temporary benefit, for it does not solve the problem of dependence at its roots. The distribution of goodies in the form of medicare, family allowances, social insurance, is made necessary for those who are not well-to-do. But the system perpetuates the need for State charity. It does not attempt to make property owners and well-to-do of the recipients of the goodies. It does not liberate them from the need of continued dependence on welfare measures.

Thus, the system provided by the Welfare State perpetuates the division of classes of capitalist and entrepreneurs on one side, and workers and employees on the other; of property owners on one side, and propertyless people on the other. The result is continued tensions between the two classes, and the continued demand for increases in wages and salaries--the root cause of chronic problems of inflation which affect even the well-developed countries."<sup>52</sup>

#### V. MEETING THE SOCIAL JUSTICE ISSUE HEAD ON: THE SOCIAL REFORM AGENDA

The Social Reform Agenda (SRA) is the product of a long and tedious process of consultations and program-formulation participated in by the different branches of government and the private sector. Although the holding of a nationwide consultation scheme (People's Economic Summit) was a brainchild of the Legislature, the initiative was seized by the Executive.

Conceptually, the SRA is "the government's main instrument for the uplift of the most disadvantaged sectors in Philippine society. As such, it operationalizes the government's human development goals embodied in the Medium Term Philippine Development Plan (MTPDP) through a set of

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<sup>52</sup> S. Araneta, *State Capitalism, Welfare State and Puhunang Panglahat* in PHILCONSA READER, 176-177 (1979).

interventions aimed at the alleviation of poverty and the attainment of social justice, equity and a lasting peace."<sup>53</sup>

It is rooted in a consultative process that included those conducted by the National Unification Commission (NUC) for the formulation of a comprehensive peace process, and those conducted by the National Economic and Development Authority (NEDA), and those that led to the People's Economic Summit.<sup>54</sup>

From the People's Economic Summit held on September 8, 1993 came about the concept of a Social Pact for Empowered Economic Development (SPEED) embodying specific measures for the realization of social and economic reform. On June 17, 1994, a People's Empowerment Caucus was held, from which the Social Reform Agenda was born. By virtue of Memorandum Order No. 213 issued by President Ramos on the same date (17 June 1994), the implementation of the Social Reform Agenda and the mobilization of all concerned government departments and agencies was set in motion. The multisectoral Social Reform Summit was then held on September 27, 1994 which yielded the final and detailed report on the operationalization of the SRA. Executive Order No. 203 (27 September 1994) was issued to provide for the committees, composed of officials from the government and key leaders of the private sector, to implement the SRA.

The concept of social reform embodied in the SRA is not necessarily identical to the constitutional or legal concept of social justice; and there is no attempt to pass off the SRA as the fulfillment of the social justice mandate embodied in the Constitution. This is apparent in the following principles<sup>55</sup> which guided the formulation of the SRA:

1. Social reform is a continuing process that addresses the basic inequities in Filipino society through a systematic, unified and coordinated social reform package.

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<sup>53</sup> FINAL REPORT: SOCIAL REFORM SUMMIT, 1-1 (27 September 1994). [hereinafter cited as *Summit Report*]

<sup>54</sup> *Ibid.*

<sup>55</sup> *Id.*, at 1-5.



2. The SRA will not be defined by Government alone, but in equal partnership with the different sectors through appropriate and meaningful consultations and participation in governance.

3. The SRA must address the disadvantaged sectors' minimum basic needs: health and nutrition, water and sanitation (for survival); income security, shelter, peace and order (for security); basic education and literacy, and participation in governance (for enabling needs).

4. Commitments from both Government and the private sector shall be delineated to ensure a workable implementation of the SRA.

5. A policy environment conducive to a sustainable SRA shall be pursued.

With these principles in mind, together with an emphasis on:

a. the most disadvantageous sectors (i.e., farmers and landless rural workers, fisherfolk, urban poor, indigenous peoples, workers, especially in the informal sector, and other disadvantaged groups), and

b. on the basic objectives of access to quality basic services, access to economic opportunities and participation in governance, the SRA, described as a "package of interventions" between the government and non-government agencies, was formulated consisting of nine (9) Flagship Programs covering the following areas:

1. Agricultural Development;

2. Fisheries and Aquatic Resources Conservation, Management and Development;

3. Respect, Protection and Management of Ancestral Domains;

4. Workers' Welfare and Protection;

5. Socialized Housing;

6. Comprehensive Integrated Delivery of Social Services;
7. Institution-Building and Effective Participation in Governance;
8. Credit; and
9. Livelihood Programs.

From the foregoing and the earlier discussion on the social justice mandate of the Constitution, it is easily noted that the social and economic maps set out by the Constitution and the SRA are independent of each other. Since the Constitution is the supreme law of the land and already provides for the framework of social justice in laborious detail, it was necessarily expected that whatever program the Executive formulates would be in pursuit of and workable within the constitutional framework. However, the SRA did not make any reference to the constitutional concept at all. As stated earlier, the SRA derives its mandate from Memorandum Order No. 213 and the subsequent executive orders. In M.O. No. 213, the explicit reference is to "the goal of Philippines 2000 [which] seeks to balance global competitiveness and people empowerment, that is, pursuing economic development not only through the promotion of efficiency in the marketplace, but more importantly, through the advancement of social equity through asset reforms, just sharing of the benefits of growth, and effective people participation in the political and economic mainstream." In effect, the SRA has created its own agenda apart from that provided in the Constitution.

However, from a larger perspective, the end sought to be achieved by the SRA is in fact that envisioned in the Constitution. And while social justice may be a consequence of the full implementation of the SRA, there is no pretension that the SRA is *the* vehicle for attaining social justice. The SRA can be regarded then as the blueprint for socioeconomic development at the grassroots level. As indicated earlier, it is the grassroots implementation of the government's medium-term development plan.

*Summary of Summit Outputs per Program*

The Social Reform Summit crystallized the substance of each of the Flagship Programs by providing for the expected outputs, the required commitments and the required strategic actions for each program.

*Agricultural Development*

The whole program is aimed at enabling farmers, including seasonal and landless agricultural workers, to increase their income through ownership of the lands they till. All efforts are fundamentally focused on the intensified implementation of the CARP and its support programs. The Department of Agriculture (DA) is tasked to orient and mobilize the different departments and agencies toward the implementation and assessment of the CARP. All agencies involved in agricultural development are expected to continue working for higher budget allocations for the program for the next five years. They are not precluded from obtaining additional funds from other sources.

The Congress is expected to play its role by providing for increased budget allocations for the implementation of the CARP. Moreover, in contemplation of the anticipated changes brought about by the effects of the GATT, the following legislative measures have also been recommended:

- a. Amendment to the Magna Carta for Small Farmers
- b. Amendment to the Seed Industry Development Act
- c. Amendment to the Agri-Agra Law
- d. Repeal of RA 1296
- e. Repeal of RA 2712
- f. Passage of the Irrigation Crisis Act

*Fisheries and Aquatic Resources Conservation, Management and Development*

The plan for the fisherfolk aims to alleviate poverty among members of the sector by encouraging their organization and training, and giving them greater access to and control over

fisheries and aquatic resources. At the same time, the program attempts to balance this goal with that of conserving and protecting natural resources. To this end, the DA is once more tapped to lead the mobilization of forces primarily by pushing for the approval of certain legislative and executive measures and by strengthening on-going projects. The passage of two legislative measures are deemed central to the program: the Comprehensive Fisheries Code and, as included in the proposed Code, the Magna Carta for the Fisherfolk. The creation of Fisheries Resource Management Councils in the area of the Executive shall also be pushed. The Department of Interior and Local Government (DILG) and the respective local government units (LGU), on the other hand, are expected to promulgate resolutions and ordinances giving preferential treatment to the fisherfolk sector. Implementation of the Seven (7) Lakes Reform Program, to be prepared by the Laguna Lakes Development Authority, shall also be ensured.

*Respect, Protection and Management of Ancestral Domains*

The Indigenous Peoples of the country are comprised of 110 ethnolinguistic communities whose way of life is culturally, economically and politically distinct from that of mainstream society. This program of the SRA seeks to ensure the integrity of this diversity through the recognition and protection of their rights to their ancestral domains. Such rights include the "right to manage and exploit exclusively the resources found within their domains, the right to self-determination, and the right to adequate basic services." On the part of the Executive, the Ad-hoc Inter-Agency Committee, created by virtue of MO No. 213 and chaired by the DENR Secretary, shall be made permanent and shall coordinate inter-agency participation in the implementation of the program. Furthermore, the full implementation of several DENR Administrative Orders with respect to Indigenous Peoples and ancestral domains shall be pursued, preferably with multi-sectoral participation. The passage of the Ancestral Domains Law by the Congress is vital to the success of the program. It was agreed upon that only qualified and credible members of the sector should be appointed to any Commission which will be created therein.

Certain recommendations in the report, if adopted, will indeed be progressive:

(1) Adoption of traditional modalities in the documentation, delineation and mapping of ancestral domains;

(2) A moratorium on all issuances of permits, licenses, leases and the like affecting IPs and ancestral domains in order to preserve the integrity of ancestral domains;

(3) Allocation of funds to support the documentation towards possible codification of customary laws, customs and traditions by the IPs themselves; and

(4) Inclusion in the educational curriculum of the documented customary laws, customs and traditions.

#### *Workers' Welfare and Protection*

Focusing on workers from the informal sector, the program intends to enhance their organizational capability, lessen the incidence of irregular employment, and expand access to social security and protection.

The Department of Labor and Employment (DOLE), as lead agency, is expected to ensure the enforcement of and compliance with existing laws on labor standards, technical safety standards and health safety standards. An expanded coverage of the social security and employees' compensation program has been recommended to the legislature. The passage of laws regulating the practice of sub-contracting and the hiring of non-regular employees is also deemed essential. The assistance of the Public Attorney's Office will also be sought in cases instituted by overseas contract workers against illegal recruiters.

#### *Socialized Housing Program*

For the urban poor sector, the SRA incorporates a program that seeks to provide affordable and decent housing primarily through the full implementation of the Urban Development and Housing Act (UDHA). A masterlist of Socialized Housing Beneficiaries and an inventory of idle lands will be made in preparation for the building and distribution of unit in these housing projects. To further facilitate the implementation of the program, the SRA pushes for the decentralization of efforts through

the establishment of Housing Boards at the local government level.

Together with the strengthening of the Presidential Commission on the Urban Poor (PCUP), the SRA also calls for the passage of the Integrated Shelter Financing Act and the Magna Carta for the Urban Poor.

*Comprehensive Integrated Delivery of Social Services*

This part of the Agenda lumps together as *disadvantaged groups* families, women, children, youth, persons with disabilities, the elderly and victims of natural and man-made calamities. The empowerment of these groups through organization and access-provision for the satisfaction of their minimum basic needs is expected to be realized under this program. Community Profiles will be drafted to identify the most depressed sectors/families to be prioritized; schools and classrooms will be built; social and health services (including day-care centers) at the barangay level will be developed as self-managed, sustained and institutionalized systems. The implementation of the Accessibility Law (Batas Pambansa Blg. 344) shall be promoted. The legislative component call for the passage of the Intercountry Adoption Bill, the Sexual Harassment Bill (which has since been enacted into law), and a law creating a Commission on the Filipino Family.

*Credit*

The focus of this program is to mobilize adequate resources for the poor and disadvantaged sectors for the improvement of their capabilities toward self-reliance and economic well-being. A People's Credit and Finance Corporation (PCFC) shall be organized. The credit program for the agricultural sector shall be spearheaded by the Agricultural Credit Policy Council (ACPC) together with the Land Bank of the Philippines (LBP). Under this Flagship Program, the optimum participation of non-governmental organizations (NGOs), cooperatives and other members of the private sector shall be sought. The Cooperative Development Authority (CDA), on the other hand, shall implement a cooperative strengthening and development program for those graduating from the Credit for the Poor Program. The National Credit Council

(NCC) shall be formed to harmonize existing government credit programs, with the following effective systems to be established accordingly: the LBP to provide credit to small farmers and fisherfolk; the Social Security System (SSS) for salaried and self-employed individuals; the Development Bank of the Philippines (DBP) for small and medium enterprises.

To this end, the Legislature's cooperation is expected through the enactment into law of the following proposals:

(1) Amendment to LBP's charter to enable it to increase its capitalization, thereby mobilizing more credit resources for the countryside;

(2) A crop insurance and guarantee system which will strengthen agri-lending; and

(3) Amendment to the SSS law which will provide the portability of GSIS and SSS membership (i.e., transferability from one system to another).

### *Livelihood*

By creating better opportunities and providing skills training, the Livelihood Program aims to adopt a more direct interventive approach in tackling the poverty issue head-on while structural reforms in the social and economic systems are being undertaken. Entrepreneurship shall be encouraged and effective responses to natural and man-made calamities will be incorporated in the program. Public Employment Services Offices in every local government unit shall be the seat of operations at the grassroots level. Kabuhayan Centers at the local level shall serve as the basic coordinating mechanisms. The participation and utilization of non-governmental organizations shall also be institutionalized.

### *Institution-Building and Effective Participation in Governance*

This part of the Agenda attempts to facilitate the integration of the other programs above-mentioned and cuts across the various sectors -- government, people's organizations, non-

governmental organizations, and the basic sectors (farmers, fisherfolk, etc.). Joint ventures and cooperative undertakings among these sectors shall be forged for effective governance and administration at the local level; incentives for growth, including tax reforms, will also be developed with the participation of all sectors.

*Comments on the Summit Outputs*

From the foregoing account of the Summit Outputs, the immediate impression seems to be that there is really nothing new or spectacular about the SRA. It is simply a document wherein the different sectors, under the leadership of government, pledged to do their respective jobs in pursuit of the people's welfare. It is the "invisible hand" made visible through words and promises. But, of course, there is no assurance that what was eloquently written on paper will be translated into reality.

Note that: (a) the SRA does not derive legal mandate from any statute or the Constitution; therefore, a citizen does not have any legal recourse to call for the implementation or observance of any Flagship program except if the same is in the form of a statute; and (b) it is really an agenda for the government such that its realization largely depends upon the government leadership's political will and commitment; and, (c) the participation of the private sector in the SRA's implementation is contingent upon government's establishment of the necessary space in the structure.

## VI. CONCLUSION

The 1987 Constitution is unique, in that it requires the State to promote a definite social order, i.e., "a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life."<sup>56</sup> The

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<sup>56</sup> CONST. Art.II, Sec.9.



Constitution also mandates that social justice be promoted at all phases of national development.<sup>57</sup>

The primary policy objectives behind these provisions are three-fold -- the prosperity of the nation, the economic independence of the nation, and freedom from poverty -- and they are all socioeconomic in nature.

On the other hand, the means of realizing these primary objectives are programs that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all. This creates a second line of policy objectives.

These two sets of policy objectives, together, make up the Constitution's picture of the ideal state of affairs of the Filipino socioeconomic milieu, which, according to the Constitution, must be promoted in all phases of national development.

This is quite a tall order for any Philippine government to accomplish, especially one that is still struggling with the vicissitudes of the agricultural and industrial phases of economic development in a world that is now hurtling into the highly technological phase.

The third line of policy objectives is implied from the constitutionally mandated socioeconomic order.

To provide adequate social services, even without approximating the multifarious and comprehensive services basic to a welfare state, the State must have the financial resources. Thus, revenue generation is an essential third-line policy objective. A fiscal policy that will support adequate social services will be required, and this will entail additional taxes and other revenue-generating measures which will work added hardship to the Filipino masses. On this score, some very hard political decisions will have to be made by the leadership of the Government. And, if added taxes are not enough to finance the required services,

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<sup>57</sup> CONST. Art.II, Sec. 10.

alternative sources of funding, including soft loans from foreign governments and funding institutions, will have to be secured. If the latter case, the Pandora's box of the foreign debt issue is again laid open.

The matter of employment opportunities is very important, as a rising standard of living, a second-line policy objective, is a necessary consequence of a healthy economic environment. To promote full employment, there must be robust economic growth that will generate the much-needed employment opportunities. Corollarily, there must be investments that will spur economic growth. Thus, investment generation is another essential policy objective. As domestic capital is insufficient, foreign capital in large amounts will have to be allowed into the country, and questions on the limits to foreign investments, in the context of economic nationalism<sup>58</sup> and sovereignty, will inevitably arise.

The problem areas in the constitutional quest for social justice are not only policy-related, but are structural as well.

Operationally, the Constitution provides for the realization of social justice through legislation (the enactment of laws by Congress)<sup>59</sup> and, corollarily, through centralized economic planning that institutionalizes State intervention in economic activity (the development plans of the National Economic and Development Authority).<sup>60</sup> This puts a very heavy burden on Government, and requires that the Congress be a pro-active legislature that is conscious of the need for social and economic reforms. It also requires that the Congress have the political will to transcend the class interests of its membership in translating the pro-poor reform proposals into law.

Considering that in Philippine society political power is concentrated in the hands of those who control the economic resources, this formula may very well be the perfect recipe for the non-attainment of the constitutional mandate, or at least for the

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<sup>58</sup> CONST. Art. II, sec. 19, provides that "the State shall develop a self-reliant and independent national economy effectively controlled by Filipinos."

<sup>59</sup> CONST. Art. XIII, Sec. 1, Art. XII, Sec. 6.

<sup>60</sup> CONST. Art. XII, Sec. 9.

institution of reforms at a very slow pace and on a piecemeal basis. The resistance of individual legislators to reforms that will give political and economic power to the people is thus not difficult to understand.

Moreover, while the Constitution has set very lofty ideals for the improvement of the lot of the Filipino people, the governmental structure it has provided to implement the much-needed reforms may not be completely supportive of the attainment of the ideal.

The framers of the Constitution have bet their money on State intervention as the means of implementing structural reforms, but the recent histories of the Philippines and of other countries have shown that reforms cannot be imposed from above and State intervention is anathema to productive economic activity. The more successful social and economic reforms have been instituted by the people themselves, through their own initiatives, with assistance from the State through infrastructure support.

It is perhaps because of this realization that the President has side-stepped the strictures of the Constitution and pushed for the Social Reform Agenda, an agenda voiced out in nation-wide consultations by the people themselves. Very clear here is the people by-passing their congressional representatives in the articulation of their problems and in finding solutions thereto, in a rare example of direct democracy. It is only in implementing the solutions through legislation that the representatives become relevant.

But on second thought, the alternative process is not completely alien to the governmental process outlined in the 1987 Constitution, as the fundamental law itself compels the State to "encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation,"<sup>61</sup> and recognizes the role of independent people's organizations "to enable the people to pursue and protect, within a democratic framework, their legitimate and collective interests and aspirations through

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<sup>61</sup> CONST. Art. II, Sec. 23.

peaceful and lawful means"<sup>62</sup> and the right of the people and their organizations "to effective and reasonable participation at all levels of social, political, and economic decision-making."<sup>63</sup> As if to emphasize the truism that reforms have to be initiated by the people themselves, the provisions on people's organization are found within the article on Social Justice and Human Rights.

However, the framers of the Constitution seem to have momentarily lost their bearings when they gave the primary responsibility for reforms to Congress and the NEDA and buried people's organizations in two innocuous provisions. And, to bureaucratize the participation of people's organizations, the Constitution provides that "the State shall, by law, facilitate the establishment of adequate consultation mechanisms."<sup>64</sup> Anyone familiar with the consequences of legislation on a particular activity will readily realize that promulgating a law on consultation mechanisms will not facilitate but rather will complicate matters.

It must also be emphasized that the programmatic provisions of the Constitution on social justice establish objectives which cannot be realistically expected of a three-year Congress. The reality of congressional elections every three years means that after the second year the Congress is virtually paralyzed because of re-election fever. In a Congress which has a productive period of only two years, major legislative reform measures cannot be realistically expected.

The programmatic social justice provisions of the Constitution, with its heavy emphasis on legislation, impliedly require the enactment, at the soonest possible time, of a new Labor Code, a new Agrarian Reform Code, a Natural Resources Code, a Fisheries Code, an Urban Land Reform Code, a Health and Social Services Code, a Food and Drugs Code, a Disabled Persons Code, a Working Women's Code and a People's Organization Code. It would be a major accomplishment for the Congress to pass even just three or four of these during its three-year life span.

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<sup>62</sup> CONST. Art. XIII, Sec. 15.

<sup>63</sup> CONST. Art. XIII, Sec. 16.

<sup>64</sup> *Supra*.

But then, even if it is able to pass the needed legislation, there is no assurance that the laws will come up to par with the stated constitutional goals. Recall the criticism voiced by various sectors against the watered-down Comprehensive Agrarian Reform Law for its failure to live up to the constitutional objective of transferring to landless farmers the land they are tilling.

The Social Reform Agenda, which despite being spearheaded by the Executive nevertheless heavily relies on legislation for implementation, is also severely handicapped by the structural limitations and the political realities. As things stand, the timetable for the expected outputs is already much delayed because of the failure of the last Congress to act on many of the legislative proposals needed for the success of the Flagship programs.

Given the realities of the legislative process, the current President, or any thinking Chief Executive for that matter, will want to limit the participation of Congress in the reform agenda. But the Constitution prevents him from dispensing with a partnership with Congress.

First and foremost, the Constitution has given the primary responsibility for the reforms that will usher a regime of social justice to the Congress. This is unfortunate, as it gives rise to the problems discussed earlier, but this is something that has to be accepted as a reality.

Then, the reform agenda requires substantial funding, and under the Constitution the funds have to be appropriated by the Congress. This institutionalizes the intervention of the Congress in any initiative that will require state support.

Thus, whether from a purely structural or budgetary perspective, as long as the reform agenda is based on the Constitution, the success or failure of the reform agenda is held hostage by congressional action or inaction.

It therefore does not make the implementation of the Social Reform Agenda any less problematic just because no one thought of the constitutional framework for social justice when the SRA was

formulated. The attainment of a regime of social justice, whether in compliance with the constitutional mandate and based on the constitutional framework or as a consequence of the grassroots implementation of the medium-term development plan, is hampered by the restrictions imposed by the Constitution and the realities of congressional dynamics. It is a case of the form limiting the substance. Conscious of this limitation, we cannot help but wonder whether the framers of the Constitution were aiming for utopia when they formulated the mandate for social justice.

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