

PHILIPPINE LAW JOURNAL

Vol. XVIII

DECEMBER, 1938

No. 6

UNWARRANTED APPLICATION OF THE DUE PROCESS CLAUSE

By JOSE LAVA *

CHAPTER V

DUE PROCESS IN THE PHILIPPINE COMMONWEALTH CONSTITUTION

New Role of Government under the Philippine Commonwealth Constitution

The Philippine Commonwealth Constitution, like most modern constitutions as those of Germany, Mexico, Czechoslovakia etc., promulgated after the 1900's, has departed from the traditional concept of what a constitution should contain. In an age when economic complexities were unknown, when individualism was the accepted norm of conduct, a constitution was looked upon merely as an enumeration of limitations to government interference with private actions. Then, the individual was glorified, and it was taken as axiomatic that he could take care of himself, left alone to his native faculties, without government interference in his favor. Hence government was limited in its function to the mere administration of justice, police protection, and the like. However, individualism got wild, property became powerful, trusts and monopolies developed, division among economic classes was accentuated, and the lie was given to free competition. Real and free competition can exist only when a more or less equal bargaining power among classes obtain. But when one class has a monopoly of property and wealth, while another class is propertyless, then genuine competition is a myth. Then, government can no longer remain as a mere spectator and umpire in an unequal game, but should be an active participant in favor of those who can not stand the rigors of bitter and unequal competition.

The twentieth century ushered in an era when free competition as an economic dogma is discredited. It ushered in an

* LL.B., University of the Philippines.

era which would have government assume an aggressive policy of rendering social justice to those who could not get it otherwise than through governmental action. The great depression of 1929, world-wide in its scope, showed only too clearly that no longer can we trust to blind and selfish individualism, the lives of millions of individuals. Some sort of government interference with private action was found necessary to enable private capitalism to survive longer. Talks of social justice, new deal etc., filled the air. The Philippines was not immune to all these talks, and when our Constitution was finally drafted, the delegates to our constitutional convention saw to it that in the enumeration of the cardinal objectives of government, the promotion of social justice was included.

Social Justice—Its Meaning

It is, therefore, in point to inquire into the meaning of social justice as incorporated in our Constitution. Social justice is necessarily a broad, hence a vague term, incapable of exact definition and delimitation. The words "social" and "justice" are in themselves broad enough, and "social justice" still broader. Social justice, in its widest signification, necessarily includes justice in all social relationships, i.e. relationship of man with man, of man with the State, etc. It includes political, criminal and economic justice. However, treatises on social justice do not deal at length with political and criminal justice, because in most not to say in all civilized countries, the political and criminal laws have been brought into such a state of perfection that they only require a few minor amendments to render full political and criminal justice to all. In economic relationships, however, much is still to be desired in the way of change, and it is therefore with economic, particularly distributive justice, that most treatises on social justice elaborate upon. As a matter of fact, there is a popular tendency to identify social with economic justice.

Rational Basis of the Claim for Social Justice

The claim for social justice is premised on the fact that wealth and its value are essentially social products. Wealth is the result of the cooperative efforts of individuals composing society, in producing goods. In this economic age when nobody can be self-sufficient, and where division of labor is the accepted

way of production, goods or wealth must necessarily be the product of the co-ordinated labor of the several individuals in society. Value or utility—a subjective concept is necessarily dependent upon the several and aggregate estimations of individuals who form the consuming public. A thing cannot have utility or value independent of individuals who ultimately desire to consume that thing. Hence, in the final analysis, goods produced have value only, in so far as there are individuals who desire them. It is thus seen that both the *physical objective thing* itself, and its *subjective value*, are the products of the cooperative efforts and aggregate desires of individuals forming society—in short are social products.

Having thus established the fact that wealth and its value are social products, it is easy to appreciate the ethical validity of the claim for social justice. If wealth can only be produced by the combined pains and privations of individuals in society, and if its greater or lesser utility is determined by these same individuals, it is natural that the income derived therefrom should be apportioned to those responsible for its production, in proportion to the pains and privations severally exerted by those participating in the productive process. It is an admitted fact that an individual alone, whatever his abilities cannot produce as much as he could if he were aided by others. Hence, it is obvious that technical training and individual ability are not sufficient to produce efficiently. Cooperation on the part of the less able personnel is necessary to render possible efficient production. It follows that in the distribution of income from production, there should be the least disparity between the incomes of the several individuals, who cooperated in the productive process. It is not contended that there should be equal apportionment of income from production. No theory of distributive justice based on equality of apportionment can plausibly be defended. All that is asked is that the wide gap in incomes now prevalent, be reduced to the minimum, it being recognized that those who are now receiving extraordinarily high incomes could not have made them without cooperation from others. It is not a part of this thesis to arrive at a theory of distributive justice, nor to devise a scheme of equitable distribution. Suffice it to mention that any program for social justice to be complete must include an equitable scheme of distribution of income derived from production.

*Socialization of Natural Resources—Doctrine of
Common Patrimony*

We shall now proceed to analyze the specific powers lodged in the National Assembly by our Constitution, which has for their purpose the promotion of social justice to insure the well-being of all the people. These powers necessarily modify to a large extent the meaning of due process as traditionally understood in both American and Philippine jurisprudence.

Section 1, Article XII, of our Constitution enunciates the fundamental principle of State ownership of all agricultural, timber and mineral lands of the public domain and other natural resources. This provision is similar to provisions on the same subject contained in the more progressive constitutions of Germany, Mexico and Ireland. It is a recognition of the fundamental fact that natural resources, because a gift of nature and exhaustible, constitutes the common patrimony of the nation, and therefore should be held and administered in trust, and for the benefit not only of the present generation, but of generations yet unborn. There is, however, one defect in our Constitution, which should at once be remedied, if we are to genuinely conserve our natural resources for the benefit of the future generations. The same article already cited (Article XII, Section 1) provides further that natural resources except public agricultural land, shall not be alienated, and that leases for the exploitation, development or utilization of any of the natural resources shall not be granted for a period longer than twenty-five years, renewable for another twenty-five years. In other words, our Constitution does not enunciate the real doctrine of common patrimony, for if it does, it should have prohibited altogether any kind of alienation, including leases to private persons. When we say that natural resources are common patrimony, we mean that they can only be held and utilized for the sole and exclusive benefit of all the people—living and still unborn—taken collectively, and that no private profit from their utilization can be allowed. The doctrine of common patrimony is based on the fact that natural resources are a gift of nature, and not a result of private efforts, and therefore benefits therefrom should be enjoyed in common. If we are to follow strictly this doctrine of common patrimony, it should be the duty of the State to capitalize the expected income from a natural resource, place the annual proceeds therefrom in a trust

fund, and spend for the benefit of the public, only an annual sum, equal to the interest that would be earned from the expected capitalization as previously determined. By following this procedure, the value of the natural resource will remain intact in the form of a trust fund, while its income i.e. interest, is being spent annually for the benefit of the people for whom it is held. Hence the exploitation of a natural resource will only change the nature of the subject-matter of the trust, from that in which it was found in nature, to a cash trust fund. Under the present system which allows leases, our natural resources will sooner or later be exhausted, and there will be nothing left for the more remote generations to enjoy. Furthermore, even assuming that our natural resources are inexhaustible, still, as long as they are privately leased, it will not be the general public, but merely a few private individuals, who will appropriate their benefits. In both cases, the spirit of the doctrine of common patrimony would have been defeated. From the above analysis, it is clear that the only appropriate thing for the State to do in connection with our natural resources, is to collectivize or socialize them, exploit them with State capital, appropriate to itself all the proceeds therefrom, and spend the same as a trustee would for his wards. It seems, therefore, that it should be part of our program of social justice to stop our present lease system, and for the State to itself exploit our natural resources so that their benefits may accrue to the general public for whom they are originally intended.

Limitation of Public and Private Landholdings Preparatory to Ultimate Socialization of Land

We next proceed to that portion of our Constitution which limits public and private landholdings. Article XII, Section 2, limits what a corporation can hold to one thousand and twenty-four hectares, and as regards any individual to one thousand twenty-four, one hundred forty-four, or twenty-four hectares, depending on whether he acquires the public land by lease, purchase or homestead. Section 3 of the same article authorizes the National Assembly to determine by law the size of private agricultural land, which individuals, corporations or associations may acquire and hold, subject to rights existing prior to the enactment of such law. Finally, Section 4 of the same article permits the Assembly to authorize upon payment of just compensation, the expropriation of lands to be subdivided into small lots and

conveyed at cost to individuals. The avowed purpose of all these constitutional provisions is to prevent the perpetration here, of that pernicious institution, *caciquism*, to promote social peace and contentment, and to render puerile, subversive movements which are not uncommon nowadays. As a temporary expedient, there is much to commend these constitutional precepts, but it may be asked: What shall be done when all available land, public and private, have already been privately appropriated, and there are more individuals who are without land of their own? In theory, there is no difference between land, and any other natural resource whose supply is exhaustible. Both are admittedly gifts of nature, which mankind did not, and can not create. Hence, in theory, both are common patrimony to be enjoyed in common. In practice, however, as long as land is plentiful, there should be no objection to its private appropriation. But when land become scarce, and not all persons can be provided with sufficient of it to maintain a decent living, private ownership of land cannot be justified. It is then time for the State to socialize land as part of its program of social justice. It should, however, be noted in passing, that it may be expedient to at once begin socialization of our undisposed public land as an experiment. We have shown that the ultimate socialization of all lands is inevitable if we are really to seek the welfare of the people. It, therefore, would be a wise policy to gradually socialize our lands by starting with our public domain, to render less painful and less sudden the transition from private to State ownership of land. This socialization of public lands can be effected by the State's formation of agricultural colonies, financed partly by the State, and partly by the colonists themselves.

State Operation of Essential Industries and Public Utilities

Section 6 of Article XII of our Constitution provides that the State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government. This provision authorizes the State to do two things: First, to establish and operate new industries. Second, to transfer to public ownership, utilities and other private enterprises to be operated by the State. This provision recognizes that there may arise a

situation when government operation of industries is essential to public welfare. Thus in the Philippines where rice is so important to our daily sustenance, and where there is constant danger of shortage of the cereal, due either to failure of harvest, or artificial cornering of the market, it may be wise for the government to go into the rice industry to assure to the entire population a continuous supply of rice at a reasonably low cost. This policy may be extended to other daily necessities if and when the conditions of their production and supply warrant such policy. In more progressive countries, the government operates public utilities, and supply services to the public at cost. In those countries, the services rendered by the utilities have come to be considered as part and parcel of a decent standard of life, which services one cannot afford to forego. In the Philippines, we may experiment on government operation of public utilities, like the supply of water, electric fluid, gas, and means of transportation and communication. These services have been daily necessities to quite a large bulk of our population that they may warrant government operation. The least that our government should do is to establish an efficient and honest public service commission, which shall exercise strict supervision and control over the utilities, so that these utilities—usually monopolies, do not dictate a monopoly price for their services. The commission should be especially strict in rate-fixing, and in seeing to it that efficient service is rendered to the public. In fixing the rate which a utility may charge, only the really necessary expenses should be allowed, and the experience of the utilities of other countries where the same conditions of labor, materials and other elements of costs are practically the same, should be carefully studied and applied. Our point is, not to allow a private company to operate a utility, and charge for its service a cost higher than what an efficiently-run company would. In other words, the public should not be made to bear the extravagances and wastes of a private company operating a utility.

*Protection to Labor—Regulation of Relations of Labor
and Capital*

Finally, our Constitution provides in Article XIII, Section 6, that the state shall afford protection to labor, especially to working women and minors, and shall regulate the relations of landowner and tenant, and between labor and capital in in-

dustry and in agriculture. This section further authorizes the State to provide for compulsory arbitration. Under this constitutional provision, many social legislations of far-reaching significance can be justified, without doing violence to the due process clause. We shall attempt to enumerate some of the social legislations necessary to render social justice, which would fall under this constitutional provision. We shall also, in the limited way we can, lay down the broad basis upon which such legislations can be grounded, and finally, we shall mention a few details about each legislation to make the same more understandable.

Maximum Hours of Labor and Minimum Wage Laws

First, we may mention the maximum hours of labor and minimum wage laws. These two laws are very closely related to each other. They recognize that the working-man, left to himself, cannot obtain from his employer the wage which is his due, nor the hours which it would be healthful for him to work. They recognize that there is an inequality in bargaining power between the employer and the employee, and the State therefore interferes in favor of the employee. Legally, these laws constitute interferences with the liberty to contract, but if we delve into the realities of living, we would find out that far from being interferences with the liberty to contract, these laws are really palliatives to a state of "unfreedom" to contract. In passing these laws, the Assembly must take into account the nature and conditions of the work, the state of profitableness of the industry in which the employer is engaged, and other factors that may help in arriving at what really should be the maximum hours permissible, consistent with the health of the employee, and what should be the minimum wage that a particular industry should give to its employees, that would leave the employer a decent profit commensurate with the labor and risks which he took. The point is, that no single limitation as to hours of labor or minimum wage can be fixed for every industry. Each industry must be studied by itself, and a corresponding limit fixed accordingly.

Social Insurance Legislations

Closely related to these Laws may also be mentioned the several social legislations that may be grouped under the general heading—social insurance. This may include workmen's

compensation, unemployment, sick and old age insurance laws. These laws consider as part of the costs of production, such risks and hazards as are the result of, or arise from, operations in an industry. When an employee contracts away his labor power to his employer, not only does he engage to work for so many hours at so much compensation, but he also exposes his body and even his life to risks necessarily incident to his occupation. Often, the wage given to the employee is based merely on his productive capacity, without taking into account the risks which the employee takes in performing his work. It is precisely with a view to place the burden of this risk on the employer, who must reckon it as an element of cost, instead of letting it fall on the employee, that workmen's compensation laws are justified. Then again, an employee may get sick as a result of the strain and fatigue which attends his work, and therefore disable him even temporarily from attending to his regular work. Without sickness insurance laws, the employee, during the time of his sickness, will not get any compensation, notwithstanding the fact that his sickness is directly traceable to his work. To prevent this injustice, and to include the loss from sickness of employees as an element of costs which it should properly be, sickness insurance laws should be passed. Finally, a situation arises where an employee has spent the best and most productive years of his life working for an employer. Ordinarily, the employee, during his normal working life, is given wages leaving him nothing to save for his old age when he is no longer productive. Without old age insurance laws, an employer may dismiss an aged employee because he is no longer useful to him, without giving him anything by way of compensation, when thus dismissed. To assure employees with a decent income even after they cease to be productive through no fault of theirs, old age insurance laws should be passed.

Employee Participation in Business Profits

Another innovation which the National Assembly may introduce is the requirement among employers to allow their employees to participate in business profits. As was already pointed out, income from production, which includes business profits, is not the result alone of the investment of capital, nor alone of managerial ability, but rather the result of the coor-

minated and collective efforts of all the factors of production, among which is labor. It is, therefore, only just that labor should participate in that surplus which it is responsible in bringing about. The practice of most, not to say all employers, is to pay their employees only that wage, which the employees, in dire need, are willing to accept, without regard to their producing capacity, and for the employers to appropriate to themselves, the surplus over and above all costs of production, calling such surplus their compensation for the risks they assumed in investing their money in their businesses. It should be remembered, that while the employer invested his capital, the employee invested not only his labor power, but also his health and even his life. It seems therefore too absurd to require argument, that an employer should get more for risking his inanimate capital, than an employee who risks his very health and life. That would be valuing property higher than human life. It seems that the more equitable practice, is for capital to be compensated according to the regular rate of interest, and to consider such interest on capital investment as an element of cost, to be deducted like wages, from gross income, and for the surplus over and above all costs of production, to be divided equally or in some other equitable proportion among all the factors of production among which is labor. In this way, only, can labor participate in that for which it is responsible in producing.

Compulsory Arbitration

Our Constitution in Article XIII, Section 6, also provides that the state may provide for compulsory arbitration. It is to be noted that the provision is permissive, not mandatory in tenor. It leaves to the National Assembly the discretion to determine when, and in what cases, compulsory arbitration is to be imposed. It is a genuine interference with the liberty of both the employer and the employee to contract, or to work on terms of their own making. Such arbitrary interference can only be justified by a genuine public necessity. It recognizes that there are three parties to all economic activities—the employer, the employee and the consumer. Compulsory arbitration, being an interference on the liberty of both the employer and the employee, can only be upheld to protect the interests of the consuming public. Hence, it is only in those industries

which produce daily necessities, like articles of food and clothing, and in public utilities, where continuous operation is indispensable to carry on a tolerable living, can the State provide for compulsory arbitration. In all other cases, labor and capital should be left to fix their own terms, through legitimate means as strikes and lock-outs. As civilization progresses, however, and as necessities encroach upon the domain of comforts, the State, as the occasion arises, may provide for compulsory arbitration in those industries which produce what heretofore were considered comforts, but which in the future shall have come to be considered necessities of life.

Revision of Our Tax System on the Basis of Ability to Pay

Finally, although there is no specific constitutional provision expressly authorizing it, the State may revise its tax system, so as to place the burden of the taxes on those most able to pay them. This is in consonance with the principle of social justice, which, as we have already mentioned, is one of the cardinal objectives of our government. The system of taxation, while primarily intended to raise revenues to meet government expenditures, may be so devised as to serve as a method of evening the harsh inequalities of fortune prevalent under the present capitalistic economy. The old system of taxation in most countries place emphasis upon property as a subject matter of taxation. Income has recently been added to the list of taxable subject-matter. The theory behind the taxation of property, regardless of its income-producing capacity, is that, since it enjoys the protection of the State, it must correspondingly share in the burden of State expenditures. In a period when property produces an income sufficient not only to support the property-owner, but also enough to meet the taxes imposed thereon, there should be no objection to taxing property independent of its income, but, in these periods when prices of agricultural products are extraordinarily low, and when income from agricultural property is barely enough to support its owner, it seems equitable to abolish altogether taxes on property, and leave income alone as the major source of revenue. Income is the most equitable basis of a scheme of taxation, for it considers the relative capacities of taxpayers in bearing the burden of taxation. It seems, therefore, necessary to amend our tax laws so as to leave income as the major source of re-

venue with which to run our government. There will of necessity be higher income tax rates, progressively imposed as incomes mount higher brackets, until a maximum is reached, and the surplus, over and above the maximum fixed, may then be appropriated by the State as representing unearned income to be enjoyed collectively by individuals forming society, who ultimately is the source of all wealth and value.

All the above are mentioned only by way of suggestions as to what our government can do in the way of rendering social justice to the people. We have arrived at a complex economic age when weaker individuals, left alone, cannot take care of themselves. Aware of this very evident fact, the delegates to our constitutional convention, side by side with the due process clause, (copied almost literally from the due process clause in the American Constitution) enumerated the promotion of social justice to insure the well-being and economic security of all the people, as one of the cardinal objectives of our government. It is plain, therefore, that the Filipino people, when they adopted the Philippine Commonwealth Constitution, adopted a due process clause tempered by the humanities of the principle of social justice, and that any legislation which makes any attempt to secure social justice, although confiscating property, or abridging liberty, cannot be held unconstitutional, because violative of the due process clause. The Filipino people has declared its will, and such will should not be defeated or circumvented by the technicalities of legal due process.

CHAPTER VI

WHAT SHALL BE DONE?

In the foregoing chapters, we have attempted to trace the history of the due process clause and the changing concepts of the rights guaranteed by the same; we have tried to rationalize them, and to find an ethical justification for their preservation; we have tried to show how the due process clause touches our very economic life, and how it has been prostituted, thus impeding social and economic progress; we have tried to show the attitude of the Supreme Courts of the United States and of the Philippines on social legislations brought before them for decision, and finally we tried to show how our own due process can be humanized by the social justice clause in our Constitution.

It is now pertinent to inquire how the civilized countries of the world have attempted to solve their problems—economic and

social—to know how the Philippines, entering its most delicate phase of independent existence, should go about with its own problems, and avoid the pitfalls to which other countries have fallen.

Communism and Fascism

Europe, today, is divided into two rival forces contending for power—Communism and Fascism. Russia is entirely communistic, France is on its way to Communism and so is Belgium. In Spain, the communists and the fascists are actively at war, to determine who should remain in power. Italy, Germany, Portugal and Austria on the other hand, are aggressively fascists. Great Britain still preserves the last vestige of liberal capitalism, although the imperialist class has sympathies for Fascism, while the workers have tendencies towards Communism. In Japan, Communism is taboo, while Mexico has communistic leanings. In the United States of America, similar alignments can be found, although Pres. Roosevelt's efforts at steering a middle course through his New Deal, serve to make less marked and less bitter, class antagonism.

We shall not attempt to elaborate on the respective merits of either Communism or Fascism. That, we will leave for our reader to determine. It should, however, be noted that while Communism has both an ideal and a method, Fascism has no ideal to boast of, but consists merely of a method to perpetuate in power the present ruling capitalist class. Furthermore, while Communism envisions a classless society, in which everybody would be a worker, and nobody a master, Fascism has no such ambition. Fascism would continue the present division into economic classes. Communism is an attack on private capitalism as a system, while Fascism represents its most violent phase. Communism enrolls the support of class-conscious workers, to bring about a temporary dictatorship of the proletariat, to be followed by a virtual condition of anarchy, while Fascism, besides enrolling the support of the capitalist class, also appeals by catch-phrases to the sympathies of the confused and not class-conscious workers, to use them as tools in perpetuating a dictatorship of the capitalist class.

The New Deal—A Middle Road?

An attempt is being made in the United States to steer a "middle course" between the "left" and the "right". This at-

tempt, as we have already occasion to mention, is the New Deal of President Roosevelt. Roosevelt and his "brain trust" do not pretend to be guided by any consistent body of knowledge or reasoning. His unbounded empiricism and experimentalism are hailed as his greatest claim to support. These qualities are scathingly contrasted with both the "hide-bound" theories of the orthodox capitalist economists, and above all with the "pedantry," "rigid dogmatism" and "absurd theorizing" of the Marxists. The essential feature of the whole New Deal is the attempt at the general stabilization of the economic system. This stabilization is expected to be attained by the permanent stabilization of the price level. Besides this all-important objective, the other features of the New Deal are but secondary. Indeed, the codification of industry, the attempt to regulate agricultural production, the attempt at the revival of loan expenditure, through both public and private agencies, are but additional efforts to secure the great aim of stable prosperity. And the sign and condition of a stable economy is taken to be a stable price level. It is impossible, at the time of this writing, to appraise the New Deal as an experiment in collective capitalism. But it seems that the American people are bent on giving it a chance, to show what it has in store for them. They have come to realize that private capitalism has miserably failed to feed and clothe, and to provide for tolerable conditions of living for them. Upon coming to this sad realization, however, they know not where to go. Reared in the traditional American way of freedom, they are as yet unprepared to embrace either Communism or Fascism, both of which make no secret of their attitude on liberty as understood by the American people.

What Shall Be Done?

We, here in the Philippines, have been and still are complacently sitting in audience to an interesting and vivid, although tragic drama of life being enacted in Europe. We are fortunate, in that as yet, we are not called upon to participate in that drama. We occupy a position of vantage, for we can calmly contemplate the struggle being enacted before our very eyes, and we are given time to rationalize and think straight, instead of being blinded by hatred, prejudice and bitterness which characterizes the struggle of contending forces in Europe. America, by granting us our independence, is giving us an opportunity to mould our own destiny as a nation, consistent with the princi-

ples of republican government. It is us therefore to decide how we shall go about in solving our own problems. We adopted our Constitution, aware of the bitter struggle that is going on in other countries, aware of the inhumanities of which private individualistic capitalism is responsible, aware of the deplorable station to which human beings have been consigned in an unmitigated capitalistic society. Aware of all these, we also recognized the fundamental rights to private property, and liberty to contract, which can not be taken or abridged without due process of law. On the same breath, we enunciated as one of the cardinal objectives of our government, the promotion of social justice to insure the well-being and economic welfare of all the people. It is, therefore, pertinent to ask a final question: Shall we humanize our due process clause, and avoid the enactment here of a real drama of life too bitter even to contemplate, or shall we allow it to be prostituted, leaving the forces of reaction and revolution to fight it out?

What shall be done?