

New Bases For A New Civil Code

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THE Philippines is the only civil law country in the world today that has no civil code of its own, that is the genuine expression of her people. This is because the Civil Code which governs the Philippines today is the Civil Code of Spain, which has been enforced by the decree of the regent Queen Maria Cristina, not by the will of our people. The proclamation, therefore, of his Excellency, President Manuel L. Quezon, for the codification of the substantive laws of the country, particularly the Civil law, which is the law that governs the private relations and life of our people, constitutes a landmark in our national history. Not only should the codification systematize the substantive laws to make its provisions clear and definite for ready reference by lawyers and judges, but it should be written for the people. It should be imbued with the principles of democracy, social justice, real equality, human dignity and social solidarity, which inspire the social philosophy of our Constitution.¹

Written for other times and other peoples, the Civil Code in force in the Philippines is in chaotic condition, not only in the number of its provisions repealed by subsequent laws, but also in

the fundamental bases and theories which inspire its provisions. The present Code is marked by its extreme individuality and an unbalanced sense of social justice and social solidarity, human dignity, equality and democracy. This assertion may surprise some of my brethren in the profession. It may be questioned by some students and even professors of law who may have uncritically expounded the provisions of this Code to the students of the land, as the expression of what is right and fair in human relations. Nevertheless, this statement is true, and to establish its truth one has only to read the provisions of the Code itself.

The Civil Code and Human Personality

Take the family law for example. In regard to the relations of the husband and the wife, the law is based upon the antiquated and long discarded marital power of the husband over his wife and her incapacity to manage her affairs. Therefore, the Code subjects the wife to various incapacities incompatible with her personality and dignity as fit companion and life partner. Thus, the wife cannot, without the consent of her husband (1) accept or re-

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¹ The social philosophy of The Constitution may be seen from the following provisions:

The Preamble of the Constitution provides: "The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution."

puddiate an inheritance (Art. 995, C. C.); (2) ask for the partition of common property (Art. 1053, C.C.); (3) accept an agency (Art. 1716, C. C.); (4) bind the community property even for the rice, milk, vegetables, etc. for the support of the family (Art. 1416, C.C.); (5) nor engage in business (Arts. 6-11, Code of Commerce.) In matters of contract, the wife is bracketed with the minors, deaf-mutes, imbeciles and insane in Article 1263, which provides as follows:

Art. 1263. "The following persons can not give consent:

1. Minors who are not emancipated;

2. Lunatics or insane persons, and deafmutes who do not know how to write;

3. Married women, in the cases provided by law."

The Roman law gave the wife a better position than was given her by the Anglo-American law,² granting her the right to have and to hold property of her own while the American and English woman could not. But the law under the Civil Code became fossilized, while the American and English laws by reforms, responding to the spirit of the times, finally granted the American and English woman full freedom in matters of property.³

Sections 4 and 5 of the Declaration of Principles (Art. II) of the Constitution provide: "The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government." (Sec. 4). "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." (Sec. 5).

Under Article XII (Conservation and Utilization of Natural Resources), the Constitution provides: "Sec. 3. The National Assembly may 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." "Sec. 4. The National Assembly may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." "Sec. 6. The State may, in the interest of national welfare and national 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."

Under Article XIII (General Provisions), the Constitution provides: "Sec. 4. The State shall promote scientific research and invention. Arts and letters shall be under its patronage. The exclusive right to writings and inventions shall be secured to authors and inventors for a limited period." "Sec. 5. All educational institutions shall be under the supervision of and subject to 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 instruction 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 specially gifted citizens." "Sec. 6. The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry, in agriculture. The State may provide for compulsory arbitration."

² By the rules of the common law, the husband and the wife were regarded as one person, the personality of the wife being merged into that of the husband, making the wife incapable of acquiring or holding property independently of her husband. See Bl. Comm. 442; Halsbury, *The Laws of England*, V. 16, Sec. 634.

³ By the Married Women's Property Act of 1882, the doctrine of the common law with regard to the unity of the husband and the wife in one personality

The Code permits the spouses to regulate their properties they have at the time of the marriage and those they acquire after its celebration.⁴ Nevertheless, because this practice is seldom, if ever, resorted to, practically all marriages in the Philippines today are governed by the legal partnership system, the rules of which are given by the Code.⁵ Under this system all the earnings of the wife, her salaries and wages, the profits of her efforts or of her property of all kinds from the date of the marriage become conjugal partnership property,⁶ and, as such, pass under the administration of the husband. While the Code calls the husband the administrator,⁷ in reality he is, for all practical purposes, the owner⁸: because he can do with it as he pleases without let or hindrance,

consent or knowledge of the wife. While the wife may object to the gratuitous dispositions in fraud of her rights, she can not make her objections effective until after the dissolution of the marriage.⁹ Nor is the wife protected against the prodigality and fraud of the husband by asking for the separation of property so that the fruits of her labors and the profits and earnings of her own properties may be removed from his administration, because the only grounds allowed by law, on which she may ask for separation of property are the following: (1) when the husband has been missing and declared so by the courts, (2) when he has committed concubinage, or (3) when he has been sentenced to a grave crime carrying with it civil interdic-

was, with regard to the acquisition, enjoyment, and disposition of property, completely reversed, and a married woman became entitled to hold, acquire, and dispose of any property in the same manner as if she were unmarried. This provision applied only to women who became married on or after Jan. 1, 1883. Thus, the English woman attained equality with her husband. But, not without struggle. She attained this condition gradually, first by the Matrimonial Causes Act of 1857, granting her the right of use of properties acquired by her while in a state of separation from her husband under judicial decree, or judicial order of protection on the ground of desertion. (Matrimonial Causes Act 1857, Secs. 21, 25, extended by Matrimonial Causes Act 1858, Secs. 6 and 8).

By the Married Women's Property Act of 1870, she became entitled to the use of her wages and earnings, as well as those properties acquired by her in her separate trade, or personalities, rents and profits descending to her by descent. By this Act of 1870, she was also empowered to make investments and to make transfers of investments independently of her husband. This act was finally repealed by the Act of 1882, which granted her full freedom and equality with her husband. Halsbury, *The Laws of England*, 16 p. 321, et seq.

⁴ Civil Code, Art. 1315.

⁵ Civil Code, Art. 1395.

⁶ Civil Code, Arts. 1401, 1402-1407.

⁷ Civil Code, Arts. 1412, 59. Of course, the future spouses may provide in contract as to who may administer the conjugal partnership. But, since this practice is seldom, if ever, resorted to, it is practically a dead law.

⁸ Civil Code, Arts. 1413, 1415.

⁹ *Baello v. Villanueva*, 54 Phil. Rep. 213. In this case, the husband made donations of conjugal partnership properties in fraud of the rights of the wife. But the court held that the donation could not be annulled until after the dissolution of the partnership, when it is shown that the donation encroaches upon her inchoate half of the community. The Court said: "We consider that the best protection for the plaintiff would be to record in the register and in the title of the defendant donees this condition of their estate. In this way, whoever acquires from them the property donated will not be able to allege ignorance that they acquired a right subject to the plaintiff's contingent right to ask for the nullity of the donation should it be prejudicial to her in her way."

tion.¹⁰ Not one of these constitutes the mismanagement, fraud, incapacity or prodigality of the husband in regard to the economic means of the family.¹¹ Not even when the husband refuses to give support to the wife and children, can the wife secure for herself and her children the exclusive management of her salary or wages and the fruits of her property, not to say her portion of the community property.¹²

And, what about the attitude of the Civil Code in regard to sex relations? The husband may divorce his wife on the ground of adultery, but the wife can not divorce her husband on the same

ground.¹³ It imposes upon the unmarried woman the duty of absolute sex abstinence, and when, lured by man upon the secret promise of marriage assuring her of a reasonable expectaton of a happy future home, she bears fruit of her love, she must be left to suffer her shame alone, unable to vindicate her claim for support or damages from the man who defrauded her of her honor.¹⁴

And, the child that has come to the world without his consent or knowledge—what of him? He, too, must suffer. Because, unless the man who has caused him to exist is pricked by his conscience to the voluntary acknowledgment

¹⁰ Civil Code, Arts. 1432, 1433.

¹¹ As provided in the Swiss, German, Chinese, Mexican civil codes. Arts. 187 and 188 of the Mexican Civil Code (1928) provide: "La sociedad conyugal puede terminar antes de que se disuelva el matrimonio si asi lo convienen los esposos. * * * Puede tambien terminar la sociedad conyugal durante el matrimonio, a peticion de alguno de los conyuges, por los siguientes motivos: I. Si el socio administrador, por su notoria negligencia o torpe administracion amenaza arruinar a su consocio o disminuir considerablemente los bienes comunes; II. Cuando el socio administrador hace cesion de bienes a sus acreedores o es declarado en quiebra.

¹² The Chinese Civil Code (1930) provides (Arts. 1009, 1010): "Where either husband or wife is declared bankrupt, the matrimonial property regime automatically becomes the separation of property regime. In any of the following cases, the court shall, at the instance of either husband or wife, order the separation of property regime to be set up:

"1. Where one of the parties is by law liable for providing the living expenses of the household but fails to provide such.

"2. Where the property of either husband or wife is not sufficient to satisfy his or her liabilities, or where their property held in common is not sufficient to satisfy their total liabilities.

"3. Where according to law, the disposition of property by one party requires the consent of the other, and such consent is refused without good reason."

¹³ Divorce Law (Act 2710), Sec. 1. "A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in Article 437 of the Penal Code." So it was held in *Francisco v. Tayao* (1927), 50 Phil. 42, that the wife cannot secure divorce against her husband on the ground of adultery committed by him.

¹⁴ In the case of *Inson v. Belzunce* (1915), 32 Phil. 342, the court said: "After an examination of the evidence brought to this court, we are of the opinion that the alleged contract to marry was based upon immoral considerations. * * * The intercourse between the plaintiff and defendant in the present case, considering all of the facts and circumstances connected therewith constituted a crime common to both of them. Neither of them under such circumstances can claim damages against the other." The Court cited Art. 1305, Civil Code. To the same effect: *Batarra v. Marcos*, 7 Phil. 156; *Tengco v. Sanz*, 11 Phil. 163. In all these cases, the offended unmarried woman who bore her lover a child tried to recover damages, but the Court refused to grant her any. The Court may have some legal ground, but it seems inescapable that such rule is contrary to the natural law. The French courts grappled with the same question for fifty years, at first denying and later granting the remedy sought by the offended woman. (See cases cited, *Florendo, The Law of Persons and Family*, Vol. I, p. 193 *et seq.* notes.)

of his paternity over such child by an indubitable writing or by continuous acts of paternity, the child has no claim whatever on him! No, not even for his shelter, clothing or food, the bare necessities for subsistence.¹⁵

What might not be said of a law that places the honor of woman and the support of a weak, little child upon the capricious will of man? Yet that is the law of the Civil Code that has been followed and applied by the courts without mercy and expounded by law professors without protest for years. It is a law which protects the strong against the weak. Lacking in spiritual Christian feelings, it is materialistic, individualistic, unsocial.

The Civil Code and Property

The Civil Code has been criticized as being capitalistic, and unfair to the laboring, wage-earning, farming classes; the law for the *haves* as against the *have-nots*, and since the *have-nots* abound in much greater numbers than the *haves*, the law is criticized as being undemocratic, because it provides greater protection for the few and less for the many. In its extreme individualism, the Code is criticised for placing property above human personality.

These criticisms are not entirely without foundation. Three years ago, when his Excellency, President Quezon, in the performance of his bounden duty under the Constitution to "do justice to every man", took side with the widow of a laborer in the famous Cuevo-Barredo case,¹⁶ those that have been immersed in the tenets of the law of the Code were naturally stirred, because they saw in it an attempt against what they called entrenched justice, but which is nothing more than an entrenched capitalism. The President did nothing but to throw his protection to whom protection is due under a regime of the natural law and natural justice.

Let us take the idea of the Code in regard to property which is embodied in its Article 348. "Ownership," says that provision, "is the right to enjoy and dispose of a thing, without further limitations than those established by law." Under this provision, one may use and dispose of his property in any manner whatever, provided that there is no express provision of the law prohibiting its particular use or disposition. So, the owner may squat on his

¹⁵ "In all cases in which the child sought acknowledgment, by the natural father, the proof offered was either express acknowledgment in writing, or the father's having permitted the child to enjoy the status of a natural child. The fact of the father's parentage is not competent to prove acknowledgment," said the Court in *re Enriquez v. Enriquez* (1915), 29 Phil. 163, citing cases. All these cases are for acknowledgment and support. The Court refused both. In *Buena-ventura v. Urbano* (1903), 5 Phil. 1, the Court said: "The mere fact of birth gave no legal right to the child, and imposed no legal duty upon the father, except in cases arising from the criminal law." See *Florendo, Id.*, p. 631, notes.

¹⁶ This case was finally decided in favor of the laborer's widow by the Supreme Court, (37 O. G. 168) which reversed the decision of the Court of Appeals. At the time the President made his remarks, characterizing the decision rendered as 16th century decision, the decision had just been promulgated by the Court of Appeals, therefore *sub-judice*. The President frankly regretted having made the remarks, but he did so under the belief that it had already become final. See President's Address, Oct. 2, 1937, on the "Principles of Law and Justice." Messages of the President, Vol. 3, part 1.

property in the manner of the dog in the manger story and prevent other people from using or profiting by what he himself would not and could not use or profit by. There is nothing provided by law that would prevent the owner from applying the thing owned by him to the prejudice of other members of the society that makes possible the maintenance of order, by which his property and life are protected. And so, by what lawyers call *jus utendi et abutendi* (the right to use and to abuse), he may not only withhold his property from the use of others in society or community, but may abuse and destroy it altogether, unfeelingly and without any social responsibility.

Compare and contrast this provision with the provisions of the other codes of recent years:

The Swiss Civil Code (1907): "Every one must, in the exercise and in the performance of his duties, act with truth and faith.

"The open misuse of a right finds no protection in the law." Art. 2.

The German Civil Code: (1900): "The exercise of a right is not permitted if it can have no other purpose than to cause prejudice to another." Art. 226.

The Civil Code of Mexico (1928): "The inhabitants of the District and of the Federal Districts are obliged to exercise their activities and to use and dispose of their property in the manner which does not prejudice the collectivity, under the sanctions established by this Code, and relative laws." Art. 16.

The Chinese Civil Code (1930): "A right can not be exercised for the purpose of causing injury to another person."

To complete the extremely individualistic and unsocial, although not anti-social, proprietary idea of the Civil Code, Art. 354 provides: "To the owner belong: (1) the natural fruits; (2) the industrial fruits; (3) the civil fruits." Art. 356 also says: "What are built, planted or sown on land belonging to another or improvements or reparations made thereon, belong to the owner of the land," * * *. In other words, all the fruits produced by the land either naturally or thru the labors of man, and all those built, planted or sown and improvements made thereon, belong to the owner of the land. If the owner has produced the fruits, built the building, planted the plants, or made the improvements, well and good. Reason and natural justice would by all means uphold his right to them. But, the rub comes in when they have been produced by another thru his industry and labor because, in such cases the Code decides in favor of the owner of the land just the same.

Of course, the Code makes some adjustments where the one who has labored to produce the fruits or made the improvements has acted in good faith. But, what is good faith? Good faith is known by all to be lack of malice, desire for the good, lack or absence of intent to cause injury or to do wrong. But the Code would have none of these, because it has its own technical definition. It requires that the one who has produced the fruits, built the building, planted the plants or made the improvements, has done so under the undoubted conviction, that he is the owner of the land in question, borne by what is called a just title suffi-

cient to transfer ownership.¹⁷ The fact remains that the Code affords greater protection to the one that *has* at the expense of the one that *has not*. Who has done greater good to the community: the owner who simply squatted on his land with folded hands or the other who has labored and caused the fruits and improvements? I am not advocating that the land should be taken away from the owner, because no person should be deprived of his property without due process of law.¹⁸ But the law should be changed and the rights of the interested owner and producer should be adjusted on the basis of real faith, the absence of malice, the desire to do good and avoid evil.¹⁹ It should be changed to permit the *have-nots* to live. As it is, the law, instead of encouraging labor and industry and of promoting the general welfare of the whole people, tends to make property, particularly lands, static and unproductive, and promotes irresponsible and absent landlordism.²⁰

Other provisions of the Civil Code could be cited. But to do so would make this brief article unduly extended. What could not

be said of the provisions of the Code making the will of the parties in contracts and of the testator in wills as having the force of law? These are the fundamental bases and principles on which the whole structure of the law of contracts and succession in the Civil Code is erected. Yet the question is asked, "Is there no interest of society in every contract that is entered into and every will that is made?" When a person is taken advantaged of because of his extreme ignorance or his necessitous condition, and so subjected to oppression and exploitation, is there no public interest that should be protected?²¹ Can any member of the body be made to suffer unjustly, and not reflect upon the whole body?

Because this contract law must be based upon the principle of equality of the parties, the Code pays lip service to this principle by declaring that "the validity and performance of a contract cannot be left to the will of one of the contracting parties." (Art. 1256, C. C.) But there can be no real equality between the laborer and the capitalist, between the landlord and the tenant, between the master and the servant.

¹⁷ Civil Code, Art. 433, which defines possessor in good faith as follows: "A person who is not aware of any vice in his title or mode of occupation which invalidates the same, is reputed to be a possessor in good faith." "Title," under the Code, is a contract sufficient to transfer ownership by delivery, such as sale, barter, donation. "Mode" is that which is sufficient to create ownership, as occupation, succession, tradition, etc. See Art. 609, Civil Code.

The definition of the Civil Code of Mexico, which originally was that also of the Civil Code of Spain, was changed as follows: "Act. 806. Es poseedor de buena fe el que entra en la posesión civil en virtud de un título suficiente para darle derecho de poseer. También es el que ignora los vicios de su título que le impiden poseer con derecho. Entiendese por título la causa generadora de la posesión."

¹⁸ As provided by The Constitution, Bill of Rights (Art. III), Sec. 1.

¹⁹ See note 17, definition of the Civil Code of Mexico. Webster's International Dictionary.

²⁰ The Civil Code of Mexico (1928.) Arts. 813, 812, 810, embody this principle.

²¹ German Civil Code Art. 138 provides: "A juristic act is also void whereby a person profiting by the difficulty indiscretion or inexperience of another, cause to be promised or granted to himself or to a third party for a consideration, pecuniary

Recent Philippine Laws

The extreme individualism of the Civil Code, its unsocial tendencies, its undemocratic principles, its sordid unfeeling materialism, must yield to the impact of the spirit of the times, characterized by democracy, progressiveness, humanity, social solidarity, social justice and real equality. The triumph of the New Deal measures of America represents the triumph of these principles. Consecrating them as fundamental principles on which the national structure should be erected the Philippine Constitution solemnly declares that:

(1) "The natural rights and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government." (Art. II, Declaration of Principles, Sec. 2.)

(2) "The promotion of social justice to increase the well-being and economic security of the people should be the concern of the State." (Id. Sec. 5).

(3) "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital and industry and in agriculture." (Art. XIII, Sec. 6).

The philosophy of these provisions and others of the Philippine Constitution is opposed to the basic philosophy of the Spanish Civil Code.

Under the progressive leadership of the President, who is not only the political leader of the nation, but its most advanced student of social affairs, and its most dynamic, practical thinker, legislations have been enacted to carry out the philosophy of the Constitution. The recently enacted labor laws, tenancy laws, the laws for the acquisition of big land estates and their sale or lease to the tenants, the laws for the organization of cooperatives and of the national development companies, the sugar-tenancy laws,²² etc.—all these are intended to

advantages which exceed the value of the consideration to such an extent that, having regard to the circumstances, the disproportion is obvious."

This principle of the Civil Code of Germany has been translated into the Civil Codes of China, Switzerland and Mexico.

The principle of the Spanish Civil Code is different. Mr. Justice Moreland in *Vales v. Villa* (1916), 35 Phil. 769, says: "All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their resolutions with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. * * * The law furnishes no protection to the inferior simply because he is inferior. * * * It makes no distinction between the wise and the foolish, the great and small, the strong and the weak." 35 Phil. 769, 787, 788; Florendo, *Law of Obligations and Contracts*, Vol. II, p. 636.

²² A long list of these legislations may be cited. The most important ones are the following: Homesite Acts (C. Acts Nos. 20, 378, 420), Minimum Wage acts (C. Acts 211, 317), Laborer's Tenement Houses acts (C. Acts 43, 104, 172, 213, 453), Tenant Testimony Act (C. Act 53), Court of Industrial Relations Acts (C. A. 103, 254, 355), Public Defenders Act (C. A. 172), Rice Tenancy Act (C. A. 178), Labor Organization Act (C. A. 213), Sugar Tenancy Act (C. A. 217), Wage Payment Act (C. A. 303), Big Land Estates Leasing and Purchasing Acts (C. A. 20, 420, 539), National Land Settlement Acts (C. C. 193, 441), Laborers Free Medical Attendance Act (C. A. 445), Landowner-Tenant Compulsory Arbitration Act (C. A. 461), 8-hour Labor Act (C. A. 444), Cooperative Associations Act (C. A. 565), Sugar Adjustment-Stabilization Act (C. A. 567).

protect the weak, promote democracy and real equality, social justice, social solidarity and the worth of human personality.

As said by the President: "The irresistible forces of human progress have brought upon us a new philosophy in the science of government, new concepts in the relation of man to man, and an ever increasing application to our social and economic order in all its varied aspects, of that basic principle propounded in the philosophy of law that 'all men are created equal.'"²³

"The time is past," he said on another occasion, "when we can blissfully ignore the lot of the man and woman who toil in the soil or who work in the factories. The time is past when any government can feel secure without the full cooperation of the masses of the people.* * * The problem of our age is how to harmonize property right with the right to live—and the right to live is paramount and above every other right. In pagan Rome, it was proclaimed that the right of a man to his property meant not only the right to use it but the right to abuse it. "*Jus utendi et abutendi.*" But that was a proper concept of right before the Son of Man laid down as the supreme law

of human relations: "Love thy neighbor as thyself." It is here where pagan and Christian civilizations conflict. The former is the philosophy of selfishness; the latter of love and justice. No Christian people should admit or misuse his possessions. * * * The task of our Government is not only to protect the right of those who *have* to the proper use and enjoyment of their property, but also to demand that those who *have not* received the fruits of their labor in its integrity, should have sufficient for their needs and those of their dependents. It is time for us to sound the warning: 'Let no one believe that he can still continue exploiting his fellow men without in the end suffering from it.' He who owns had better give a part of what he owns to the community in which he lives if he wants to conserve the rest for him."²⁴

A new Civil Code of the Philippines should embody the new bases of democracy, social justice and social solidarity, progressiveness and humanity, truth and real equality, which inspired the social philosophy of the Constitution, the social legislations of the National Assembly, and the pronouncements of the President.

²³ See Note 16, *supra*.

²⁴ Address of the President on the occasion of the first anniversary of the Commonwealth, Nov. 15, 1936, on Social Justice.