Social and Economic Rights: Security and Property as Affected by Police Power, Taxation, and Eminent Domain*

By ENRIQUE M. FERNANDO **

II

I. Property and Security as Affected by Police Power Measures

Police power measures as shown in a previous article, are enacted in the interest of public health, public morals, public safety, or public welfare in general. Looked at from another standpoint, they contribute to the promotion of social and economic rights. For one test by which social and economic rights may be enjoyed is the extent to which all or nearly all of the population may be able to live in health and in comfort. While beneficial to many, such police power measures may adversely affect property rights. And those persons who feel the pinch of such legislation may complain of deprivation of property without due process, or denial of equal protection, or impairment of contractual rights. The courts have then the task of harmonizing the conflicting claims of property and business on the one hand and on the other the beneficiaries of the social welfare legislation.

Many such police power measures were enacted prior to the Constitution. They increased in number after the Constitution became operative in view of the social justice provision as well as its requirement that labor be protected. Their validity in the light of the constitutional mandate to secure social and economic rights is beyond question.

Prior to the Commonwealth, the chances for annulling such legislation were not too bright either. Only one legislation of importance was held void under the due process clause. Maternity leave with pay as provided for in Act No. 3071 was as previously pointed out stricken down in *People v. Pomar* [1] on the ground that

---

* This article is a continuation of a previous article on the same subject appearing in 25 Phil. Law Journal 575.

** Associate Professor of Law, College of Law, U. P., LL.B., U. P., LL.M., Yale Law School.

1 46 Phil. 440

it interfered with freedom of contract protected by due process. This doctrine as already seen is overruled by the Constitutional provision requiring protection to labor, especially to working women and minors.[2]

In the majority of cases, though, such police power measures enacted by the legislative body of the Philippines prior to the Commonwealth and restricting property rights had been held valid. Some examples may suffice. Thus legislation prohibiting the exportation of Philippine silver coins;[3] prohibiting the slaughtering of large cattle for human consumption without a permit duly secured from the Municipal Treasurers, and the killing for food of large cattle in the municipal slaughter-house, without such permit;[4] requiring the compulsory registration of lands[5] all received the approval of the Supreme Court.

As far as municipal action is concerned, ordinances providing that an animal infected by a contagious disease may be so declared as suffering as such by a veterinarian and shot upon previous authorization of the Municipal President,[6] requiring the building permit be issued the proposed building shall abut in the street or in the alley, or a public street or alley officially approved;[7] requiring every building or premises to be connected with the sanitary sewage system were upheld.[8]

In a case decided after the Constitution took effect, *Government v. Hongkong & Shanghai Bank*,[9] the Supreme Court of the Philippines announced that it is now beyond question that the bank is so affected to the public interest as to justify its regulation and control under the police power of the state. The use of the term "business affected or coupled with the public interest" in the above case as well as in section 19 of the Court of Industrial Relations Act, as a justification in the latter case for employers to be exempt from the prohibition to hire strike breakers within fifteen days after the declaration of the strike, may indicate that the distinction between businesses clothed or coupled with the public interest and those which are not is still recognized by our law. At a time when, as in the United States, regulatory legislation was looked with disfavor as incompatible with free enterprise economy, this distinction was relied upon to invalidate and avoid public control of business.

Since 1934, however, the distinction has been of no consequence in the United States. As was pointed out in the case of *Nebbia v. New York*,[10] the phrase affected with the public interest "can in the

---

[2] *Leyte Land Transportation v. Leyte Laborers Union*, 45 O.G. 4863
[3] *U.S. v. Ling Su Fan*, 10 Phil. 104
[4] *U.S. v. Toribio*, 15 Phil. 85
[5] *Government v. Aballa*, 54 Phil. 455
[6] *Punzalan v. Ferriols*, 19 Phil. 214.
[7] *Fabie v. City of Manila*, 21 Phil. 486
[8] *Case v. Board of Health*, 24 Phil. 250
[9] 66 Phil. 483
[10] 29 U.S. 502

nature of things mean no more than that of industry is for adequate reason subject to control for the public good." Under this view, an industry may when circumstances require and for the common good be subjected to regulation. In the Philippines the phrase should have even less significance, it being accepted from the earliest period of American administration that police power justifies public control of business whenever desirable. The only limitation is that the regulation should be free from the taint of arbitrariness or partiality. Otherwise, there will be a denial of due process and equal protection. There may likewise be cases where such legislation impairs contractual obligations.

The designation, however, of certain businesses as constituting public utilities or public service still controls. Businesses of this character, as the furnishing of light, power, fuel, transportation and the like, may be operated by the state itself as recognized in the Constitution, in the interest of national welfare and defense. There is less likelihood then of attacks on such legislation as violative of constitutional provisions of due process, equal protection or non-impairment succeeding. And, as the Supreme Court held in the case of *Pangasinan Transportation Company v. Public Service Commission*,[11] statutes enacted for regulation of public utilities, being a proper exercise by the State of its police power, are applicable not only to those public utilities coming into existence after its passage, but likewise to those already established and in operation.

A. PUBLIC CONTROL OF BUSINESS AND PROTECTION TO LABOR

Under the Constitution, the government may regulate business to promote social justice,[12] to protect labor,[13] to meet the problems arising from the existence of big landed esates, [14] and, in the interest of national welfare and defense, to establish and operate industries and means of transportation and communication and to transfer to public ownership upon payment of just compensation, utilities and other private enterprises to be operated by the government.[15] There is warrant for the view then that a mild form of socialism is allowable under the Constitution.

The presence of the above provisions in the Constitution attests to the awareness of the framers and the Filipino people of the role that the government has to play in promoting social and economic rights. The claim, therefore, that social welfare legislation curtailing property rights is violative of the Constitution is not likely to receive unqualified approval from the courts. For a realistic appraisal of the type of economy that was then evolving in the Philippines at the time the Constitution was enacted, the Philippines being predominantly agricultural in character, but on the way to industrialization, makes manifest that the protection of the wage earners

[11] 40 O. G. 7th Sup., 721
[12] Art. II, Section 5
[13] Art. XIV, Sec. 6
[14] Art. XIII, Sec. 4
[15] Art. XIII, Sec. 6

and salaried employees, not to mention the vast number of tenants, require regulatory legislation.

Business, whether in the form of industry, commerce, finance, mining, or agriculture, if left to itself, was not likely to grant concessions that would have the effect of cutting down profits unless the pressure exerted by organized labor was too strong to withstand. At the time of the framing of the Constitution of the Philippines, however, the movement for labor unions while already on the way was not yet sufficiently strong to cope adequately with the situation. Moreover, a militant group of labor leaders was swayed by Communistic ideology. It was proper then for the government to assume the role of an arbitrator in labor disputes and to help labor attain its just demands. Hence, the provisions on protection to labor especially to working women and minors, the regulation of the relations between the capital and labor in industry and agriculture, including the power to provide for compulsory arbitration, and the promotion of social justice.

1. *Social Justice*—

Social justice, according to *Calalang v. Williams* [16]—

> "is neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of 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 component elements of society, through the maintenance of a 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 which underlay the existence of all governments on the time-honored principle of *salus populi est suprema lex.*"

As the declaration of principle in the above opinion asserts, the well-being and economic security of all the people is the end and social justice the means. It is a well-recognized fact, however, that for the well-being and economic security of the higher-income groups, social justice is not necessary. They are so situated that through their own efforts and without governmental help their well-being and economic security are assured. The beneficiary of a social justice policy should rightly be, therefor, the big tenant and labor groups who, if they were to rely on their exertions alone without governmental aid, would not be in a position to attain the well-being and security guaranteed all the people. This declaration of principle, therefore, along with Section 6 of Article XIV providing for protection to labor, constitutes a mandate on the government to

[16] 40 O. G., 9th Sup., 239

carry out a sound labor policy under which the welfare of the Filipino masses would be promoted without undue harshness and oppression on management and landlord.

In the above sense. social justice may be defined in the words ascribed to Professor Thomas Reed of Harvard that "he who is less favored in life is more favored in law."

1. *Labor legislation—*

a. *Unionization and collective bargaining—*

The Supreme Court of the Philippines in the case of *Gallego v. Pimbulan*,[17] recently spoke of the existence of labor unions as a necessary development of the industrial revolution. Through labor unions, laborers may obtain protection of their rights and privileges and social justice within a economic set up dominated by capitalism. The vindication of the laborer's just claims to human dignity and his due share in the benefits accruing in the interplay of the modern social system of production, distribution, and consumption, is achieved through labor unions.

Thus far, the basic law regulating labor unions in the Philippines is Commonwealth Act No. 213, which defines a legitimate organization as an organization, association, or union of laborers duly registered and permitted to operate by the Department of Labor, and governed by a constitution and by-laws not repugnant to or inconsistent with the laws of the Philippines.[18]

Associations duly organized and registered with the permission to operate by the Department of Labor have the right to collective bargaining. No labor organization shall be denied such registration and permission to operate, except such whose object is to undermine and destroy the constituted government or to violate any law or laws of the Philippines. The registration of, and the issuance of permit to, any legitimate labor organization entitle it to all the rights and privileges granted by law.[19]

Thus all associations duly organized and registered with and permitted to operate by the Department of Labor have the right to collective bargaining with employees. According to the Supreme Court collective bargaining denotes in common usage as well as in legal terminology, negotiations looking toward a collective agreement.[20] It is thus a process of discussion and negotiations between two parties, one or both of whom is a group of persons acting in concert. And the resulting bargain represents the agreement as to the terms or conditions under which a continuing service is to be performed. More specifically it is the procedure by which an employer or employers and a group of employees agree upon the conditions of work.

---

[17] G.R. No. L-1868
[18] Section 1, Com. Act No. 213
[19] Section 2, Com. Act No. 213
[20] *Pampanga Bus Co. v. Pambusco Employees Union*, 38 O.G. 984

Labor unions through collective bargaining may seek better working and living conditions, fair wages, shorter working hours and may promote the material, social and moral well-being of their members. The terms embodied in collective bargaining agreements naturally vary. But certain features are common to most agreements, such as provisions on union security and union protection, on wages, hours and working conditions including pay during holidays and vacations, sick leave and rest period.

The Supreme Court, however, in the leading case on the subject, *Pampanga Bus Co. vs. Pambusco Employees Union*,[21] held that the right to collective bargaining does not deprive the employer of his liberty to enter or not into collective bargaining contracts with labor unions. Further it said that there is no provision of law compelling such agreement.

In the United States, in the leading case of the *National Labor Board vs. Jones & Laughlin*,[22] the American Supreme Court held that the right of employees to self organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion is a fundamental right. It added, however, that while the National Labor Relations Act, then the Wagner Act, which preceded the present Taft-Hartley Act, safeguards that right, it did not compel agreements between employers and employees.

In the Philippines a closed shop may be agreed upon between labor and management. In two decisions promulgated January 3, 1949 by the American Supreme Court, one of them deciding the two cases of *Lincoln Federal Labor Union v. Northwestern Iron and Metal Company* and *Whitaker v. North Carolina*,[23] and the other the case of *American Federation of Labor v. American Sash & Door Company*,[24] the American Supreme Court sustained the validity of constitutional provisions as well as state statutes providing that no one can be denied opportunity to obtain or retain employment because he is or is not a member of a labor union. These decisions may reflect a trend against the *closed shop* which is a term characterizing an agreement between employers and employees imposing as a requisite for employment membership in a particular union. It is to be distinguished from an *open shop* wherein membership in a union is not made a condition precedent to employment. There is likewise a milder form of a *closed shop* which the Court of Industrial Relations has referred to as a *closed union shop with open union*, whereby employers are under obligation to hire union men, but if none are available, non-union men may be employed with the understanding that such workers must join the union as soon as they enter the shop. This is referred to as the *union shop* in American labor law.

---

[21] 88 O.G. 984
[22] 301 U. S. 1
[23] 335 U. S. 525
[24] 335 U. S. 538

b. *Fair labor standards as to hours, wages and working condition—*

The validity of legislation on maximum hours, minimum wages, and decent working conditions is beyond question in view of the constitutional provision with reference to protection to labor. Every particular legislative enactment, however, as well as executive or administrative orders issued in pursuance thereto, may be tested if arbitrary or unduly discriminatory, under the due process and equal protection clauses. Employers in the Philippines have even resorted to objections based on the non-impairment as well as the illegality of unlawful delegation of legislative power but without success.

The experience of the United States, where legislation fixing maximum hours and minimum wages were first invalidated under the due process clause, is not likely to occur in the Philippines. As a matter of fact, it was the principle in the first United States minimum wage case, that of *Adkins v. Children's Hospital*,[25] where a federal minimum wage law was held void, that led the Philippine Supreme Court to annull the maternity leave for women workers in the now overruled case of *People vs. Pomar*.[26] And it took a strong dissenting opinion of Justice Holmes in the *Lochner*[27] case where the majority held that an act providing that no employee in a bakery or confectionary establishment could work more than 60 hours a week or 10 hours a day invalid before later legislation on hours of labor was held constitutional, first as to women in *Muller v. Oregon*,[28] then as to children in *Sturges v. Beauchamp*,[29] and then as to men in *Bunting v. Oregon*.[30] However, legislation providing for minimum wage law for women was held valid in the later case of *West Coast Hotel v. Parrish*[31] where Chief Justice Hughes speaking for the majority cited in support of this change of front, excerpts from dissenting opinions of Justices Holmes and Taft in the *Adkins* case.

In the Philippines, as far as hours of work are concerned, there is the eight-hour labor law, Commonwealth Act No. 444, which is applicable to all persons employed in industry or occupation, whether public or private, with the exception of farm laborers who prefer to be paid on piece work basis, domestic servants and persons in the personnel service of another, and members of the family working for him.[32] Under this law the legal working day is fixed at of not more than eight hours daily. However, when work is not continuous, the time when the laborer is not working and may rest completely is not to be counted.[33] A person, firm, or corporation, busi-

---

[25] 261 U.S. 525
[26] 46 Phil. 440
[27] 198 U.S. 45
[28] 208 U.S. 412
[29] 231 U.S. 320
[30] 243 U.S. 426
[31] 80 U.S. 379
[32] Sec. 2
[33] Sec. 1

ness establishment or place or center of labor may not compel an employee or laborer to work during the Sundays and legal holidays unless he is paid an additional sum of at least twenty-five percentum of his regular remuneration. From this rule is excepted public utilities performing some public service such as supplying gas, electricity, power, water, or providing means of transportation or communication.[34]

That portion of the eight-hour labor law exempting public utilities from paying an additional compensation of not less than 25% for working during Sundays and legal holidays was held valid as not constituting class legislation in the case of *Manila Electric Co. v. Public Utilities Employees Association*.[35]

In another case, that of *Elks Club vs. Rovira*,[36] it was argued that the eight-hour labor law should not be construed to apply to the employees of the Elks Club, not only because the nature of the service furnished by the Club required the employees to serve the members of the club not only on week days but also on Sundays and holidays, but also the application of the law to such employees would impair the obligation of the contract as the term for employment call for seven days service a week on a week or a monthly salary basis. The Supreme Court stated that this argument is based on wrong premises. There was nothing in the record, not even a mere allegation to show that such contracts were not of lease of services from month to month, but for a longer period. After Act No. 444 became effective then, they could not have been renewed expressly or tacitly.

With reference to wages, there is a statutory authority for the Court of Industrial Relations upon the direction of the President of the Philippines to fix minimum wages with respect to a given industry or a given locality.[37] Such a power likewise exists in connection with the solution of the particular controversy in the exercise of its jurisdiction to determine an industrial or agricultural dispute tending to call a strike or a lock-out.[38]

At present, there is under consideration by the Congress of the Philippines a bill fixing minimum wages of ₱2.50 for agricultural workers and ₱4.00 for industrial laborers, with a provision for adjustment, whenever circumstances warrant it, through wage boards. The wage boards, operating under the Department of Labor, are to be composed of representatives of labor, management, and the public. . . .

As to the factors affecting the determination of wages, the present law speaks of just compensation for labor, adequate in meeting the essential necessities of civilized life, and fair return

---

[34] Sec. 4
[35] 45 O.G. 1760
[36] G.R. No. 48411
[37] Section 5, Com. Act No. 103
[38] *International Hardwood v. Pañgil Federation of Labor*, 40 O.G. 9th Sup. 118

on the investment, in determining the minimum wage or maximum canon of rental for a given industry, or locality.[39] Decisions both by the Supreme Court and the Court of Industrial Relations in accordance with the above provision have taken into consideration the nature of the work, the maintenance of a minimum standard of health and decency, the high cost of living, the amount paid to the type of work in other plants in the same locality.[40]

A decision of the Court of Industrial Relations, sustained by the Supreme Court, required the payment of minimum wages even if the effect is adverse to the finances of the company. There the company contended on appeal to the Supreme Court that increases granted by the Court of Industrial Relations would throw the company into bankruptcy. The Supreme Court declined to pass on the question on the ground that whether or not the ruling of the Court of Industrial Relations would allow the petitioner a fair return on its investments or result in its bankruptcy, is a factual inquiry beyond the competence of the Supreme Court.[41]

This case of *Leyte Land Trans. v. Leyte Farmers & Laborers Union* is likewise authority for the view that the Court of Industrial Relations may adopt a scale of wages higher than that of the government.

Likewise the law penalizing an employer who fails to pay the salaries of the laborers and employees at the fifteenth or the last day of every month or on Saturday of every week with only two days extension unless he could show that it was impossible to make such payment was held valid in the case of *People v. Vera Reyes* [42] as an appropriate exercise of police power against the contention that the penal sanction therein amounts to imprisonment for debt.

In the case of *Government vs. Visayas Surety* [43] the Supreme Court sustained the validity of Act No. 3058 compelling the contractors to file a penal bond not only in favor of the government but also in favor of persons contracting labor and material and public works project.

The provision for medical and dental care under Act No. 3961 as amended and Republic Act No. 239 is likewise a valid exercise of the police power. The standard of safety for the welfare of the laborers and of the public imposed first by Commonwealth Act No. 104 and now Republic Act No. 367 is likewise a proper manifestation of the public concern for health and safety. The constitutional provision requiring protection to labor especially to working women and minors erases whatever doubts there may have been about the validity of Act 3071 which provides certain age limits for certain

---

[39] Sec. 5, Com. Act No. 103

[40] *Leyte Land Trans. v. Leyte Farmers and Laborers Union*, 45 O.G. 4863 *Allied Workers Ass. v. Insular Lumber Co.*, CIR No. 136-V.

[41] *Leyte Land Trans. v. Leyte Farmers and Laborers Union*, G.R. No. L-1877, prom. May 12, 1948.

[42] 38 O.G. 3157. The present statute on the subject is Com. Act No. 303.

[43] 38 O.G. 2814

occupations and require better working conditions for women and minors.

As previously pointed out section 13 thereof required the employer to grant to any woman employed by it who may be pregnant vacation with pay thirty days before and after confinement. Likewise as already stated, the above provision of law was declared unconstitutional in the case of *People vs. Pomar* [44] on the ground that it violates the freedom of contract protected by the due process of law clause of the Constitution.

After the Constitution took effect with its requirement that the state shall afford protection to labor, especially to working women and minors, the decision in the Pomar case has lost its binding force. Justice Laurel, one of the most active members of the Constitutional Convention, so stated in his concurring opinion in the case of *Ang Tibay vs. Court of Industrial Relations.*[45] This concurring opinion was cited with approval in the majority opinion of the Supreme Court in the case of *Antamok Goldfield Mining Co. vs. Court of Industrial Relations,*[46] decided on June 28, 1940. Just recently, the Supreme Court as before noted, once again repudiated the Pomar case in its opinion in the case of *Leyte Land Transportation vs. Leyte Farmers & Laborers' Union.*[47]

c. *Security of tenure—*

The leading case on the subject is that of *Manila Trading vs. Zulueta* [48] where Justice Laurel speaking for the Supreme Court announced that the right of an employer to select or discharge freely his employees is subject to regulation by the State basically in the exercise of its paramount police power. Here, however, it was shown that the employee was dismissed because as a gate keeper he permitted contrary to the instructions of the company, one of the customers to pass through the exit gate without paying for the work done on the car.

His dismissal was sustained as valid, for as the Supreme Court stated—

> "much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. There may, of course, be cases where the suspension or dismissal of an employee is whimsical or unjustified or otherwise illegal in which case he will be protected. Each case will be scrutinized carefully and the proper authorities will go to the core of the

---

[44] 46 Phil. 440
[45] G.R. No. 46496
[46] 40 O.G. 8th Sup. 178
[47] 45 O.G. 4863. See Com. Act No. 647
[48] 40 O.G. 6th Sup. 188

controversy and not close their eyes to the real situation. This is not however the case here."

d. *Compulsory arbitration, strikes and picketing—*

The Constitution states that the State may provide for compulsory arbitration. This is one mode of settling a labor dispute, resembling a judicial settlement in that there is a hearing and determination of the case in controversy by a third party whose award is binding on the parties to the dispute. It is compulsory as distinguished from voluntary arbitration in that both parties are compelled to submit their controversy to the arbiter for final and binding determination. In the case of voluntary arbitration, while the award is likewise binding, there is no requirement on the parties to submit the dispute to the arbitrator, the decision to do so being dependent on their will. The role of the third party who intervenes in a labor dispute may be that of conciliator or mediator. There is conciliation where the intervention is at a minimum, the intermediary limiting himself to making the parties meet or carry proposals between them. In the case of mediation, there is a more active participation by the third party who makes proposal and seeks to persuade and even to bring pressure on them through outside public and private agencies to accept a peaceful settlement.

The Act[49] creating the Court of Industrial Relations vested with the power of compulsory arbitration was passed on October 29, 1936. It was among the first steps taken implementing the social justice program of President Quezon. While compulsory arbitration was the main purpose of the law, the Court of Industrial Relations has the power to fix minimum wages to be paid laborers and the maximum rentals to be paid by tenants. Its validity has been upheld.[50]

(1) *The right to strike—*

The effect on the right to strike by the adoption of compulsory arbitration was set forth in the recent case of *Luzon Marine Dept. Unions v. Roldan* [51] thus:

"1. The law does not look with favor upon strikes and lockouts because of their disturbing and pernicious effects upon the social order and the public interests; to prevent or avert them and to implement Sec. 6, Art. XIV of the Constitution, the law has created several agencies, namely, the Bureau of Labor, the Department of Labor, the Labor-Management Advisory Board, and the Court of Industrial Retions. x x x

2. The law does not expressly ban strikes except when enjoined by the Court of Industrial Relations, but if a strike is declared for a trivial, unjust or unreasonable purpose, or if it is carried out through unlawful means, the law

---

[49] Com. Act No. 103
[50] Antamok Goldfield v. Court, 40 O.G. 7th Sup. 29
[51] G.R. No. L-2360

will not sanction it and the court will declare it illegal, with the adverse consequences to the strikers.

3. If the laborers resort to a strike to enforce their demands, instead of resorting first to the legal processes provided by law, they do so at their own risk, because the dispute will necessarily reach the court and, if the latter should find that the strike was unjustified, the strikers would suffer the adverse consequences."

There is thus an added qualification to the decision of *Rex Taxicab Company v. Court*,[52] where Justice Laurel speaking for the Court states:

"Commonwealth Act No. 103, for instance, provides that when any dispute has been submitted to the Court of Industrial Relations for settlement or arbitration, and pending award or decision by the Court of such dispute, the employee, tenant, or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when public interest so requires, and if he has already done so, he shall forthwith return to it, upon order of the Court, which shall be issued only after hearing and when public interest so requires when the dispute cannot in its opinion, be promptly decided or settled. (Commonwealth Act No. 103, section 19, as amended by Commonwealth Act No. 559). In other words, the employee, tenant or laborer is inhibited from striking or walking out of his employment only when so enjoined by the Court of Industrial Relations and after a dispute has been submitted thereto and pending award or decision by the court of such dispute x x x.

"In cases not falling within the prohibition, the legality or illegality of a strike depends, first, upon the purpose for which it is maintained, and, second, upon the means employed in carrying it on. The fact that the combination is for a lawful purpose does not render it less unlawful where the end is to be attained by the employment of improper means, and a strike for an unlawful purpose may not be carried on by means that otherwise would be legal."

Under the *Luzon Marine Department* ruling, the purpose may be lawful but if trivial, unjust, or unreasonable, the strike may be declared illegal. As to illegality of means, where acts of sabotage were committed in a strike against the Manila Gas Company with some of the strikers introducing water to the pipes for the purpose of stopping the flow of gas, closing the connecting pump in the streets and in the houses, and breaking materials, the strike was declared illegal. [53]

---

[52] 40 O.G. 9th Sup. 136

[53] *National Labor Union v. Court*, 40 O.G., 3rd Sup. 37

It is to be noted likewise that this case quotes with approval the decision of the American Supreme Court holding invalid a sit down strike which was conducted by the employees remaining in possession of the business premises establishing business therein, stopping production and refusing access to owners or to others desiring to work. Moreover this case makes clear that an enterprise engaged in the operation of public services or in business coupled with public interest is exempt from the prohibition of the law prohibiting the employment of strike breakers within fifteen days after the declaration of strikes. It is bound by its certificate of public convenience to maintain the regular operation of its factory so as not to prejudice the public.

While the validity of the strike against the government has not been squarely passed upon, it has already been decided by the Supreme Court of the Philippines in the case of *Lino v. Fugoso* [54] that the city laborers on strike were entitled to exercise their civil rights.

(2) *Picketing*—

Picketing is the marching to and fro before the premises of an establishment involved in a dispute, generally accompanied by the carrying and display of a sign, placard or banner bearing statements in connection with the dispute. It is resorted to by strikers in order to enlist the support of the other laborers and employees and of the general public.

The Supreme Court of the Philippines, however, in the *Mortera vs. Canlubang Workers Union*,[55] has followed the Supreme Court of the United States in including picketing as part of the freedom of speech guaranteed by the Constitution. The picketing that is so considered, however, is the peaceful picketing as above defined.

In *Thornhill vs. Alabama*,[56] the Supreme Court of the United States through Justice Murphy announced categorically that peaceful is a part of the first amendment of the American Constitution embodying the guarantee of freedom of speech and annulled Section 3448 of the Alabama State Code of 1923 in so far as it declares illegal the picketing of the works or place of business of other persons, firms, corporations or associations of persons for the purpose of hindering, delaying or interfering with or injuring any lawful business enterprise of another.

The Supreme Court of the Philippines, however, in the *Mortera* case makes it clear that only peaceful picketing is embraced in the freedom of speech guaranteed by the Constitution. There is no constitutional protection to illegal picketing, that is, picketing through the use of illegal means. Likewise, in the *Thornhill* case, the Supreme Court of the United States stated that "picketing en massee or otherwise conducted which might occasion such imminent and aggravated danger" to life or property, or the right of privacy or the peace was not within the terms of its decision.

---

[54] 43 O.G. 1214
[55] 45 O.G. 1714
[56] 310 U.S. 88

In view of the later cases, however, it would seem that the principle announced that peaceful picketing is a part of freedom of speech has not legalized all forms of picketing. This is so because unlike other forms of free speech, picketing in so far as it involves the use of economic power is not merely an appeal to persuasion but is in part also a coercive labor weapon.

In the United States, just after the *Thornhill* case had been rendered, the Supreme Court of the United States with a strong dissenting opinion by Justice Black, outlawed picketing which was "part of the coercive thrust when entangled with acts of violence." There was testimony showing past instances of window smashing, dropping of stench bombs, wrecking and burning of trucks, setting a store on fire, and beating of a truck driver. The same majority of the Supreme Court considered that "in such a setting, it could justifiably be concluded that the momentum of fear generated by past violence would survive even though peaceful picketing might be wholly peaceful." It sustained the Supreme Court of Illinois in so finding. [57]

There is likewise the decision of the American Supreme Court in the *Carpenters and Joiners Union v. Ritter's Cafe*,[58] where peaceful picketing was deemed as not including the right to picket a person not a party to a labor dispute.

Just recently, the American Supreme Court in a unanimous decision in the case of *Giboney v. Empire Storage and Ice Company*,[59] held that picketing by an ice peddlers union to compel distributor in violation of the State law to agree not to sell to non-members of union was not in the exercise of any constitutional right.

Two other cases deserve mention: *American Federation of Labor v. Swing* [60] and *Cafeteria Employees Union v. Angelo*.[61] The Supreme Court of the United States in the former case considered peaceful picketing to be proper even in the absence of an employer-employee relationship, and announced in the latter case that the use of loose language was not an abuse of the exercise of the right to picket.

e. *Nationalization of Labor*—

A cursory glance of the Constitution suffices to show that one of its principles is the emphasis on nationalism. Thus under Article XIII, there are provisions for the conservation and nationalization of natural resources. And in another article, there is a prohibition of the grant to foreigners of certificate or any other form of authorization for the operation of the public utilities except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by the Filipinos. [62]

---

[57] *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 87
[58] 315 U.S. 122
[59] 93 Law ed., ad. op., 649
[60] 312 U.S. 321
[61] 320 U.S. 293
[62] Art. XIV, Sec. 8

The passage of the parity amendment granting similar rights to Americans as far as the exploitation and development of natural resources and as far as public utility is concerned is an exemption that emphasizes the prevailing principle of nationalism followed.

Could labor be nationalized likewise? If by nationalization of labor is meant that preference be given to Filipino employees and laborers as against foreigners, the answer is in the affirmative. For one form by which the promotion of social justice and protection to labor may aptly take is the assurance of employment opportunities to Filipino citizens. And where such an opportunity becomes unreasonably curtailed because of competition by aliens, the power of the government in accordance with the principal terms of the Constitution to nationalize labor would seem to be undoubted.

At any rate the decision in the *Co Chiong* [63] case seems to reflect such a tendency. In this case the validity of Republic Act No. 37 by virtue of which preference was ordained for Filipinos in the lease of stalls in public markets and the Secretary of Finance was empowered to regulate such rules and regulations as well as Department of Finance Order No. 32 issued in pursuance of the above authority declaring all stalls in public markets as vacated by their occupants and the leases terminated as of January 1, 1947 were put in issue. The lower court rendered judgment sustaining the validity of Republic Act No. 37 but annulling the provisions of Department of Finance Order No. 32 as not in conformity with said Republic Act. The case was taken on appeal to the Supreme Court.

The Supreme Court held that public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation, and therefore limited in its operation to Filipino citizens or to corporations or associations sixty per centum of the capital of which belongs to Filipino citizens.

The Supreme Court further stated—

> "In impugning the validity of Republic Act No. 37 appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public services or utilities."

While it cannot be said therefore that the Supreme Court has decided that the nationalization of labor is constitutional, still the above decision is in support of the view that efforts on the part of the government to nationalize labor as a means of helping the Filipino workers to gain a decent livelihood would not be frowned upon by the Supreme Court especially in view of the emphasis of the Constitution on social and economic rights.

---

[63] G.R. No. L-1440, March 31, 1949

Subsequently in the case of *Dee C. Chuan v. Court,*[84] the Supreme Court sustained an order of the Court of Industrial Relations issued during pendency of a labor dispute by virtue of which Dee C. Chuan and Sons could hire laborers from time to time and on temporary basis provided that "majority of the laborers to be employed should be native." According to the Supreme Court, the above order "meets the test of reasonableness and public interest."

It must be admitted, however, that such an effort to nationalize labor must not totally deprive earners of their right to earn a living. The decision in the American case of *Truax v. Raich,*[85] where a statute, requiring an employer having more than five workers to hire only qualified electors or native citizens of the United States to the extent of at least eighty per centum of his force, was held void should be thus interpreted, for as the very holding of the United States Supreme Court makes clear the statute was invalid because the legislature may not "deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom."

As long as the aliens therefore admitted here are given an opportunity to earn a livelihood then there can be no objection based on constitutional grounds against any law nationalizing labor.

2. *Protection of customers, competitors and general public*—

Business is likewise regulated in the interest of its customers, competitors and the general public. In addition, therefore, to such specific legislation intended to carry out the constitutional objective of protection to labor, there may be expected other police power measures which are likewise to promote social and economic rights by an assurance of a fuller and a more abundant life for all. This can be done, as it has been done before, by enactments that will protect customers and competitors especially those in agriculture, mining, industry, commerce or finance. Even in the United States, which is the most capitalistic country on earth, free enterprise in its extreme and undiluted form no longer exists. For while the United States Constitution does not contain provisions recognizing economic and social rights, statutes have been enacted from the early thirties under the vigorous leadership of Franklin D. Roosevelt to assure freedom from want, his phrase for social and economic rights. And the election in 1948 confirmed the trend towards a welfare state, with President Truman pledged to carry out his fair deal program.

Both before and after the Constitution took effect, regulatory statutes affecting business have been enacted under the police power to protect the consumers, the competitors and the general public. The record of the judiciary is impressive in its approval of such measures.

---

[84] G.R. No. L-2216
[85] 239 U.S. 33

Thus, no doubts can be entertained regarding the validity of restraints imposed on unfair competition.[66] Likewise, measures protecting debtors against usury,[67] vendees on the installment plan,[68] investors against fraudulent stock schemes,[69] and customers of laundries[70] have been upheld as against contentions based on any or all of such standards protecting individual rights as due process, equal protection and non-impairment. Creditors are protected against debtors seeking to defraud them by the Bulk Sales Law, the validity of which has been upheld.[71] In sustaining the first Blue Sky Law, the predecessor of the present Securities & Exchange Act, the Supreme Court in the case of *People v. Rosenthal*[72] held that such a statute is intended to protect the public against speculative schemes which have no more basis than so many feet of blue skies and against sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations.

In the interest of public safety and the general welfare legislation restricting the issuance of certificates of Philippine registry except to vessels owned by citizens or native inhabitants of the Philippines and at that time the citizens of the United States residing in the Philippines and to corporation composed wholly of the citizens of the Philippines or of the United States created under the law of the United States, was sustained as valid in the leading case of *Smith Bell & Co. v. Natividad*.[73] Likewise, the probition imposed by the statute on the importation of cattle from foreign countries to prevent the production of cattle diseases in the Philippines was also found unobjectionable.[74]

Moreover, in view of the emergency conditions upon liberation in 1945, with more than three years of enemy occupation which almost laid prostrate Philippine economy, the President of the Philippines by virtue of the Emergency Powers Law, and then thereafter the Congress of the Philippines, enacted remedial measures.

These measures affected existing contract rights and were assailed precisely on that ground. Thus far, the Philippine Supreme Court has sustained the validity of the executive order annulling deposits and validating withdrawals,[75] assumed the validity of the executive order providing for a moratorium on the enforcement of payments of all debts and other monetary obligations payable within the Philippines and incurred prior to liberation,[76] and upheld the applicability to existing contracts of the rental law to aid tenants who faced hardships in view of the scarcity of houses arising from the burning and destruction of Manila during liberation.[77]

---

[66] *U. S. v. Manuel*, 7 Phil. 221; *U. S. v. Sow Chiong*, 23 Phil. 188
[67] *U.S. v. Constantino*, 39 Phil. 55
[68] *Manila Trading v. Reyes*, 62 Phil. 461
[69] *People v. Rosenthal*, 38 O.G. 998
[70] *Kwong Sing v. Manila*, 41 Phil. 103
[71] *Liwanag v. Megraj*, 40 O.G. 1441
[72] 38 O.G. 998
[73] 40 Phil. 136
[74] *Cruz v. Youngberg*, 56 Phil. 234
[75] *Hillado v. De la Costa*, G.R. No. L-150
[76] *Palacio v. Daza*, 42 O.G. 53; *Ma-ao Sugar Central v. Barrios*, 45 O.G. 2444
[77] Santos v. Alvarez, 44 O.G. 4259

B. *PROMOTION OF EDUCATION AND REGULATION OF PROFESSIONS—*

According to the Constitution—

> "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." [78]

> "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 scholarship in arts, science, and letters for specially gifted citizens." [79]

The State likewise recognizes the natural right and duty of the parents in the rearing of the youth for civic efficiency in accordance with the provisions of the Constitution. This right and duty should receive the aid and support of the government. The doctrine announced in the case of *Pierce v. Society of Sisters* [80] that an act compelling attendance solely in public schools of children between the age of 8 to 16 is invalid, thus receives confirmation in the above declaration of principles of the Constitution. For that doctrine is supported likewise by the view that a child is not a mere creature of the State. Those who have control and direct his destiny have the right coupled with the right and duty of preparing him for additional obligations.

All the above constitutional provisions rightly emphasize the right of every Filipino to instruction and education, the obligation to provide free, public primary instruction being laid on the State. This is one of the most important of the social and economic rights affording opportunity as it does to every citizen to have access to such values as enlightenment and skill. If the Philippines is not to develop a caste society and is to afford the real equality of opportunity which a regime of democracy and freedom demands, instruction, including the right to pursue higher education, must not be withheld from any qualified individual merely on account of his poverty.

Democracy as an ideal approaches reality when positions of leadership are open to all irrespective of one's financial condition

---

[78] Art. XIV, Section 4
[79] Art. XIV, Section 5
[80] 268 U.S. 510

at birth, whether in public service or in private business or the professions. But unless appropriate training is undergone by those who have aptitude and talent, they will not acquire the skills that will fit them into such positions of leadership.

To others who may not be in the front rank of whatever endeavors they may pursue, instruction is likewise indispensable, because skill, in whatever form, is entitled to greater rewards. Nor is this all. Since democracy imposes on everyone the duty of weighing carefully the diverse views on matters of public concern, the likelihood of correct decisions being arrived at in this intricate and complex age is greater if literacy and education in the fundamentals are more widespread.

1. *Regulation of the professions*—

Under the police power, the admission to practice of the professions as well as the revocation of those who had previously been admitted to such practice may be regulated, as was held in the case of United States v. Gomez Jesus. [81]

2. *Academic freedom*—

Under the Constitution, "universities established by the State shall enjoy academic freedom," which is defined as—

> "the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics." [82]

The progress of the community depends on the advancement of knowledge. And it is rightly felt that unless intellectual inquiry is allowed the utmost latitude and freedom, the frontiers of knowledge are not likely to be pushed forward. Worse than that there might even be retrogression because science is not stationary. The faculty member or research worker in higher institutions of learning if given the freedom to investigate and to expound his conclusions reached is in the same position as a technical expert, whose views on matters falling within the scope of his discipline may benefit the community at large. And if in addition to his competency he is likewise impartial, recognizing and minimizing his own bias or prejudice and serving truth as he sees it, he is like a judge whose strength is derived from his firmness, integrity, and competence. To make academic freedom a reality he must have security of tenure. He is not to be removed except for such causes as incompetence or moral delinquency. Moreover, his right to a hearing before removal should be guaranteed. And the only group

---

[81] 31 Phil. 218

[82] Lovejoy, Encyclopedia of Social Sciences

who should be allowed to judge his competency should be those who are likewise qualified in his specialty.

The constitutional guaranty applies only to universities established by the State. At present there is only one such university, the University of the Philippines. Since, however, the field of private education is expanding in the Philippines with institutions of higher learning increasing at what to some is an alarming rate, it might be more advisable if the constitutional provision were to extend likewise to such private colleges and universities. Some of the ablest men of the country in the physical and social sciences are connected with such private institutions of learning, and the reason for affording academic freedom to professors in the state university, applies to professors in private institutions as well. The fear that since some of these private institutions, notably the sectarians schools, are established in the interest of propagating their respective faiths, the guaranty of academic freedom to their faculty members might prevent the removal of faculty members with opposing views, has some justification. It should not outweigh though the greater interest in academic freedom, especially in the field of physical sciences where objectivity has greater chances of being attained.

C. *NATIONALIZATION AND CONSERVATION OF NATURAL RESOURCES*—

According to the Constitution—

> "All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concessions at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant." [83]

In the leading case of *Gold Creek Mining Co. v. Rodriguez*, [84] a petition for mandamus to compel the then Secretary of Agriculture and Commerce to approve the petition for application for patent was granted notwithstanding the allegation of respondent Secretary of Agriculture and Commerce that petitioner was not entitled to a

[83] Art. XIII, Section 1

[84] 37 O.G. 1662

patent, as the Constitution prohibits the alienation of natural resources except public agricultural lands. In granting the petition, the majority opinion followed the doctrine in the case of *McDaniel v. Apacible* [85] that a valid location of a mining claim segregated the area from a public domain. Such being the case the conclusion reached by the majority, therefore, is that the mining claims no longer formed part of the public domain when the Constitution became effective. It did not come within the prohibition against the alienation of natural resources. The right of the petitioner to the patent was, therefore, sustained.

The concurring opinion of Justice Laurel proceeded on the assumption that a perfected location of a mining claim is an existing right within the purview of Section 1 of Article XII of the Constitution, was in doubt as to the continuing validity of the doctrine announced in the case of *McDaniel v. Apacible*. The dissenting opinion of Justice Concepcion stated that the petitioner was not entitled to the issuance of a patent as its right thereto had not matured before November 15, 1935, when the Constitution went into effect, in the absence of the required publication for a patent which was done only on February 13, 1936, and by the failure to pay the ₱25.00 per hectare before the inauguration of the Commonwealth.

Further, the same article provides:

> "No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association."[86]
>
> "The Congres 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." [87]
>
> "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." [88]

The above provisions of the Constitution stress the importance of social and economic rights. They remove any doubt that the expropriation of lands for the purpose of subdividing them into small lots and conveying them at cost to individuals who need them is in accordance with the concept of public use. This is an affirmation of the view that the government is not supposed to stand idly by and not do its share in ending economic conditions that cause social maladjustments. One of them is the existence of

---

[85] 42 Phil. 749
[86] Article XIII, Sec. 2
[87] Art. XIII, Sec. 3
[88] Art. XIII, sec. 4

big landed estates which with its usual concomittance of absentee landlordism has been responsible for tenant unrest. Likewise, this provision of the Constitution is a recognition that while tenancy legislation may be remedial in character, one way of extirpating the evil arising from the existence of tenancy in the Philippines is to enable tenants to own the lands they till.

The power of eminent domain as conferred by the above constitutional provision is limited to "expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city" and does not extend to "condemnation of a small property x x x". [89]

Our very nationalistic provision in the Constitution reads as follows:

> "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines." [90]

In the leading case *Krivenko v. Register of Deeds*, [91] the majority of the Supreme Court over a strong dissenting opinion classified as agricultural, residential and commercial lots in pursuance of the above constitutional provisions. In the case of *People v. Padilla*, [92] Commonwealth Act No. 108 penalizing evasion of nationalization laws as to certain rights, privileges and franchise was held not violative of due process.

> "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." [93]

This provision of the Constitution makes clear that no transgression of the Constitution is committed if the government desires to embark on a program resembling that of the British Labor Party. It is again an expression of the growing conviction that with reference to certain industries only public operation may result in their serving the needs of all at the least cost to the consumers. Likewise, there is here an adoption of the view that in times of war, business and wealth no less than human lives must, as the occasion so demands, be conscripted in the service of the nation.

IV. *PROPERTY AND SECURITY AS AFFECTED BY TAXATION*—

A welfare state is not true to its name unless it actively takes steps to promote security. The services it has to render

---

[89] *Guido v. Rural Progress*, G.R. No. L-2089
[90] Art. XIV, sec. 5
[91] 44 O. G. 471
[92] 40 O.G. 13th Sup., 58
[93] Art. XIII, Sec. 6

are many and varied. Education, medical care, recreation facilities, aid to the indigent and the unemployed, assistance to the infirm and the aged are among a few of the tasks that a government may be confronted with. All of these activities if carried out result in giving most of the people access to such values as health, comfort, and well-being. Police power measures, in the sense of fair labor standards, constitute one mode by which this objective may be attained.

Taxation and eminent domain likewise lend themselves to this state function. Thus free public primary education is obligatory, and this must be financed by the government. Medical care for the workers as required by existing statutes must be supplemented by medical care for his family by government hospitals, clinics and puericulture centers. Again there is need for governmental expenditures. Other health and recreation facilities are taken care of by public works projects requiring governmental appropriations. And social security schemes that may be devised to take care of the problems of old age, unemployment, accident or sickness may likewise depend on governmental aid. The state may spend less if the employers themselves finance the whole project, as may be required by a regulatory statute. Where wages are more than adequate to meet their living needs, there is no objection if the employees and workers likewise contribute to this welfare fund. Otherwise in this and similar cases calling for governmental action to promote social and economic rights, money is needed.

To this problem taxation is mainly the answer. Even if for some projects, as a long range program in public works, bonds may be floated to obtain the needed amount, still such bonds have to be paid for through money that are ultimately raised by taxation.

With reference to the prohibtion of certain activities ascertained to be inimical to public welfare, which prohibition is proper in the police power, taxation may likewise come into play. For whatever a statute may forbid or regulate, it may permit upon condition that a fee be paid in return for the privilege and such fee may be exacted to discourage prosecution of a business or to adjust competitive or economic inequalities. Taxation once again can thus be made to implement the exercise of the police power.

As President Quezon [94] aptly stated, taxation is imposed in the interest of the nation, to keep peace and maintain order, to evade invasion, to improve the living condition of the people, to educate them, to promote agriculture, industry and trade. Taxation also, according to him, could be used to prevent the accumulation of vast wealth in a few hands, for as he stated this is not a denial of the right of property of the individual but an affirmation that the right may be limited by the State when social well-being demands. To him the root of the world wide discontent of the people has been the disregard by the government of the social use of property. Under such a concept of taxation it is clear then to what extent

[94] Message at the opening session of the National Assembly in 1938.

taxation and the police power may serve to implement the constitutional objective of promoting security.

Granted the need for taxes, a need which is becoming much more insistent in view of the above-mentioned widening scope of governmental activities to promote social and economic rights, the next question is on whom should the burden fall? In the same message of President Quezon it is stated that taxation has been concerned not with the principles of justice and rarely has it been concerned with the living conditions of the people. Rather it has sought only to produce revenues and to place the burden on the backs of those least able to remonstrate. It has done this according to him by taxes on consumption, on sales, on licenses to engage in business trade or profession and by excessive charges for services which should be rendered by the government and for which only a minimum charge should have been made to cover the costs. It was his belief that those who ruled did not pay their share. They exempted the wealth they owned and the incomes they enjoyed almost fully from taxation.

The picture of taxes in the Philippines as it thus appeared to him in 1938 was that of the wage earners and farmers carrying most of the burden, then the middle class, and lastly the upper class. The extent to which the government was supported by the poor was not then generally recognized. In about 40 years according to him the masses had contributed a sum approximately equal to the then accumulated wealth of the Philippines in industry and in agriculture. According to him, within the past generation, consumption taxes, the burden of which was mainly placed on the shoulders of the masses, made possible the Commonwealth. Almost alone then he stated the masses created the Commonwealth by their sacrifices. He felt that a halt should be called to such sacrifices as they had been going on for more than 300 years. For the system of taxation was inherited from the past in which a few enjoyed all the privileges, while the people did the work and paid for the support of the government.

So to him the immediate task was to reduce and whenever possible to eliminate altogether every internal revenue tax which is passed on ultimately to the consumer, as for instance the sales tax. He, therefore, recommended the amendment of the salee tax law so as to eliminate completely the sales tax on every article that is a prime necessity and leave it only for luxuries in which case the tax could be materially increased. He likewise recommended that such revenue taxes as license fees for the various professions should be abolished or reduced. He proposed instead that the income tax on corporation and individuals be increased but not to such a rate as was then current in the United States. In his opinion while the Philippines was still in the primitive period of a growing economy, it should not discourage the investment of capital. But he was for the increase of the income tax because it was inexcusably low. Moreover, he felt that that was the time of adopting a policy of avoiding accumulation of wealth and to force the return of excessive

income through the medium of government services supported by such taxes. Through corporation, inheritance and income taxes the government should be enabled to revert to the nation a large amount of wealth that may remain in a few hands.

As a response to such a message Commonwealth Act No. 466, the present National Internal Revenue Code was enacted and came in force and effect in July, 1939. After liberation and to meet the then financial problems, the Internal Revenue Code had been amended as far as the income taxes, inheritance taxes, privilege taxes on business and occupation, mining taxes and documentary taxes. Likewise, a war profits tax was required to be levied, assessed, collected and paid on amounts by which the net worth of an individual partnership company or corporation on February 26, 1945, exceeded the worth of said individual partnership, company or corporation on December 8, 1941, ranging from 50% where such excess is over ₱6,000.00 but not over ₱50,000.00 up to 95% where such excess is over ₱1,000,000.00.[95] While the tax is for the purpose of producing revenue it likewise has the police power aspect in that it was to penalize the profitable public transactions occurring during the occupation period and very likely resulting from economic collaboration with the enemy.

An individual partnership or corporation which is thus subject to tax is not, as previously shown, without a remedy based on constitutional grounds if he could make out a case of denial of equal protection or due process or the non-impairment of an obligation of contract with the government. The express provision in the Constitution that the rule of taxation[96] shall be uniform is a restatement of the principle of equal protection as applied to taxing power.

VII. SECURITY OF PROPERTY AS AFFECTED BY EMINENT DOMAIN—

The constitutional provision on eminent domain provides that private property shall not be taken for public use without just compensation. Once again, there is here a recognition of governmental power, the exercise of which may promote security and may result in the deprivation of property. Because the property thereby taken is justly compensated, resistance of the exercise of this governmental power may not be as great as might prove to be a case where there is the police power or the taxing power that is utilized Moreover, resort to condemnation proceedings for such governmental activities as public works projects present nothing unusual and raises no constitutional question except perhaps that of fixing the just compensation. And where such public works projects are limited to streets, parks, playgrounds, schoolhouses and public hospitals, no objection is likely to be raised.

Should the government, however, go further and embark on a program of public housing, there may be opposition on the part of

---

[95] Republic Act No. 55
[96] Art. VII, Sec. 22

property owners as well as on the part of tax payers, because while the security of those who stand in need of such houses is promoted. those adversely affected, whether property owners, landlords or taxpayers, may see in the undertaking an unconstitutional curtaliment of their property rights. More than this, where the government itself—whether national or local, as provinces and municipalities have likewise the power of eminent domain—engages in this activity, dissatisfaction on the part of those whose property rights are interferred with may express itself in objections raised in legal form.

Where the power relied upon is that of eminent domain, the courts if appealed to can inquire as to whether the taking is for public use and whether there is just compensation. They cannot ignore though the clearly expressed constitutional intent to enlarge the power of eminent domain as shown by such constitutional provisions as enable the Congress upon payment of just compensation to expropriate lands to be subdivided into small lots and conveyed at cost to individuals, and as enable the government in the interest of national welfare and defense to transfer to public ownersip, utilities and private enterprise to be operated by the government upon payment of just compensation.

For persons affected by the exercise of eminent domain to be able to raise a constitutional objection, he must show that his property has been taken in the constitutional sense. Property here may refer not only to the thing but to every variety and degree of interest therein which thus includes the rights inhering a person's relation to a physical thing. Where it is the thing itself that is the object of condemnation proceeding, there is a taking by the actual occupancy and possession thereof. Where it is merely a right over the thing, there is a taking when the control of such a right becomes transferred to the government.

In the case of *Cu Unjieng v. City of Manila,*[97] where a license to construct a building was issued only upon condition that owner should follow a new street line thus preventing him from building on a portion of his own land, there was held to be taking in a constitutional sense. Even without actual use or occupancy by the government where the owner is in turn prevented from making use or occupancy of a thing, there is a taking by the government.

Thus, in the case of *Commonwealth of the Philippines v. Batac,*[98] where the irrigation system on a portion of property not condemned had been destroyed or otherwise rendered worthless, there was held to be likewise a taking which must be compensated. For while taking has usually been understood to refer only to a direct appropriation and not to consequential injuries resulting from the exercise of a lawful power, where such consequential injuries cover not merely the extra expenses incurred by the owner but amount to a practical destruction or material impairment of property, there is a taking in the constitutional sense. Taking thus includes not

[97] 39 O.G. 1563
[98] 42 O.G. 2437

only substitution of ownership but damage to or depreciation in value of and destruction of property.

In an American case, *United States v. Causby*,[99] where the government permitted its airplane to fly so low over a private land which adjoined a municipal airport leased by the government as to deprive the owners of the use and enjoyment of their land for the purpose of raising chickens, there was a taking that must be compensated in accordance with the constitutional provision.

Forever, as the constitutional provision itself provides, private property may be taken only for public use. In a case decided by the Supreme Court, *Sena v. Manila Railroad Co.*,[100] public use has been identified with whatever is beneficially employed for the community. It is a term that grows with the advancing demands of society and the increasing recognition that the government is to play an effective role in meeting such demands. As had already been made mention of, in a welfare or service state social and economic rights have to be implemented through governmental action.

One mode through which such implementation may be made is as above shown, by the exercise of eminent domain. And it is likely that if it could be shown that the object the community may have in mind is for the purpose of promoting the welfare of its under-privileged members, the condemnation of private property with such end in view may be classified as being for public use. There is a recognition of this principle in Article XIII, Section 4 of the Constitution to the effect that Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

This constitutional provision as well as the constitutional provision in Section 6 of the same article, 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, remove any doubts as the expanding concept of public use. It fits into the more active role that a government is called upon to play in a welfare state.

In the previously cited *Visayan Refining Company*[101] case, the Supreme Court held that the condemnation of a piece of property for military and aviation purposes is a public use considering the undeniable fact that a military establishment is essential to the maintenance of organized society and the progress of military art and science resulting from the development of aeronautics.

Whether or not the property has been condemned for public use is to be adjudged in the first instance by the legislative or executive branch of the government in authorizing the condemnation proceed-

---

[99] 328 U.S. 256
[100] 40 Phil. 550
[101] 4 Phil. 550

ings. But the determination of either of those political agencies of the government is not conclusive upon the courts. The judiciary may determine for itself whether the use of the property sought to be condemned is in reality public or not. The question as to the necessity, however, is generally a judicial question except where eminent domain has been exercised by a municipal corporation under a general grant of eminent domain.

The owner of the condemned property is entitled to just compensation, which means the equivalent for the value of the property taken. Anything beyond that is more, and anything short of that is less, than compensation. The word "just" conveys the idea that the equivalent to be returned for the property taken shall be real, substantial, full, ample. Just compensation means a fair and equivalent for the loss sustained. The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property.

There must be a consideration then of all the facts which make it commercially valuable. The question is what would be obtained for it on the market from parties who want to buy and would give full value. Testimonies as to real estate transactions in the vicinity are admissible. It must be shown though that the property must be of similar character as to use to the one sought to be condemned. The transaction must likewise be coeval as to time. To the market value must be added the consequential damages, if any, minus the consequential benefits. Under a Philippine statute, the assessed value of real property constitute prima facie evidence of its real value in case of condemnation proceedings.[102]

With reference to the question of determining as of what time the value of the property is to be fixed, the answer supplied by the case of *Provincial Government of Rizal v. Caro de Araullo*[103] is as follows:

> "x x x the valuation of the property taken should be made as of the time of the filing of the condemnation proceedings. That is a fixed and convenient date, and it usually precedes or coincides with the taking of the property; but in the case at bar the plaintiff appropriated the property with the consent of the landowners, and without the filing of any expropriation proceedings, and the expectation that the parties would be able to reach an agreement out of court as to the value of the property taken, and the condemnation proceedings were not filed until it was found much later than no such agreement could be reached as to the part of the property. Under those circumstances the value of the property should be fixed as of the date when

---

[102] Com. Act No. 530
[103] 58 Phil. 308

it was taken and not to date of the filing of the proceedings."

The Supreme Court of the Philippines has held that interest on the amount of the award should be given to the owner of the property from the time when possession is taken of the property; but deposit of said amount stops the running of the interest.[104] The amount of taxes and assessments paid by the owner of the condemned property after the possession has been taken away from him must be included in the compensation.[105] The expenses incurred, however, in the transfer and reconstruction of houses expropriated and duly paid for but thereafter allowed to be taken by the previous owners thereof as the provincial government had no use for them should not obviously be included in the compensation to be paid.[106]

---

[104] *Phil. Railway Co. v. Lolen*, 13 Phil. 34
[105] *City of Manila v. Roxas*, 60 Phil. 215
[106] *Province of Tayabas, v. Perez*, 66 Phil. 467