

# A SECOND LOOK AT THE AGRICULTURAL LAND REFORM CODE OF 1963

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## ESSENTIAL FEATURES OF THE CODE

The Agricultural Land Reform Code of the Philippines became law on August 8, 1963, as Republic Act No. 3844.

It is the *policy* of this Code:

1. To establish owner-cultivatorship and the economic family-size farm as the basis of Philippine agriculture and divert landlord capital in agriculture to industrial development;
2. To create an economic structure in agriculture conducive to greater productivity and higher farm incomes;
3. To apply all labor laws to both industrial and agricultural wage earners;
4. To provide a more vigorous and systematic land resettlement program and public land distribution; and
5. To make the small farmers more independent, self-reliant, and responsible citizens, and a source of strength in our democratic society. (Sec. 2).

To accomplish the above policy, the following are established under the Code:

1. An agricultural leasehold system to replace all existing share tenancy systems in agriculture;
2. A declaration of rights for agriculture;
3. An authority, called the "Land Authority" for the acquisition and equitable distribution of agricultural land;
4. An institution, called the "Land Bank", to finance the acquisition and distribution of agricultural lands;
5. A machinery, called "Agricultural Credit Administration" (ACA), to extend credit and similar assistance to agriculture;
6. A machinery, called "Agricultural Productivity Commission" (APC), to provide marketing, management, and other technical services to agriculture;
7. A unified administration for formulating and implementing projects of land reform, through the creation of a National Land Reform Council (NLRC);
8. An expanded program of land capability survey, classification, and registration;
9. A judicial system to decide issues arising under the Code, organizing for this purpose 15 regional districts of Courts of Agrarian Relations and the Office of Agrarian Counsel.

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The Code *abolished agricultural share tenancy* as contrary to public policy. It allowed existing share tenancy contracts to continue in force, to be governed in the meantime by the Agricultural Tenancy Act (Rep. Act No. 1199, as amended), until the end of the agricultural year when the National Land Reform Council proclaims that all the government agencies in the region or locality are in operation, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system (Sec. 4). With the abolition of share tenancy, the agricultural leasehold system shall be deemed established by operation of law (Sec. 5), and said relationship shall continue until extinguished for causes specified by the Code (Secs. 8, 9). The Code also fixed the rental in leasehold tenancy which shall not be more than the equivalent of 25% of the average normal harvest during the three agricultural years immediately preceding the date the leasehold was established, after deducting the amount used for seeds and the cost of harvesting, threshing, hauling, and processing; provided, that if the land has been cultivated for a period of less than three years, the initial rental shall be based on the average normal harvest during the preceding year or years (Sec. 34). However, fishponds, saltbeds, and lands principally planted to citrus, coconuts, cacao, coffee, durian, and other similar permanent trees at the time of the approval of the Code shall be exempted from the compulsory leasehold system, and the rental and the tenancy prevailing shall be governed by the provisions of the Agricultural Tenancy Act (Rep. Act No. 1199, as amended) (Sec. 35).

A declaration of *rights for agricultural labor* includes the following: (1) right to self-organization; (2) right to engage in concerted activities; (3) right to minimum wage of ₱3.50 a day for 8 hours' work; (4) right to work for not more than 8 hours unless paid an overtime pay of 25% additional, based on their daily wages; (5) right to claim damages for death or injuries sustained while at work, pursuant to the Employer's Liability Act (Act No. 1874); (6) right to compensation for personal injuries, death or illness, pursuant to the Workmen's Compensation Law (Act No. 3428, as amended); and (7) right against suspension or lay-off without just cause. The last three rights, however, shall not apply to farm enterprises not more than 12 hectares (Secs. 39-48).

The *Land Authority* provided by the Code shall be directly under the control and supervision of the President of the Philippines, and headed by a Governor with an annual salary of ₱24,000, assisted by two Deputy Governors with an annual salary of ₱18,000 each, all to be appointed by the President with the consent of the Commission

on Appointments, for a term of five years (*Secs. 49-59*). The powers and functions of the Land Authority, broadly speaking, are to carry out the policy of establishing owner-cultivatorship and the economic family-size farm as the basis of Philippine agriculture (*Sec. 49*); and specifically, "to initiate and prosecute expropriation proceedings for the acquisition of private agricultural lands" as defined in the Code, for the purpose of subdivision into economic family-size farm units and resale to *bona fide* tenants, occupants, and qualified farmers (*Sec. 51*).

The *Land Bank* created by the Code shall have an authorized capital stock of one billion five hundred million pesos (₱1,500,000,000), divided into 90 million shares with a par value of ₱10 each, which shall be fully subscribed by the Government and 60 million preferred shares with a par value of ₱100 each, or 600 million pesos (₱600,000,000) worth of preferred shares which shall be issued to pay the owners of expropriated lands, pursuant to the provisions of the Code. Of the total capital subscribed by the Government, 200 million pesos (₱200,000,000) shall be paid by the Government within one year from the approval of the Code, and 100 million pesos (₱100,000,000) every year thereafter for two years (*Sec. 81*).

The *Agricultural Credit Administration* (ACA) shall take over the functions of the former Agricultural Credit and Cooperative Financing Administration (ACCFA); this ACA was liberally given an appropriation of 150 million pesos (₱150,000,000) in addition to existing appropriations for the ACCFA, and with the privilege of obtaining from the Central Bank, the Development Bank of the Philippines, the Philippine National Bank, and other financing institutions, such additional funds as may be necessary for the effective implementation of the Code (*Secs. 101-104*).

The *Agricultural Productivity Commission* (APC) which is under the direct control and supervision of the President of the Philippines, shall take over the functions of the Bureau of Agricultural Extension of the Department of Agriculture and Natural Resources, and shall have under it also the present Agricultural Tenancy Commission of the Department of Justice. The APC shall be administered by an Agricultural Productivity Commissioner with an annual salary of ₱18,000, with the powers and duties as are now exercised by the Director of the Bureau of Agricultural Extension. He is assisted by extension workers who shall be recruited and selected from graduates of agricultural colleges (*Secs. 119-125*).

The *National Land Reform Council* (NLRC) created by the Code is composed of the Governor of the Land Authority, as Chair-

man, and the Administrator of the ACA, the Chairman of the Board of Trustees of the Land Bank, the Commissioner of the APC, and another member appointed by the President of the Philippines upon recommendation of the minority party receiving the second largest number of votes in the last Presidential election, who shall hold office at the pleasure of such minority party, unless sooner removed for cause by the President, as members, and the Agrarian Counsel, as counsel. It shall be the responsibility of the NLRC to: (1) formulate the general program of land reform contemplated by the Code; (2) establish guidelines, plans and policies for its member-agencies, relative to any particular land reform project; (3) promulgate such rules and regulations as may be necessary to carry out the provisions of the Code; (4) proclaim in accordance with the provisions of the Code, after due publication, that all government agencies in any region or locality relating to leasehold envisioned in the Code are in operation (*Secs. 126-131*).

The *Courts of Agrarian Relations* established by the Code shall be constituted by an Executive Judge and some 40 regional judges, in addition to 24 Court Commissioners, as many clerks of courts as there are judges, plus an Office of Agrarian Counsel assisted by a Deputy Counsel and 80 special attorneys.

### EXPROPRIATION OF PRIVATE AGRICULTURAL LANDS

The Code authorizes the compulsory purchase or expropriation of the following lands, in the order of priority hereinbelow stated:

1. Idle or abandoned lands, except those held or purchased within one year from the approval of the Code by private individuals or corporations for the purpose of subdivision and resale into economic family-size farm units in accordance with the policy of the Code;
2. Those whose area exceeds 1,024 hectares;
3. Those whose area exceeds 500 hectares but not more than 1,024 hectares;
4. Those whose area exceeds 144 hectares but not more than 500 hectares; and
5. Those whose area exceeds 75 hectares but not more than 144 hectares (*Sec. 51*).

In other words, any private agricultural land in excess of 75 hectares, "upon the petition in writing of at least  $\frac{1}{3}$  of the lessees" (*Sec. 53*), is subject to the risk of expropriation, after observing the order of priority stated above.

"Idle lands" means lands not devoted directly to any crop or to any definite economic purpose for at least one year prior to the

notice of expropriation for reasons other than force majeure (*Sec. 166 [18]*). "Abandoned lands" means lands devoted to any crop at least one year prior to the notice of expropriation, but which was not utilized by the owner for his benefit for the past 3 years prior to such notice of expropriation (*Sec. 166 [19]*).

Idle or abandoned lands may be acquired by the Land Authority either by purchase or by expropriation, regardless of their area and without need of prior petition on the part of the occupants, if any. But all private agricultural lands, in excess of 75 hectares, worked under leasehold (except those planted to permanent crops under labor administration, and public agricultural lands acquired by the owner of the expropriated land from the Land Authority) may be expropriated, subject to prior petition of the tenants (*Sec. 53*) and to the order of priority aforesaid (*Sec. 51[1], [b]*).

#### MODE OF PAYMENT FOR EXPROPRIATED LANDS

The Land Bank shall make payments to the owners of expropriated lands in the form and manner prescribed by the Code, namely, 10% *cash* and the remainder in *bonds* issued by the Land Bank, unless the landowner prefers to be paid in *preferred shares of stock* of the Land Bank in an amount not exceeding 30% of the purchase price (*Sec. 80*).

#### NATURE AND USES OF THE BONDS

The bonds payable to the landowner whose land is expropriated are bonds issued by the Land Bank which is authorized by the Code to issue them "up to an aggregate amount not exceeding at any one time *five times its unimpaired capital and surplus*." They are tax-exempt, fully negotiable and unconditionally guaranteed by the Government of the Republic of the Philippines, besides earning 6% interest payable to the bondholder every 6 months from date of issue. Although the Code characterizes these bonds as "redeemable bonds" (*Sec. 80*), yet they are redeemable not at the option of the bondholder but only "*at the option of the Bank at or prior to maturity which in no case shall exceed 25 years*" (*Sec. 76*). The Code also makes it appear that these bonds are *mortgageable to government institutions* not to exceed 60% of their face value; but a careful reading of the Code shows that these bonds cannot secure any kind of loan but only such loans which will "enable the holders of such

bonds to make use of them in investments in productive enterprises" (Sec. 76). The bondholder, therefore, may not mortgage these bonds to secure a loan to construct a house or to pay a private debt.

The Code further enumerates the other uses of the bonds:

1. Payment for agricultural lands or other real property purchased from the Government;
2. Payment for the purchase of shares of stock of all or substantially all of the assets of the following Government-owned or controlled corporations: National Development Company, Cebu Portland Cement Company, National Shipyards and Steel Corporation, Manila Gas Corporation, and Manila Hotel Company;
3. Surety or performance bonds in all cases where the Government may require or accept real property as bonds; and
4. Payment for reparations goods (Sec. 85).

#### NATURE OF PREFERRED SHARES OF STOCK ISSUED BY THE LAND BANK

The Code authorizes the Land Bank to issue, from time to time, preferred shares of stock in such quantities not exceeding 600 million pesos worth, as may be necessary to pay owners of lands expropriated by the Land Authority (Sec. 81). These shares of stock are guaranteed a return of 6% per annum; and in the event that the earnings of the Land Bank for any single fiscal year are not sufficient to enable it to declare dividends at the guaranteed rate, the Code authorizes the Bank to pay the difference necessary to cover the guaranteed rate *out of its assets* and the Code further provides that, in such event, the Government, on the same day that the Bank makes such payment, shall reimburse the Bank in full, for which purpose, "*such amounts as may be necessary to enable the Government to make such reimbursements are hereby appropriated*" (Sec. 77). These particular provisions of the Code are extraordinary in two respects: first, a corporation is allowed to declare dividends out of assets instead of out of surplus profits realized from its business; and second, payments out of government funds are made automatically without any definite amount of money having been first appropriated.

The holders of these preferred shares may elect annually one member of the Board of Trustees and one member of the Committee on Investments of the Land Bank, but they "shall not bring derivative suits against the Bank" (Sec. 88), which means that they have no right to sue the directors in behalf of the corporation for whatever fraud or *ultra vires* act the latter may commit while in office.

These preferred shares of stock are transferable, and upon liquidation of the Bank, the redemption of such shares shall be given priority and shall be guaranteed at par value (*Sec. 88*).

It must be noted, however, that payment in preferred stocks of the Land Bank in an amount not exceeding 30% of the purchase price may be made only *if the landowner so desires* (*Sec. 80*). Hence, the only legal question that may be raised with respect to the mode and manner of payment is in connection with the payment in *bonds* against the will of the landowners.

### REVOLUTIONARY PROVISIONS OF THE CODE

The new Agricultural Land Reform Code, therefore, contains the following revolutionary provisions:

1. It abolishes all existing contracts of share tenancy.
2. It authorizes the expropriation of private agricultural lands in excess of 75 hectares, in the order of priority stated in the Code.
3. It compels a landowner whose land is expropriated to accept bonds of the Land Bank in payment thereof.

We shall discuss the constitutionality of these provisions in the order stated above.

### ABOLITION OF SHARE TENANCY

Section 4 of the Code expressly provides:

"Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished; *Provided*, That existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act No. 1199, as amended, *until the end of the agricultural year when the National Land Reform Council proclaims that all the government machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system; . . .*"

The Code establishes the leasehold relation by operation of law (*Sec. 5*), excepting, however, "fishponds, saltbeds, and lands principally planted to citrus, coconuts, cacao, coffee, durian, and other similar permanent trees at the time of the approval of this Code," in which case, "the consideration, as well as the tenancy system prevailing, shall be governed by the provisions of Republic Act No. 1199, as amended" (*Sec. 35*).

It must be noted that the Code nullifies not only contracts of share tenancy that may be executed upon the approval of the Code but also those that had previously been lawfully executed under the Agricultural Tenancy Act (Rep. Act No. 1199) with *terms* which will not expire when the NLRC proclaims the effectivity of the Code in any particular region. The Code also gives the tenant the absolute right to terminate a share tenancy contract, with or without a fixed term, without the consent of the landholder.

A law may validly give a tenant the right to terminate at will a share tenancy contract *without a fixed term*,<sup>1</sup> but a share tenancy contract with a reasonable term mutually agreed upon by the contracting parties, may not be affected by a subsequent law which gives one of the contracting parties, much less a third party like the NLRC, the right to terminate the term at will, without impairing the obligation of contracts.

In the case of *In re Fidelity State Bank*,<sup>2</sup> the Supreme Court of Idaho said:

"The obligation of a contract is impaired by a statute which alters its terms by imposing new conditions or dispensing with existing conditions, or which adds new duties, or releases or lessens any part of the contractual obligations, or substantially defeats its ends."

Perhaps, those who believe in the constitutionality of the absolute abolition of all existing share tenancy contracts, *including those with fixed terms*, have in mind the decision of the United States Supreme Court in the case of *Ogden v. Saunders*,<sup>3</sup> which held that an insolvency law which discharges a debtor from all his debts upon being given a certificate of discharge by the Insolvency Court is constitutional, and is not a law which impairs the obligation of contracts; but a careful reading of this decision will reveal that debts contracted prior to the enactment of the insolvency law are not affected by a law on insolvency.

Perhaps, also, those who believe in the constitutionality of the absolute abolition of all existing share tenancy contracts, including those with fixed terms, have in mind the exercise of the police power of the state. The police power of the state is not, as some people allege, absolute and uncontrollable. It may be superior to the necessities of an individual or a group of individuals, but it certainly cannot be superior to the fundamental law of the state. As held in the case of *Case v. Board of Health and Heiser*:<sup>4</sup>

<sup>1</sup> *Tapang v. C.I.R.*, 72 Phil. 79 (1941).

<sup>2</sup> 35 Idaho 797, 209 P. 449 (1922).

<sup>3</sup> 6 L. Ed. 606 (1827).

<sup>4</sup> 24 Phil. 250 (1913).

"The State, under the police power, is possessed with plenary power to deal with all matters relating to the general health, morals, and safety of the people, so long as it does not contravene any positive prohibition of the organic law."

And, in the case of *People v. Pomar*, our Supreme Court again said:

"Public sentiment wields a tremendous influence upon what the state may or may not do, for the protection of the health and public morals of the people. Yet, neither public sentiment, nor a desire to ameliorate the public morals of the state will justify the promulgation of a law which contravenes the express provisions of the fundamental law of the people—the constitution of the state."<sup>15</sup>

It is, therefore, submitted that the Agricultural Land Reform Code, insofar as it abolishes and nullifies all existing share tenancy contracts which have *reasonable fixed terms*, is a law which impairs the obligation of contracts, and is, therefore, void and unconstitutional, as it is in violation of Article III, Section 1, of the Constitution which provides that: "*No law impairing the obligation of contracts shall be passed.*"

#### EXPROPRIATING LANDS IN EXCESS OF 75 HECTARES

The Agricultural Land Reform Code empowers the Land Authority to initiate and prosecute expropriation proceedings for the acquisition of all idle or abandoned private agricultural lands of any size, and all cultivated private agricultural lands in excess of 75 hectares in the order of priority as to area (*Sec. 51*), except fishponds, saltbeds, and lands principally planted to fruit trees (*Sec. 35*).

Now, Article XIII, Section 4, of the Constitution of the Philippines provides:

"The Congress may determine by law the size of private agricultural lands which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law."

The Agricultural Land Reform Code is *not* a law which limits the maximum size of private agricultural lands which a person may lawfully own. It is a law which merely subjects to the risk of expropriation lands in excess of a certain area. But, assuming without

<sup>15</sup> 46 Phil. 440, 443 (1924). However, in *Vda. de Ongsiako v. Gamboa*, 47 O.G. 5613 (1950), it was held that a law changing the sharing basis from 50-50 to 45-55 in favor of the tenant in tenancy contract, is valid and does not impair the obligation of contracts. This is so, because *tenancy sharing* affects public interest, and the state may change it in the exercise of police power. But the *term* in a contract, if *reasonable*, is not inherently immoral nor prejudicial to public interest, and may not be impaired by a subsequent law.

admitting, that the Code is a law which limits the landholding to not more than 75 hectares, still the Constitution exempts from such limitation lands already acquired prior to the enactment of the Code, the Constitution expressly providing that the limitation shall be "subject to rights existing prior to the enactment of such law."

Under the Code, all private agricultural lands in excess of 75 hectares run the risk of expropriation. Apparently, it seeks to implement another constitutional provision which says:

"SEC. 4. 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." (*Art. XIII, Const.*)

But the term "lands" in this constitutional provision has been interpreted by our Supreme Court to refer only to "landed estates." In the case of *Guido v. Rural Progress Administration*,<sup>6</sup> it was held that the constitutional provision above quoted contemplates "large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city which bears direct relation to the public welfare." To permit the expropriation of small areas would amount to taking private property in order to be given to other private individuals. If carried out, "it will place the Government of the Republic in the awkward predicament of veering towards socialism, a step not foreseen nor intended by our constitution."<sup>7</sup>

And in the case of *Republic v. Baylosis*,<sup>8</sup> where a person's private agricultural land of about 77 hectares was being expropriated by the Government in order to be subdivided into smaller lots and sold to the occupant-tenants, our Supreme Court held that the attempted expropriation was void, being in violation of the Constitution, not only because the area involved is not large enough as contemplated by the framers of the Constitution but that lands that had already been broken up or subdivided, as was the fact in the case, could no longer be the subject of expropriation. The Supreme Court said:

"What Sec. 4, Art. XIII of the Constitution intended and sought to do was merely to break up landed estates and trusts in perpetuity. It intended to discourage the concentration of extensive landed wealth in an entity or a few individuals, but surely, it did not intend or seek to distribute wealth among citizens or to take away from a citizen land which he did not actually need and give it to another who needs it. That does not come within the realm of social justice. . . . In conclusion, we

<sup>6</sup> 84 Phil. 847 (1949).

<sup>7</sup> 84 Phil. 847, 856 (1949).

<sup>8</sup> 51 O.G. 722 (1955).

hold that under Sec. 4, Art. XIII of the Constitution, the Government may expropriate only *landed estates* with extensive areas, especially those embracing the whole or large part of a town or city; that once a landed estate is broken up and divided into parcels of reasonable areas, either through voluntary sale by the owner or owners of said landed estate, or through expropriation, the resultant parcels are no longer subject to a further expropriation under Sec. 4, Art. XIII of the Constitution."

It must be noted also that the Public Land Law authorizes an individual to own public agricultural lands not in excess of 144 hectares, and private corporations not in excess of 1,024 hectares, and it is absurd to think that the Government would authorize such areas of public lands to be owned, only to be expropriated once they have been converted into private ownership. It seems more logical to conclude that an area of 144 hectares owned by an individual is not considered a "landed estate" within the contemplation of the constitution and as held by the Supreme Court in the *Baylosis* case.

Hence, insofar as the Agricultural Land Reform Code authorizes the compulsory expropriation of cultivated private agricultural lands in excess of 75 hectares but not too large as to be regarded a landed estate, the said Code is void, being in violation of the intent and purpose of the Constitution.

#### COMPELLING LANDOWNER TO GIVE UP HIS LAND IN EXCHANGE FOR BONDS

The Agricultural Land Reform Code compels a landowner whose land has been expropriated to accept 10% cash and 90% bonds of the Land Bank.

What are bonds? Bonds are merely promissory notes or evidences of indebtedness. Our Constitution expressly provides that lands may be expropriated to be subdivided into small lots and conveyed at cost to individuals "*upon payment of just compensation*" (Art. XIII, Sec. 4, Const.). Please note, that the constitution does not only require compensation; that compensation must be just. Please note also, that the Constitution requires that there must be *payment*, not a mere *promise to pay*. The great legal question I am, therefore, propounding is, whether a landowner whose property has been forcibly taken away from him and who is compelled to accept 10% cash and 90% bonds is deemed to have been *justly compensated* pursuant to the Constitution.

The Code has clothed these bonds with some specified uses. But a second look at these enumerated uses reveals that these uses are either useless or not so useful.

It is true that the bonds may be used as payment for public agricultural lands or other real property purchased from the Government. But why oblige a landowner to give up his private agricultural land, already cultivated and developed by him, in exchange for bonds of the Land Bank to enable him to buy another public agricultural land which he must again cultivate and develop? Would it not be more just and equitable that these bonds be issued to the tenant instead, to enable him to acquire public agricultural land and become a landowner by his own effort? That it was the tenant who had tilled the expropriated land does not necessarily entitle him to own the land to the exclusion of the landlord, because land is not developed by labor alone. Labor and capital have equal contribution in the cultivation and development of an agricultural land. Labor and capital are like the bow and the arrow, useless each without the other.

It is true that these bonds may also be used for the purchase of shares of stock of some selected Government-owned or controlled corporations; but a second look at the financial standing of these corporations reveals that, with the exception of the Manila Gas Corporation, all of the corporations selected by the Code are in the red or can hardly make both ends meet. Besides, two of said corporations—the Cebu Portland Cement Company and the Manila Hotel Company—have already been sold to private parties, pursuant to the policy to transfer Government-owned or controlled business corporations to private hands. It seems unfair to limit the bondholder's investment in only three Government-owned or controlled corporations which, except one, are not making any profits. Furthermore, the Code also reveals that a bondholder may not purchase a few shares of said corporations. In plain language, the bondholder must offer to buy the entire corporation. Hence, if he does not own enough bonds to equal the purchase price of any of these three remaining Government-owned or controlled corporations, or does not find other bondholders willing to join with him in the purchase of said corporations, such bonds are useless for the purpose indicated by the Code.

That these bonds may be used as surety or performance bonds in cases where the Government may require real property as bonds will not be of much use to the bondholder because there may be no occasion to put up such surety or performance bond; and the fact that these bonds may be used for payment for reparations goods will be of use only to those interested in the acquisition of Japanese reparation goods.

In other words, any fair-minded person must admit that these bonds have very limited uses; and in the event that the bondholder finds no occasion to avail himself of such particular uses, the only remedy left to the landholder whose land has been forcibly taken away from him is to wait for the Land Bank to redeem these bonds *at the option of the Bank which may be 25 years.*

The advantages with which the Code has clothed these bonds are, therefore, more apparent than real. Even granting that the supposed advantages given to the bonds are real, the term "just compensation," as held by the courts, *excludes* the taking into account as an element in the compensation any *supposed benefits* which the landholder may receive or is expected to receive.<sup>9</sup> This is so, because the compensation provided by the Constitution is for the *property* taken, and not to the owner. Hence, it has been held that the term "compensation" standing by itself, carries the idea of an equivalent. So that, if the adjective "just" had been omitted, and the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation should be the "equivalent of the *property*." In the language of the United States Supreme Court: "In view of the combination of these two words, there can be no doubt that the compensaion must be a *full and perfect equivalent* for the property taken. And this compensation, it will be noticed, is for the *property*, and not to the owner." And in the language of the Wisconsin court, it means no other than "making the owner good by an equivalent in *money*."<sup>11</sup>

It is contended that these bonds are just as good as the paper money issued by the Central Bank, because the bonds are equally guaranteed by the Government to the same extent as the Central Bank paper money. The comparison ceases to be a comparison when we realize that the Central Bank paper money is *already money*, while the bonds are not. While the Central Bank paper money may acquire *anything* in exchange for the value of the thing acquired, these bonds cannot have the same exchange or purchasing power. *Clearly, when a bond cannot have the same purchasing power as the Central Bank paper money, it is absurd to claim that the bond is just as good as money.* Money is the accepted universal measure of value. Bond is not money. Hence, if money is the full equivalent of property, and the bond is not money, then the bond is not the equivalent of property. If the first is equal to the second, but the

<sup>9</sup> *Monongahela Navigation Co. v. U.S.*, 148 U.S. 326, 37 L. Ed. 463 (1893).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Bigelow v. RR. Co.*, 27 Wis. 478.

second is not equal to the third, then the first and the third are not equal to each other. This is simple logic.

It may be alleged that in some countries, like Taiwan and Mexico, payment in bonds for lands expropriated is acquiesced in as a matter of course. The reason for this ready acquiescence is, perhaps, to be found in the fact that in those countries, there is no constitution, or if there is, their constitution contains no Bill of Rights similar to ours. Our democracy has been patterned after the age-old and tested principles of American republican institutions, and an adulteration of these time-honored principles with the infusion of such newly-coined words "guided democracy" or "functional democracy," as invented by some leaders of state, would merely be a corruption of the true meaning of democracy as originally intended by our Constitution.

Hence, if we would like to know the true meaning of "just compensation" in our Constitution, let us look for it, not in the jurisprudence of countries not used to constitutional guarantees but in the American courts which had interpreted the same constitutional provisions similar to ours.

The case of *Martin v. Tyler*<sup>12</sup> involves the legal question whether the property owner, in expropriation proceedings, against his will, may lawfully be deprived of his private property in exchange for bonds issued by the Cass county. These bonds "shall bear interest at a rate not exceeding 7% and shall be payable not exceeding 20 years from the date thereof, and the said Commissioners (of Cass county) shall provide a sinking fund for the payment of said bonds at maturity for the payment of the annual interest on the same." The Supreme Court of North Dakota in this case said: "Just compensation, when ascertained, must always be in *money*. Money is the measure of compensation. Compensation represents the money value of property taken or damaged. Just compensation can be made in no other medium."<sup>13</sup>

And the argument that these bonds are fully guaranteed by the Republic of the Philippines is an admission of the fact that no payment for the property taken has been made. In the language of the court in the *Martin v. Tyler* case, "Security negates payment."

In the case of *Oregon Short Line RR. Co. v. Fox*,<sup>14</sup> the Supreme Court of Utah, said:

<sup>12</sup> 60 N.E. 392 (1894).

<sup>13</sup> See also *Vanhorne's Lessee v. Dorrance*, 1 L. Ed. 391 (1795).

<sup>14</sup> 78 P. 800 (1904).

"Where lands are taken under condemnation proceedings, the owner is entitled to 'just compensation' in *money* and cannot be compelled to accept any other kind of property in lieu thereof. In the exercise of the right of eminent domain, no just compensation can be made for the property taken, except in money. Money is a common standard, by comparison with which the value of anything may be ascertained. Compensation is a recompense in value, a *quid pro quo*, and must be in money. Bond or anything else also may be a compensation, but then it must be at the election of the party; it cannot be forced upon him; and an Act of the Legislature which provides that land may be taken and paid for with other lands belonging to the State does not provide a constitutional compensation."<sup>15</sup>

And no less than the Supreme Court of the United States, speaking through Mr. Justice Peterson, has this to say:

"The right of acquiring and possessing property and having it protected, is one of the natural, inherent, and inalienable rights of man. Men have a sense of property. Property is necessary in their subsistence, and correspondent to their material wants and desires; its security was one of the objects that induced them to unite in society. No man would become a member of a community in which he could not enjoy the fruits of his honest labor and industry. . . . The Legislature had no authority to make an Act divesting the citizen of his freehold and vesting it in another, without a just compensation. It is inconsistent with the principles of reason, justice, and moral rectitude; it is incompatible with the comfort, peace, and happiness of mankind; and lastly, it is contrary both to the latter and spirit of the constitution. . . . *No just compensation can be made except in money.* Money is a common standard by comparison with which the value of anything may be ascertained. It is not only a sign which represents the respective value of commodities, but it is a universal medium, easily portable, liable to little variation, and readily exchanged for any kind of property. (It is said) that we have nothing we can call our own, or are sure for a moment; we are all tenants at will, and hold our landed property at the mere pleasure of the legislature. Wretched situation, precarious tenure! And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free!"<sup>16</sup>

This pronouncement of the United States Supreme Court will surely find sympathetic echo in the hall of our Supreme Court, not because it is the jurisprudence of the United States, but because that doctrine is consistent "with the principles of reason, justice, and moral rectitude."

As a matter of fact, our Supreme Court has already adopted this American doctrine in the case of *Lucban v. NAWASA*.<sup>17</sup> In this Philippine case, pursuant to Republic Act No. 1383 (creating

<sup>15</sup> See also *Alabama & F. R. Co. v. Burhitt*, 46 Ala. 569.

<sup>16</sup> *Vanhorne' Lessees v. Dorrance*, 1 L. Ed. 391, 396 (1795).

<sup>17</sup> G.R. No. L-15525, October 11, 1961.

the NAWASA), all the assets of the waterworks system of the municipality of Lucban, Quezon, were taken over or transferred to the NAWASA, by simply crediting the municipality with a book entry of the value of the said assets and equipment. The decision of the Court of First Instance of Quezon, which was *affirmed* by the Supreme Court, held that, inasmuch as the plaintiff will be credited by the defendant NAWASA on its books with an equivalent value merely in the form of book entry, *payment not being in the form of money*, the requirements for a valid exercise of the right of eminent domain were not complied with. It further held that the state's police power is never intended as a substitute for just compensation in eminent domain proceedings, because liability to the exercise of police power rests entirely on different consideration, and the power does not extend so far as to include the acquisition of property without compensation.<sup>18</sup>

In the debates in the Philippine Constitutional Convention on this same question, our delegates used the words "amount", "price", and "deposit in court" prior to the taking of the property condemned. They all assumed and took for granted that "money" shall be paid, deposited, or tendered as compensation for property taken. Their problem is not whether something else other than money may be given as compensation, but whether the compensation in money must precede the taking of the property. Many delegates lamented the fact that in some instances, the landowner is already deprived of his property, and yet no immediate payment has been made. He is made to wait for months, even years, before the landowner is indemnified. Thus, Delegate Clemente V. Diez of Surigao, lamented in the Convention Hall: "On many occasions, under the present law on expropriation, the owner is deprived already of his private property, dispossessed of the same, deprived of the fruits of the property, and yet, Mr. President, months and even years passed without the owner receiving the indemnity for his property that has been expropriated."<sup>19</sup>

Prompt payment is one of the essential requisites of just compensation. When the landowner is subjected to uncertainties or unreasonable delay in being paid, the payment, *even in money*, had been held to be in violation of the constitution. As the Massachusetts court said:

<sup>18</sup> See also *City of Baguio v. Nawasa*, G.R. No. L-12032, Aug. 31, 1959; *City of Cebu v. Nawasa*, G.R. No. L-12892, April 30, 1960.

<sup>19</sup> See *Journal of the Constitutional Convention of the Philippines*, Vol. III, No. 92, Nov. 20, 1934.

"Although payment need not precede the seizure, yet the means for securing inlemnity must be such that the owner will be put to no risk or unreasonable delay."<sup>20</sup>

If payment in *money*, with unreasonable delay, is constitutionally objectionable, how much more objectionable will payment in *bonds* in twenty-five years?

### POLICE POWER, DISTINGUISHED FROM POWER OF EXPROPRIATION

Those who favor this mode of payment in bonds as provided in the Code defend it on the ground that the state may lawfully condemn private property in the exercise of the state's police power. As already pointed out by our Supreme Court in the case of *Lucban v. NAWASA*, above referred to, "liability to the exercise of police power rests entirely on different consideration, and the power does not extend so far as to include the acquisition of property without compensation." Private property devoted to an illegal or immoral use or which constitutes a menace to health and public safety may be confiscated, and even destroyed by the state without compensation. But when private property is not used or devoted to illegitimate or immoral purpose nor is a menace to public health and safety, but on the contrary, is being used for productive purposes, such property may be taken forcibly by the state only by *expropriation* and upon *just compensation*, and not under the police power of the state. As held by our Supreme Court in the *NAWASA* case, "*the state's police power is never intended as a substitute for just compensation in eminent domain proceedings.*"

Even during war time, the private property of a citizen may not be taken by the State under police power, as may be seen from the following constitutional provision: "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." (*Art. XIII, Sec. 6, Const.*) If, even during war time, public utilities which are vital to national defense may not be transferred to public ownership by the exercise of police power of the state, then how could purely private property, like cultivated private agricultural

<sup>20</sup> *Connecticut River Co. v. Franklin County Comm'rs.*, 127 Mass. 50, 34 Am. Rep. 338 (1879). See also *Haverhill Hill Bridge v. Essex County Comm'r's.*, 4 Am. Rep. 518 Am. Rep. 518 (1869).

lands, be so acquired, in the interest of other private individuals and during peace time?

It is true that the police power of the state is a growing and expanding power. It is true that as civilization develops and public conscience becomes awakened, the police power may be expanded. But, says again our Supreme Court, "that power cannot grow faster than the fundamental law of the state—the constitution. *If the people desire to have the police power extended and applied to conditions and things prohibited by the organic law, they must first amend the constitution.*"<sup>21</sup>

### THE RIGHT OF PROPERTY IS A VITAL PRINCIPLE IN A DEMOCRACY

The reason why our Constitution requires "just compensation" when private property is compulsorily taken is because of the high and respected place such right occupies in our system of government. In some of our neighboring countries, the right of private property is not considered a vital principle of their system of government. Thus, in India, the constitution had been amended several times to enable the Indian Government to expropriate private agricultural lands, first by eliminating the word "just" before the word "compensation," and lastly, by taking away entirely from the power of the Judiciary the right to determine the amount of the compensation to be given a landowner whose land has been expropriated. This last amendment to the Indian Constitution is known as the "Fourth Amendment," which provides that it is the sole business of the legislature to determine the amount of compensation or the manner in which it will be paid, and no court of law will sit over it in judgment. The Indian Constitution now reads:

"31. (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no law shall be called in question in any court on the ground that the compensation provided by the law is not adequate."<sup>22</sup>

Under such a constitution, the right of private property is no longer regarded as one of the inherent rights of man. May the time not come when our people, too, may be led to think along the same

<sup>21</sup> *People v. Pomar*, 46 Phil. 440, 456 (1924) (*Emphasis supplied*).

<sup>22</sup> See Pelee, M. V., "Constitutional Government in India" (1960), p. 283 (Asia Publishing House, New York).

channel, under the influence of the so-called "guided" or "functional" democracy, or "short-cut" methods of government. It is dangerous to tinker with the fundamental rights of man, because to take away one of such rights today will lead to the taking of two or more rights tomorrow, until he is stripped of all his rights. The United States Supreme Court said that:

"The protection of the right of property had been regarded as a vital principle of republican institutions. 'Next in degree to the right of personal liberty,' Mr. Broom in his work on Constitutional Law says, 'is that of enjoying private property without undue interference or molestation.' (p. 228). The requirement that the property shall not be taken for a public use without just compensation is but an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down as a principle of universal law. Indeed, in a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen."<sup>23</sup>

And, our Supreme Court, the last bulwark of our democratic institutions, in the case of *Guido v. Rural Progress Administration*, already referred to, also wisely said:

"In paving the way for the breaking up of existing large estates, trusts in perpetuity, feudalism, and their concomitant evils, the *Constitution did not propose to destroy or undermine property rights, or to advocate equal distribution of wealth, or to authorize the taking of what is in excess of one's personal needs and the giving of it to another*. Evidencing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country." (*Emphasis supplied*).

#### MILLIONS OF PESOS FOR EXPROPRIATION BUT NONE FOR LANDOWNER

It must be noted that the Agricultural Land Reform Code has liberally appropriated huge sums of money, and never has there been any non-budgetary law where millions of pesos had flowed so profusely upon its enactment. Thus:

<sup>23</sup> *Chicago B. & Q. R. Co. v. Chicago*, 41 L. Ed. 978, 984 (1897). See also 2 Story, Const., Sec. 1790; *Cooley*, Const. Limit. 559; *People v. Platt*, 17 Johns 195, 215, 8 Am. Dec. 382 (1819); *Ex Parte Martin*, 13 Ark. 199, 206, 58 Am. Dec. 321 (1853).

To carry into effect the transfer of the powers and functions of the NARRA and the Land Tenure Administration to the Land Authority (in addition to existing appropriations for said agencies), an appropriation has been set aside in the sum of 5 million pesos .....	P 5,000,000 (Sec. 73)
To carry out the land capability survey and classification, the Code appropriated the sum of 10 million pesos .....	10,000,000 (Sec. 73)
To form a special guaranty fund to guarantee the obligations of the Land Bank, the Code appropriated (aside from P500,000 each succeeding year until the accumulative fund reaches P20,000,000), the sum of one million pesos ...	1,000,000 (Sec. 78)
Of the authorized capital stock of the Land Bank of one billion five hundred million pesos (P1,500,000,000), the Government subscribed and is ready to pay (in addition to 100 million pesos every year for 2 years), the sum of 200 million pesos .....	200,000,000 (Sec. 81)
To finance the additional credit functions of the ACA, the Code appropriated the sum of 150 million pesos .....	150,000,000 (Sec. 102)
To cover the losses of the ACA in the granting of loans which may impair its capitalization, the Code provided an automatic appropriation of 6 million pesos .....	6,000,000 (Sec. 110)
As additional fund to carry out the functions of the APC, the Code appropriated the sum of 5 million pesos .....	5,000,000 (Sec. 125)
To finance and support the expanded program of cadastral land survey and registration, the Code appropriated the sum of 100 million pesos .....	100,000,000 (Sec. 140)
For expenses of court-rooms and salaries of judges and personnel of the Courts of Agrarian Relations, the Code provided an annual appropriation of 3 million five hundred thousand pesos .....	3,500,000 (Sec. 159)
For salaries, equipment, and expenses of the Office of Agrarian Counsel, with its retinue of assistant attorneys, the Code provided an annual appropriation of 3 million pesos .....	3,000,000 (Sec. 165)
To cover retirement gratuities of personnel of offices abolished or not absorbed under the Code, there was set aside the sum of 500 thousand pesos .....	500,000 (Sec. 169)
<b>TOTAL APPROPRIATION .....</b>	<b>P484,000,000</b>

This huge amount of 484 million pesos excludes the indefinite automatic appropriations to cover reimbursements for payments of guaranteed dividends made by the Land Bank out of its assets already alluded to (*Sec. 77*), which may amount to another 20 million pesos.

The Yulo Canlubang Estate, which has been the object of Government expropriation, is said to have an area of 2,459 hectares, and its provisional value has been placed at ₱1,114,070.00. Had the Government simply implemented the Land Reform Code of 1955 (*Rep. Act No. 1400*), and there is really at present such huge amount of some 500 million pesos ready and disposable every year, as evidenced by this Code, then even 400 Yulo estates could be acquired yearly by compulsory expropriation and for cash; and in four or five years, the objective of the Code could have been equally accomplished, without the necessity of creating new agencies and new positions with fat appropriations and salaries, and without causing unnecessary oppression to property owners.

#### THE MEANS TO ACCOMPLISH A GOOD END MUST BE JUSTIFIED

It is to be admitted that the end, aim, purpose, or object of the Agricultural Land Reform Code of 1963 is laudable; it seeks to implement the following constitutional provision:

"The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." (*Art. II, Sec. 5, Const.*)

But, as held by our Supreme Court in the case of *Guido v. Rural Progress Administration*, *supra*:

"The promotion of social justice ordained by the Constitution does not supply paramount basis for untrammelled expropriation of private land by the Rural Progress Administration or any other government instrumentality. Social justice does not champion division of property or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production."

The desire to improve the economic lot of our toiling farmers is a universal desire. We believe that a nation of independent farm-owners is the backbone of our democracy. We believe that our tenants should be emancipated from economic bondage; but we also

believe that the slaves of today should not be made the oppressors of tomorrow. The aim to accomplish a good end must always be circumscribed within constitutional limits. Otherwise, the demarcation line between Democracy and Dictatorship may become so obscure as to mistake one for the other. Arbitrariness in the guise of public welfare should not be allowed to gain a foothold in a constitutional democracy. As warned by the United States Supreme Court in *Boyd v. U.S.*:

"Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachment thereon."<sup>24</sup>

In other words, our end, aim, purpose, or object may be laudable but the means employed to accomplish the end may be constitutionally objectionable. Recently, our Supreme Court had an opportunity to express its abhorrence against this doctrine of "the end justifies the means" in the case of *Gonzales v. Hechanova*, when it said:

"Ours is supposed to be a regime under a rule of law. Adoption as a government policy of the theory of 'the end justifies the means,' brushing aside constitutional and legal restraints, must be rejected, lest we end up with the end of freedom."<sup>25</sup>

### CONCLUSION

It is admitted that law is progressive; but it should progress along the path of constitutional rectitude. It is true that in some cases, where the interests of society conflict with those of a few individuals, the interests of the few individuals may be sacrificed for the common good. But this doctrine is valid only where there is a real conflict and the interests of the few individuals may be sacrificed without moral damage to republican institutions. However, there are certain natural rights, called "bill of rights" enshrined in our Constitution which may not be sacrificed at any cost, because they are conclusively presumed to be for the good of both the individual and society, and to encroach upon those rights would constitute an encroachment on the rights of society itself. There are twenty-one (21) of such rights in the Constitution, among which are the following, all embodied in Article III:

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<sup>24</sup> 29 L. Ed. 746, 752 (1885).

<sup>25</sup> G.R. No. L-21897, October 22, 1963.

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

"(2) Private property shall not be taken for public use without just compensation."

"(10) No law impairing the obligation of contracts shall be passed."

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, also declares that:

"ART. 17. No one shall be arbitrarily deprived of his property."

Both as a civilized nation and as a member of a community of civilized nations that approved the Universal Declaration of Human Rights, we are bound to respect and protect the right of private property against any and all kinds of encroachments which may likely undermine our republican institutions.

It is quite risky and presumptuous to predict what our Supreme Court will say when these constitutional questions I have mentioned are raised in the Court. The risk becomes greater when we take into account that this Code has successfully passed the gamut of learned constitutional lawyers in both houses of Congress. However, because of the great haste in which the Code has been prepared and acted upon,<sup>26</sup> and bearing in mind that no Congressman would dare vote against any legislative proposal to emancipate the tenant from rural slavery without being held to account at the polls, I, who have no ambition to run for an elective office, venture to say this much:

I. That the abolition of share tenancy will be sustained as valid, *except* insofar as it affects validly existing share tenancy contracts which have fixed terms agreed upon by the parties and duly registered in the Registry of Tenancy Contracts pursuant to the Agricultural Tenancy Act (Rep. Act No. 1199, as amended), which contracts may not be impaired by any subsequent law so long as the term of the contract is not unreasonably long.

II. That the acquisition by the Government of idle or abandoned lands, regardless of size and of the mode or manner of payment of compensation, will be sustained as valid, inasmuch as the acquisition of such lands may properly be based on the police power of the state and not on the power of expropriation.

III. But, the expropriation of cultivated private agricultural lands in excess of 75 hectares and which are not "landed estates"

<sup>26</sup> The Presidential Committee on Land Reform was created only in January, 1963; the Code became law on August 8, 1963.

within the contemplation of the Constitution, is invalid and unconstitutional; and an area of 76 hectares is definitely not a "landed estate" as held in the *Baylosis* case. If six hectares may be considered as an economic family-size farm unit, then at least 50 families must be benefited by the subdivision and distribution of the expropriated land; hence, it is submitted that at least 300 hectares should be the minimum area in order to be regarded as a "landed estate" within the contemplation of the Constitution. It would be unfair and unjust to deprive a landowner of his land which, if subdivided, will benefit only a few individuals, as such an act amounts to depriving a person of his property without due process of law.

IV. The mode and manner of payment of compensation for the expropriated land in *bonds* and not later than 25 years *at the option of the Land Bank*, as provided in the Code, is patently unjust, unfair, unilateral, invalid, and unconstitutional. While Congress has the power to expropriate a landed estate, it does not have the inherent power to determine absolutely the mode and manner of payment of the compensation to be made. The power to expropriate belongs to the legislature, but the power to determine the justness of the compensation belongs to the courts. And the court, ever mindful of the true, natural, and accepted meaning of "just compensation" contained in our Constitution, which are the very same terms used in the American Constitution, will not deviate from the path of established jurisprudence of republican institutions. Speaking on Philippine Constitution Day in 1938, the former Supreme Court Justice and President of the Constitutional Convention, Claro M. Recto, said:

"Nowhere is the Convention's conservatism more patently exhibited than in the Bill of Rights of the Constitution. Even attempts to recast familiar phraseology of the Bill of Rights of former organic laws were vigorously opposed, and eventually voted down. This was prompted in part by a desire to preserve intact and undisturbed the jurisprudence on the subject built through the years. The result was the reproduction, almost bodily, of the Anglo-American Bill of Rights in our Constitution."

This being the case, it is not difficult to foretell the probable interpretation which our Supreme Court will give to the words "just compensation" found in our Constitution.

A second look at the Agricultural Land Reform Code makes me feel that this Code may not remain long *in its present form* in the statute books. It is true that Section 171 of the Code expressly provides that: "If, for any reason, any section or provision of this Code shall be questioned in any court, and shall be held to be uncon-

stitutional or invalid, no other section or provision of this Code shall be affected thereby." But, if those provisions of the Code pointed out here are the ones that shall be held unconstitutional, then the entire Code will be affected, its entire philosophy will be undermined, and its good intentions will be thrown to the winds.

Let us hope that proper amendments to the Code in conformity with constitutional precepts could be made, in order to save this Code from total collapse. It is never too late to abide by the Constitution.