

THE CONSTITUTIONALITY OF THE COMPENSATION PROVISIONS OF THE AGRICULTURAL LAND REFORM CODE *

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INTRODUCTORY:

The Agricultural Land Reform Code¹ represents the boldest step so far taken on the vexing land question, and it is to be expected that the most determined challenges to its constitutionality will arise. From the inception of the tortuous legislative process that gave it birth, its parent bill was under attack on constitutional grounds.² Only through more than a hundred changes was legislative approval secured.³ Yet such concessions did not score a complete victory, for in the thinking of some members of the Senate, the Code had not been fully purged of constitutional infirmities and among them are some of our ablest parliamentarians.⁴ Thus, division of opinion as to the legitimacy of the Code under our Constitution persists and promises to erupt before our courts as a landmark in constitutional controversy.

Taken together, the views so far expressed on this question assume a form very much like the famous dilemma of President Lincoln. Is the authority of the Government under our Constitution too narrow to permit the reforms envisioned by the Code, or too

* This paper is based largely on data gathered in connection with a research project undertaken by the author for the Office of the Solicitor General, Department of Justice. The views and arguments herein presented, however, are purely personal.

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¹ R. A. No. 3844, effective August 8, 1963. (Referred to in the text as the Code).

² Tañada, *Land Bill Abstention Explained*. Text of speech delivered by Senator L. Tañada explaining his vote of abstention on the land reform measure, delivered in the Senate on July 9, 1963.

³ *Ibid.*, p. 4.

⁴ In his speech above cited, Senator Tañada stated:

"Nevertheless, despite the numerous and substantial improvements on the original measure, it is still my earnest conviction that the bill continues to suffer from constitutional infirmities, grave and serious enough to require me to withhold my vote on the measure. For I cannot, in conscience, vote YES for a bill which I believe to be gravely unconstitutional; and neither can I, in conscience, vote NO against a measure whose goals and objectives I fully subscribe to. Were mine the deciding vote, I honestly cannot say that I could still abstain because I wish to place the Nationalist-Citizens Party on record as alive to the urgency of land reform, and I would not want my personal opinion—fallible as it is—to stand in the way of approval of the measure. However, with the passage of this measure assured, I can cast my vote of abstention free from any apprehension." (*Ibid.*, p. 17).

broad as to sanction the destruction of property rights? The issues thus drawn put our courts, especially the Supreme Court, in a delicate position. But the menace of the horns is merely apparent, for the dilemma is not real. Land reform under the Code is not an instrument to destroy the institution of property. On the contrary, one essential aim of the Code is to strengthen the existing economic order through a more stable, because prosperous, society and through a more diffused ownership of rights over land.⁵ To be sure, the Code exacts a sacrifice, but to diminish is not to destroy. It is the thesis of this paper that under the circumstances, the sacrifice called for by the Code is not only necessary but reasonable. This is all that due process under the Constitution requires.⁶

I. THE SCHEME FOR COMPENSATION:

In its basic features, the compensation scheme provided in the Code follows existing approved practices.⁷ Thus, the ascertainment of the compensation due is left to the courts. The question of *how much* should be paid, expressed in units of Philippine currency, is to be resolved through the judicial process on the basis of the facts established in a hearing where the owner of the expropriated property is given an opportunity to be heard.⁸

Where the land expropriated is under leasehold, the court is directed, on the question of just compensation, to "consider as a basis, without prejudice to considering other factors also, the annual lease rental income authorized by law capitalized at the rate of six per cent (6%) per annum."⁹ Thus, the court is provided with a working guide in determining adequate compensation for each particular case. At the same time, however, the court is free to consider *other factors* which affect the value of the expropriated property. Thus, the Code, in this respect, abides by the principle of untrammelled judicial discretion in the fixing of compensation so as to insure its adequacy.

The legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public taking the property, through Congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry.¹⁰

⁵ Sec. 2, R. A. No. 3844.

⁶ CORWIN, *THE CONSTITUTION: WHAT IT MEANS TODAY*, 219-222.

⁷ Sec. 53, R. A. No. 3844.

⁸ Sec. 155, R. A. No. 3844.

⁹ Sec. 56, R. A. No. 3844.

¹⁰ *Monongahela Navigation Co. v. U.S.*, 37 L.Ed. 468.

Once the proper amount of just compensation has been established, the landowner is paid in *cash* and *securities* in the proportions authorized by the Code.¹¹

To appreciate the *reasonableness* of this arrangement, which will be discussed later, it is important to know the intricate system of safeguards and benefits provided in the Code for the protection and advantage of the holders of these securities. To remove as much as possible the objections to *postponed* payments of cash, which is the effect of payment in securities, the Code has invested them with all the attractive qualities known to investors, particularly as to *integrity* of the issuing entity, *certainty* of eventual payment, *negotiability*, *earning capacity*, *liquidity*, and *tax immunity*.¹²

The financing scheme centers on the Land Bank, which is capitalized at one and a half billion pesos, with an initial paid-in capital of two hundred million pesos for the current fiscal year and another hundred million pesos each year for the next two succeeding fiscal years.¹³

These are merely the initial assets of the Land Bank. As soon as its operations are well under way, the Bank will have the following *additional* assets:

- (1) Public lands duly titled in its name for distribution to resettled farmers;¹⁴
- (2) Private lands expropriated under the Code, title to which remains with the Bank;¹⁵
- (2) Private securities held by the Bank;¹⁶ and
- (4) Receivables from the tillers, which are secured by land titles held by the Bank.¹⁷

¹¹ Sec. 80 of the Code states:

"Making Payment to Owners of Landed Estate.—The Land Bank shall make payments in the form herein prescribed to the owners of land acquired by the Land Authority for division and resale under this Code. Such payment shall be made in the following manner: ten per centum in cash and the remaining balance in six percent, tax-free, redeemable bonds issued by the Bank in accordance with Section seventy-six, unless the landowner desires to be paid in shares of stock issued by the Land Bank in accordance with Section seventy-seven in an amount not exceeding thirty per centum of the purchase price.

In the event there is an existing lien or encumbrance on the land in favor of any Government institution at the time of acquisition by the Land Bank, the bonds and/or shares, in that order, shall be accepted as substitute collaterals to secure the indebtedness.

The profits accruing from payment shall be exempt from the tax on capital gains."

¹² Secs. 76, 77, 78, 81, 85, R. A. No. 3844.

¹³ Sec. 81, R. A. No. 3844.

¹⁴ Sec. 66, R. A. No. 3844.

¹⁵ Sec. 57, R. A. No. 3844.

¹⁶ Sec. 75 (5), R. A. No. 3844.

¹⁷ Sec. 60, R. A. No. 3844.

Against this array of assets in cash and in kind, the Bank issues securities for payment of compensation due under the Code. These securities are:

- (1) Shares of stock in the Bank and
- (2) Bonds.

SEC. 76. *Issuance of Bonds.*—The Land Bank shall upon recommendation by the Board of Trustees and approval of the Monetary Board of the Central Bank, issue bonds, debentures and other evidences of indebtedness at such terms, rates and conditions as the Bank may determine up to an aggregate amount not exceeding, at any one time, five times its unimpaired capital and surplus. Such bonds and other obligations shall be secured by the assets of the Bank and shall be fully tax exempt both as to principal and income. Said income shall be paid to the bondholder every six (6) months from the date of issue. These bonds and other obligations shall be fully negotiable and unconditionally guaranteed by the Government of the Republic of the Philippines and shall be redeemable at the option of the Bank at or prior to maturity which in no case shall exceed twenty-five years. These negotiable instruments of indebtedness shall be mortgageable in accordance with established banking procedures and practices to government institutions not to exceed sixty *per centum* of their face value to enable the holders of such bonds to make use of them in investments in productive enterprises. They shall also be accepted as payments for reparation equipment and materials.

The Board of Trustees shall have the power to prescribe rules and regulations for the registration of the bonds issued by the Bank at the request of the holders thereof.¹⁸

SEC. 77. *Issuance of Preferred Shares of Stock to Finance Acquisition of Landed Estates.*—The Land Bank shall issue, from time to time, preferred shares of stock in such quantities not exceeding six hundred million pesos worth of preferred shares as may be necessary to pay the owners of landed estates in accordance with Sections eighty and eighty-one of this Code. The amount of shares that the Bank may issue shall not exceed the aggregate amount needed to pay for acquired estates in the proportions prescribed in said Section eighty of this Code. The Board of Trustees shall include as a necessary part of the by-laws that it shall issue under Section seventy-five of this Code, such formula as it deems adequate for determining the net asset value of its holdings as a guide and basis for the issuance of preferred shares. The shares of stock issued under the authority of this provision shall be guaranteed a rate of return of six *per centum per annum*. In the event that the earnings of the Bank for any single fiscal year are not sufficient to enable the Bank, after making reasonable allowance for administration, contingencies and growth, to declare dividends at the guaranteed rate, the amount equivalent to the difference between the Bank's earnings available for dividends and that necessary to pay the guaranteed rate shall be paid by the Bank out of its own assets but the Government shall, on the same day that the Bank makes such payment, reimburse the latter in full, for which purpose such

¹⁸ Sec. 76, R. A. No. 3844.

amounts as may be necessary to enable the Government to make such reimbursements are hereby appropriated out of any moneys in the National Treasury not otherwise appropriated. The Bank shall give sufficient notice to the Budget Commissioner and the President of the Philippines in the event that it is not able to pay the guaranteed rate of return on any fiscal period. The guaranteed rate of return on these shares shall not preclude the holders thereof from participating at a percentage higher than six *per centum* should the earnings of the Bank for the corresponding fiscal period exceed the guaranteed rate of return. The Board of Trustees shall declare and distribute dividends within three months after the close of each fiscal year at the guaranteed rate unless a higher rate of return is justified by the Bank's earnings after making reasonable allowance for administration, contingencies and growth, in which case dividends shall be declared and distributed at a higher rate. The capital gains derived from the sale or transfer of such shares and all income derived therefrom in the form of dividends shall be fully exempt from taxes.¹⁹

The protective features of the Code constitute a significant basis for the *reasonableness* of the payment of compensation chiefly in the form of securities.

(1) The bonds will be evidences of debt of the Bank enforceable in any court of law in the same manner as the debt instrument of any bank, person, or institution; they will be redeemable at the option of the Bank at or before maturity, which in no case shall exceed 25 years. The shares of stock will be evidences of equity or ownership in the Bank. The shares of stock, however, can participate in the administration of the Bank only to a limited extent, to avoid bringing the Bank into the hands of former landowners interested in blocking the progress of the Land Reform Program or in directing the Bank to their own private ends. Neither may the stock be entitled to the institution of a derivative suit against the management of the Bank; this may create a bad impression enough to lose the public's confidence which is so essential to the successful operation of the Bank.

The Government will contribute the initial capital of the Bank with ₱200 million and thus be a co-owner and the substantial administrator of the Bank. However, the Government will not participate in the earnings of the Bank; this is to assure greater earning potential for the shares of the private stockholders.

(2) The bonds will be guaranteed a 6 per cent rate of interest payable every 6 months from the date of issue. The shares of stock will be assured a minimum 6 per cent rate of dividend earning, which means that the rate may be higher depending upon the profitability of the Bank. The shares are, furthermore, protected against inflation because of their growth capacity, i.e., their value will rise with the expansion of the Bank's operations.

(3) The bonds and stock will be completely exempt from taxation as to both principal and income. On the other hand, agricultural land will be subject to the local real property tax, the regular income tax, and

¹⁹ Sec. 77, R. A. No. 3844.

a host of other taxes on agricultural products. Thus, the rate of return on the bonds and stock will be higher than that of agricultural land.

(4) The bonds and stock will be as marketable as agricultural land. The bonds and stock can be sold for cash just like any other asset, and they can provide collateral for any loan from a government institution to the extent of 60 per cent of their face value. In addition, the bonds can be used to pay for (a) public agricultural land, which will be free from expropriation if developed under plantation administration; (b) other real properties of the Government; (c) shares of stock of all or substantially all of the assets of certain government corporations; and (d) reparations goods. The bonds may also be used as surety or performance bonds in all cases where real property may be used in lieu of such bonds.

Assets of Land Bank. The function of the Land Bank will be to guarantee, in the same manner as any bank or financial institution, the earning power, redeemability, and use as a medium of payment of these instruments. For this purpose, the Bank will not depend upon the credit standing of the Government but will have bankable assets of its own to support the bonds and stock. These are:

(1) The acquired private lands, the title to which will be with the Bank until completely paid for by their beneficiaries;

(2) The amortized payments on the land by the beneficiaries, and the interest thereon;

(3) The Bank's initial capital of ₱200 million, which will be contributed by the Government for investment by the Bank in private industries with proven viability and profitability;

(4) The special guaranty fund, which will be established by the Government under the administration of the Central Bank for the redemption of the bonds;

(5) Savings and time deposits, which the Bank will be authorized to receive from the beneficiaries of land reform;

(6) Prime public agricultural land, title to which will be transferred by the President of the Philippines to the Bank;

(7) The profits of the Bank from its investments and trading in securities;

(8) The borrowings authorized to be incurred by the Bank from domestic and foreign sources with the unconditional guaranty of the Republic of the Philippines; and

(9) The Government's unconditional guaranty on the minimum 6 per cent rate of earnings of the stock.

Comparison between bonds and stock and agricultural land. It is evident from the foregoing that the bonds will meet the economic requirements of agricultural lands, i.e., *earning power, growth potential, and liquidity*. With its burdensome taxes, agricultural land will earn less than its usual 6 per cent rate of return; on the other hand, the bonds and stock will earn a *minimum*, in all probability more than, 6 per cent. In addition, because production on land is subject to such variables as supervision, maintenance, natural elements, agrarian unrest, Constitutional limitations (e.g., expropriation), erosion or depletion, law and order, and community factors (e.g., conversion into non-agricultural area), its income will not be as stable as the *guaranteed* return on the bonds and stock.

The expansion of banking operations through reinvestments, trading, and further acquisition and redistribution of public and private lands will eventually be reflected in the growth of the stock; this is while the rise in value of agricultural lands will be kept at a minimum by the unattractiveness of said lands under the Land Reform Program, or will be taxed away by the capital gains tax provided by the National Internal Revenue Code. The capacity of the Bank to support the earning power, redeemability, and use as a medium of payment of the bonds and stock with its previously enumerated assets will in turn promote the integrity of said bonds and stock and gain the public's confidence in these instruments, thereby assuring their marketability; at the other extreme, there is no gainsaying the restrictive effect that the capital gains tax, the prospect of expropriation, the real property tax, and the other elements of the Land Reform Program will have on the marketability of agricultural lands.

From the point of view of the national economy, ownership in the Land Bank will provide a psychological advantage. Since the Bank will invest studiously in industrial ventures, the landowner-stockholder will have an indirect participation in, and consequently a new orientation to, industry. Eventually, the landowner will be directly investing his earnings from the bonds and stock in other industrial enterprises and even participating actively in the management of such enterprises. From a mere collector of land rent in agriculture, he will become a dynamic factor of industrialization.²⁰

II. THE NECESSITY FOR DEFERRED PAYMENTS:

The use of bonds to finance principally the compulsory purchase of lands is dictated by a number of imperatives underlying the reform program.

First, in order to attain its objectives, the government must acquire and redistribute as much land as it can within the shortest possible time. Piece-meal or sporadic redistribution carried out over long periods of time cannot bring about the desired increase in productivity, the liquidation of tenancy, the satisfaction of the land hunger among the peasantry, or that simultaneous impact of the Code upon all landholders and tenants affected as will insure the operation of the program in a fair and equal way.

The proposed Land Reform Program is an extensive long-term program. The reform is composed, in the first instance, of the acquisition on an extensive scale of suitable private agricultural lands for redistribution to tenants and other tillers. The acquisition and redistribution, which is expected to be made within a maximum period of fifteen years, will involve no less than two million hectares of tenanted land plus an indeterminate amount of idle and abandoned private land to accommodate 800,000 tenants and countless numbers of other landless tillers and owner-cultivators of less-than-family-size farm units. Within the next three

²⁰ *General Description of the Land Reform Program*, paper prepared by the Program Implementation Agency, Office of the President, dated Sept. 23, 1963 (Unpub.), pp. 26-28.

years alone, the Program hopes to transfer the ownership of nearly 800,000 hectares of land to the 300,000 tenants presently working thereon.²¹

For the government to pay *cash* for all the land it wishes to acquire for redistribution would unduly strain the resources of its treasury. In fact, such arrangement is clearly beyond its capability with current revenues.

Second, in order to achieve its objectives, the government must do much more than merely redistribute land. It must provide the new owners promptly and adequately with those services and facilities that spell the difference between primitive (subsistence) farming and modern agriculture.²² The Code requires, in fact, that before a redistribution is undertaken, the subsidiary programs of assistance must be ready to operate in the region concerned.²³

The Code provides for the following facilities and services:

(1) Activities for the promotion and organization of cooperatives and other farm associations.²⁴ The associations will primarily consider the need of the new leaseholders and owners for organizing themselves effectively to protect against trespass and other forms of property usurpation; to make possible on essentially small farm units large-scale operations, efficient and coordinated management, adoption of modern farm methods and techniques, and diversification of farm projects; to spread farm risks; to obtain maximum benefits from the most economical distribution and use of farm supplies and equipment, credit, technical services, and other government and private assistance and facilities, and form organized marketing; and to embark on social, community, and other self-help projects.

(2) Technical services, i.e., advice and information on, and demonstration of, modern scientific and generally accepted farm practices and uses of machinery and equipment.²⁵

(3) Credit facilities, e.g., production loans, and loans for the purchase of work animals, tillage equipment, seeds, fertilizers, poultry, livestock, feeds and other similar items, based upon production or available securities. The loans will be extended to individuals or, preferably, to cooperatives, at an interest rate not exceeding eight per cent per annum under a program of supervised credit.²⁶

(4) Marketing assistance to provide marketing outlets for the crops and other commodities produced by the farmers.²⁷

²¹ *Ibid.*, p. 29.

²² Alexander, "Agrarian Reform in Latin America," *AMERICAN JOURNAL*, Vol. III, No. 1, June, 1963, p. 36. In his cited article, Alexander stated:

"The mere distribution of land is not, of course, a sufficient reform by itself. An effective program of agrarian reform must make sure that the new proprietors have access to credit to finance their crops and to buy equipment, and it must provide technical assistance and help in marketing." (*Ibid.*, p. 36).

²³ Sec. 53, in relation to Chapter VII, R. A. No. 3844.

²⁴ Sec. 61, R. A. No. 3844.

²⁵ Sec. 124, R. A. No. 3844.

²⁶ Chapter V, R. A. No. 3844.

²⁷ Sec. 105, R. A. No. 3844.

(5) Distribution of farm supplies and equipment either to individuals or to cooperatives.²⁸

Third, assuming that the government is able to raise the necessary funds, there is grave danger of inflation, with its crippling effects on the economy, if the financing of the reform program were put on a wholly *cash* basis.

However, the Government itself will be incapable of initially paying cash to the landowners without jeopardizing the extent of the proposed reform. The financial strain on the Government will be unbearable. The two million hectares of tenanted land alone to be acquired under the Program, at a conservative ₱1,000 per hectare, will already mean an outlay of ₱2,000,000,000. The taxing and borrowing powers of the Government may be employed to the limit and yet not be able to meet these needs adequately. The Government can pay so much cash only by issuing new money and creating inflation.²⁹

The second big problem in purchase is how to pay for the land when it is bought. The government can pay the landlords cash, and when sufficient income is not available it may be tempted to print money. If there is a large amount of land involved, the result may be inflation, which will certainly not be to the advantage of the economy as a whole. Purchase by cash, therefore, is by and large limited to countries where the area to be purchased and the amount to be paid out is relatively small. Where there is large scale tenancy and large amounts of land to be purchased for redistribution, the government can seldom pay cash without endangering the whole economy. The other alternative, of course, is to give the landlords bonds; then the government can determine how those bonds may be used.³⁰

These are legitimate and adequate grounds, especially when taken together, for not providing compensation in cash.

III. PAYMENT OF BONDS IS A UNIVERSAL APPROACH TO THE PROBLEM OF COMPENSATION:

The method of deferring cash payments by paying in bonds as provided in the Code is neither unique nor original. It is founded upon the experience of no less than thirty other countries which instituted land reform programs before the enactment of the Code.³¹

²⁸ Sec. 69, R. A. No. 3844.

²⁹ *General Description of the Land Reform Program, supra*, p. 24.

³⁰ Bunce, A., "Financial Aspects of Land Reform in the Far East," LAND TENURE: (Proceedings of the International Conference on Land Tenure and Related Problems in World Agriculture held at Madison, Wisconsin, United States, 1951. Ed. by Parsons, Penn and Raup.) p. 484. Also, "Report of the Working Party," by Galbraith, J. and Marton, W. (Chairmen), in the same work, p. 496.

³¹ These include India, Japan, China, Burma, Korea, South Vietnam, Turkey, Mexico, Israel, New Zealand, Denmark, Puerto Rico, Egypt, Pakistan, Finland, West Germany, Italy, Spain, Bolivia, Greece, Guatemala, Algeria, Iraq, Iran, Syria, Venezuela, Colombia, Chile, Tunisia, Brazil and Dominican Republic. [Sources: *Land Reform* (Defects in Agrarian Structure as Obstacles to Eco-

In financing their land reform, each of these countries had to confront those considerations discussed above which virtually preclude cash payments for land purchases. Their answers, in nearly all cases, come to one basic pattern: a system of deferred cash payments, either through prescribed annual installments³² or through bonds redeemable after a stated number of years.³³ Caught between

nomic Development), United Nations (Dept. of Economic Affairs) 1951, pp. 51-63; *Progress in Land Reform*, United Nations (1954) pp. 58-87; *Progress in Land Reform* (2nd Report), United Nations (1956), pp. 127-137; *Progress in Land Reform* (3rd Report) United Nations (1962); Alexander, R., "Agrarian Reform in Latin America," *American Journal*, Vol. III, No. 1, June 1963, pp. 26-31].

³² The following are good examples:

CHILE: Land Reform Act No. 15,020, 15 Nov. 1962, *Diario Oficial* No. 25,403, 27 November 1962, p. 2501.

The purchase price shall be paid with a maximum of 20 per cent in cash and the remainder in equal installments for a period of not less than ten years. Payments by installment shall carry an annual interest rate of 4 per cent and may be readjustable according to the same index as is applied to the price of the plot. The provisions of this paragraph shall not apply in the case of lands acquired by public auction (par. 12, Article 11).

GUATEMALA: Decree 559 (Agrarian Statute) 25 Feb. 1956—*El Guatemalteco* Vol. CXLVI, No. 73 27 Feb. 1956, p. 758.

Art. 47: When the price has been determined, payment shall be made in cash, where the financial situation of the National Treasury permits, or in equal annual installments over a period not exceeding ten years. In the latter case, interest at the rate of 4% per annum shall be paid at the expiration of each annual period.

TURKEY: Decree No. 8751 promulgating Regulations governing the distribution of land to farmers, established in application of Article 63 of the Act No. 4753 of 11 June 1945 on the Distribution of Land to Farmers, after examination by the Council of State. 28 Feb. 1957. *Resmi Gazete* No. 9566, 22 March 1957, p. 16745.

In the case where the funds allocated for expropriation purposes are inadequate to meet the payment of compensation for the expropriated immovable properties, the amounts remaining unpaid shall be met from the appropriation of the following year plus interest at the official rate accruing for the period elapsing from the date of termination of the expropriation procedure until the date of payment. Delay in the payment owing to the insufficiency of funds cannot constitute an obstacle to the expropriation of the immovable property, its registration in the name of the Treasury, and its distribution. (Art. 42, last par.).

³³ The following are good examples:

COLOMBIA: Act No. 135, 13 December 1961, *Diario Oficial* No. 30691, 20 December 1961, p. 80, 81.

Art. 62. Land acquired by the Institute as a result of voluntary sale or expropriation shall be paid in the following manner:

1. Uncultivated land, in class B Agrarian Bonds issued in pursuance of this Act.

2. For improperly farmed land, in cash. An amount equivalent to 20% of the price shall be paid on the date of transaction without however exceeding a maximum of one hundred thousand (100,000) Colombian pesos. The remainder shall be payable in eight successive annual installments of equal value, the first of which shall fall due one year after the date of the transaction.

Other types of farm subject to this mode of payment are:

1) land farmed by small-scale tenant farmers or share croppers

inelastic budgetary outlays and the horrors of inflation, these governments saw in this system the most feasible and equitable approach to the problem of financing land reform.

The burden of compensation expropriated landholders has, as a rule, been spread over a period of years; instances where indemnity has been paid all at one time in cash, as in Colombia and Spain, have been the exception. Thus, former landowners have usually been given bonds for all or a substantial part of the compensation amount established for their

when in case of share-croppers the owner does not participate in the management of the farm and does not assume responsibility for any part of the costs or operation involved. (See par. 3, Art. 55).

3. For other types of land, in cash. An amount equivalent to 20% of the price shall be paid on the date of the transaction without however exceeding a maximum of three hundred thousand (300,000) Colombian pesos.

SYRIA: Consolidated Text of Legislative Order No. 161 pf. 27 Sept. 1958, effective 15 May 1962.

Art. 10. Compensation shall be paid in the form of public bonds bearing interest at 1.5 percent per year from the date of issue of this Legislative Decree in respect of land already expropriated and from the date of actual expropriation in respect of land actually expropriated at a later date, in accordance with the following provisions:

a) In ten equal annual payments to persons whose compensation does not exceed 100,000 Syrian pounds;

b) In fifteen annual payments to those whose compensation exceeds 100,000 Syrian pounds, provided that during the first ten years the annual payment shall not be less than 10,000 Syrian pounds.

Said bonds shall be registered and shall be negotiable through the banks by persons enjoying citizenship of the Syrian Arab Republic.

TUNISIA: Act No. 58-63 of 11 June 1958 on Agrarian Reform in the Lower Valley of the Nedherda as amended by the Act No. 60-6, 26 July 1960—*Journal officiel de la Republique Tunisienne* No. 36, 29 July, 1960, p. 1002, (Revised text).

The indemnity shall be payable in Treasury Bonds yielding 2% interest and redeemable in twenty-five annual installments as from the fifth budgetary year following the year of the publication of the Decree of Expropriation.

PAKISTAN: West Pakistan Land Reforms Regulation—7 Feb. 1959, *The Gazette of Pakistan Extr.*, 3 March 1959, p. 297.

Compensation payable under this paragraph shall be paid through heritable bonds which shall be transferable but shall not be negotiable through or with bonds. (Sec. (2) of Par. 17).

All bonds shall bear taxable simple interest at the rate of four per cent per annum payable annually in the prescribed manner. (Sec. (3), Par. 17).

BOLIVIA: Legislative Decree No. 03464 relative to Agrarian Reform—2 August 1953—*Publicacion de la Subsecretaria de Prensa, Informaciones y Cultura del Palacio de Gobierno*, 1953.

Lands affected by this Legislative Decree in accordance with Article 84 shall be paid for at the current registered value to the extent corresponding to the part concerned, with Agrarian Reform Boards which shall earn a non-capitalizable interest of 2 per cent per annum, over a term of 25 years (Article 156).

GREECE: Legislative Decree No. 2185 relative to compulsory expropriation of certain land for the settlement of landless peasants and stockbreeders—15 August 1952—*Gov't. Gazette*, Pt I No. 217, 15 Aug. 1952, p. 1418.

The compensation is in the form of bonds, redeemable in 20 years. (Art. 40.)

property. This has eased budgetary difficulties (especially as the rates of interest have been low, even by long term bond standards) and it has served to avoid the inflationary impact of large lump-sum disbursements.³⁴

In India, compensation to zamindars has been given partly in cash and partly in bonds, the proportions varying from State to State. Sometimes, pending final decision on compensation methods, partial *ad hoc* methods were made. In Madras State, as much as half of the final settlement was paid in cash. In West Bengal, the zamindar received the whole indemnity in cash if his net income from the land was less than 250 rupees, but higher incomes were compensated with progressively smaller proportions of cash; the twenty-year bonds for the remainder are not negotiable. In most Indian states the bonds given in compensation are negotiable and are redeemable in equal annual installments over periods varying from twenty to forty years. Owners of land in excess of ceilings have likewise received cash and bonds in proportion varying from state to state, and various sliding scales have been applied. Usually these compensation bonds are transferable, bear interest at 3 to 5 per cent per annum, and can be redeemed in equal annual installments over twenty years. In Maharashtra State, two classes of bonds are given, one type redeemable over twenty years in equal annual installments and the other redeemable at par after twenty years.³⁵

SOUTH VIETNAM: Ordinance No. 57 governing Agrarian Reform. 22 Oct. 1956—*Cong-Bao Viet-nam Cong-Hoa* No. 53 17 Nov. 1956, p. 2961.

Art. 21. "The indemnity shall comprise:

(a) payment in cash of 10% of the value of the expropriated lands;
(b) the balance, in registered securities guaranteed by the State and not negotiable, bearing an annual interest of 3% and redeemable within 12 years.

ALGERIA: Decree 56-691, relative to Agrarian Reform in Algeria 13 July 1956—*Journal officiel de l'Algeria* No. 69, 34 Aug. 1956, p. 1498.

Compensation payments shall be made by the issue to the claimants of negotiable bonds which shall form part of a single fund guaranteed by the State.

These bonds shall bear interest at 6 per cent and shall be redeemable after a maximum term of twenty years.

IRAQ: Agrarian Reform Law No. 30. 30 Sept. 1958—*The Weekly Gazette of the Republic of Iraq* No. 20, 3 Dec. 1958, p. 206.

"Art. 8. Compensation shall be payable by means of governmental bonds carrying a 3% interest which shall be amortized within a period not exceeding 20 years. These bonds shall be personal and untransferable except to an Iraqi individual. The dates and conditions for the mortgage of these bonds and the conditions governing their negotiability shall be fixed by a legislation."

ITALY: *Land Reform in Italy*, FAO Agricultural Studies No. 53, 1961.

Determination of expropriation indemnity. This is based on the taxable values ascertained and ascertainable for the progressive tax as regards patrimony. Payment of these indemnities (Acts of 18 May 1951 and 15 March 1956, Nos. 333 and 156) is in negotiable government bearer stocks at 5 per cent interest, redeemable within 25 years with the exception of payment of part in cash to those obliged or intending to carry out works of land improvement (Act of 21 March 1953, No. 224), p. 23.)

³⁴ *Progress in Land Reform* (3rd Report), United Nations (1962), paragraph 67, p. 71.

³⁵ *Ibid.*, par. 68, pp. 71-72.

The form of payment for expropriated land has also been of great importance. It is generally impossible for the government to pay in cash for all the land it wants to expropriate. As a result, virtually all the reform laws have provided for payment in interest-bearing government bonds. In Mexico, Guatemala, Bolivia and Cuba the legislation has called for complete payment in bonds, although in the Cuban case these bonds have never been issued. In Venezuela, the government pays 10 per cent of the expropriation price in cash, and the rest in bonds of from 10 to 20 year's duration, paying not more than five per cent interest per year. The new Colombian law provides that when unused land is expropriated, payment shall be made in 25-year bonds, paying a two per cent interest. In other cases, land shall be paid for in cash, with annual payments extending from five to eight years, depending upon the kind of land which is being purchased.³⁶

While it may be admitted that in many of these countries the great principles of constitutional government are not as strictly observed as in the Philippines, it deserves stress that all these countries are members of the Free World and that a good number of them have constitutional governments. In all of these regimes, the institution of private property is recognized and protected.³⁷ The

³⁶ Alexander, R., *op. cit.*, pp. 32-33.

³⁷ The corresponding constitutional provisions of the following countries announce similar principles of just compensation, thus:

BOLIVIA—Private property is guaranteed, provided that the use made thereof shall not be prejudicial to the public interest. Expropriation is effected for reasons of public utility or when property does not serve a social purpose; it must be authorized in accordance with the law and upon previous and just indemnity. (*Political Constitution* of the Bolivian State of November 23, 1945, Art. 17.)

CHILE—Inviolability of all property, without any distinction. No one can be deprived of property under his control, or of any part thereof, or of the right he may have therein, except by virtue of a judicial decree or a writ of expropriation on account of public interest, conformable to a law. In this case indemnification, as may be agreed on, or as may be determined in the corresponding court proceedings, shall be paid the owner in advance.

The exercise of ownership is subject to the limitations or regulation that the maintenance and advancement of social order may demand, and, in this sense, the law may impose obligations or servitudes for public benefit in favor of the general interests of the State, of the health of the citizenry, and of the public welfare. (*Political Constitution* of the Republic of Chile, September 18, 1925, (as amended), Art. 10).

COLOMBIA—Private property and other rights, acquired under just title, according to the civil laws, by natural or juridical persons, are guaranteed and may not be ignored, nor disturbed by subsequent laws. When the application of a law issued for reasons of public utility or social interest results in a conflict between the rights of individuals and the necessity recognized by the same law, the private interest must yield to the public or social interest.

Property is a social function which implies obligations.

For reasons of public utility or of social interest defined by the lawmaker, there may be expropriation by judicial order and after indemnification.

Nevertheless, the lawmaker, for reasons of equity, may determine the cases in which there shall be no occasion for indemnification, upon the favorable vote of the absolute majority of the members of both houses.

best evidence of this respect for property is that so far as available data shows, the lands appropriated were redistributed among the farmers and peasants and that landowners were fully compensated

(Political Constitution of the Republic of Colombia, with amendments up to February 16, 1945, Article 30).

GREECE—No one shall be deprived of his property except for the public benefit, which shall be duly proved, when and as the law directs and always after full indemnification. The indemnification may be provisionally fixed judicially after a hearing or summoning of the beneficiary who may be inobliged, at the discretion of the judge, to afford an appropriate guarantee in a manner determined by law. Prior to the payment of the final provisional indemnification all the rights of the proprietor shall remain intact and dispossession shall be prohibited. Special laws determine ownership and disposal of mines, quarries, archeological treasures, and mineral running and subterranean waters.

Ownership and fish-breeding operation and administration of shoals and large lakes are likewise regulated by law.

Special laws regulate requisitioning for the needs of the armed forces in the case of war or mobilization or in order to meet immediate social needs liable to endanger public order or health.

Interpretation Clause:

The term "property" shall be deemed to include property. (The Constitution of Greece, January 1, 1952, Article 17).

GUATEMALA—All persons may freely dispose of their possessions in accordance with the laws. The State reserves its power to limit the authority over real estate situated within 15 kilometers of the sea coasts and of the terrestrial frontiers of the country, as well as over grounds bordering on rivers and lakes, to the extent fixed by the laws. No expropriation shall be resolved upon except in cases of public utility or necessity; (Political Statute of the Republic of Guatemala, The Government Council of the Republic of Guatemala, August 10, 1954, Article 15 (c)).

INDIA—(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India.

as provided in the corresponding legislation.³⁸ In striking contrast, the land seized by the communist governments in North Korea, China, North Vietnam, to mention the Asian examples, were converted into state farms and hence became state properties.³⁹ To

and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property. (Constitution of India, as amended in 1951, Art. 31).

IRAN—No owner can be deprived of his land except by sanction of the Shari, and then even only after the fixing and payment of a just price. (Iranian Constitutional Law—passed by the National Assembly and signed by the Shah. Teheran, October 8, 1904—Article 15).

IRAQ—Rights of ownership shall be safeguarded. No person's goods or property shall be expropriated except for the public benefit, and in the circumstances and in the manner prescribed law, and on condition that just compensation is paid.

Forced loans may not be imposed, nor may goods or property be seized, or prohibited goods confiscated, except in accordance with law.

Unpaid forced labor and the general confiscation of movable and immovable property are absolutely forbidden. (The Iraq Constitution, March 21, 1925, Article 10).

ITALY—Property is public or private. Economic assets belong to the State, to institutions, or to private persons.

Private property is recognized and guaranteed by law, which specifies the modes of acquisition and enjoyment thereof, as well as its limits, in order to assure its social function and to render it accessible to all.

In the cases provided for by law, and on the basis of compensation, private property may be expropriated for reasons of public interest. (Constitution of the Italian Republic, Approved by the Constituent Assembly on December 22, 1947, and effective January 1, 1948, Article 42).

JAPAN—The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor. (Constitution of Japan, Promulgated November 3, 1946).

KOREA—The right of property shall be guaranteed. Its nature and restrictions shall be defined by law. The exercise of property rights shall conform to the public welfare. Expropriation, use or restriction of private property for public purposes shall be accompanied by due compensation in accordance with the provisions of law. (The Constitution of the Republic of Korea, July 12, 1948).

MEXICO—The ownership of the lands and waters comprised within the boundaries of the national territory is vested originally in the nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

Private property shall not be expropriated except for reasons of public utility and subject to payment of indemnity. (Political Constitution of the United States of Mexico, January 31, 1917, Article 27).

SYRIA—(6) Expropriation on grounds of public utility shall be allowed and shall be effected in accordance with a law giving the right to a fair compensation. (The Constitution of Syria, September 5, 1950, Article 21 (6)).

VENEZUELA—The right of property. By virtue of its social function, property shall be subject to taxes, restrictions and obligations established by law, in accordance with which also expropriation of any kind of property may be declared by final judgment and payment of the price. (Constitution of Venezuela, April 11, 1953, Article 35 [9]).

³⁸ See authorities cited in footnote 31. Also Klein, S., *THE PATTERN OF LAND TENURE REFORM IN EAST ASIA*, New York (1958), pp. 19-110).

³⁹ Klein, *ibid.*, pp. 111-188.

make matters worse, the landowners were not only not compensated but were mistreated, imprisoned or killed.

Thus, while the collective experience of these countries by way of deferring payments of compensation for expropriated land is not conclusive as to the reasonableness of the method, it deserves great weight and consideration.

IV. JUST COMPENSATION DOES NOT ALWAYS REQUIRE MONEY:

The Constitution enjoins the payment of *just compensation* whenever private property is expropriated.⁴⁰ It is settled that whatever be the means of ascertaining compensation, it should be *adequate* in order that the constitutional requirement will be deemed complied with.⁴¹ What is adequate is essentially a matter for the courts to ascertain in each particular case, taking into account

⁴⁰ Par. 2, Art. III, Sec. 1 and Art. XIII, Sec. 4, Constitution of the Philippines.

⁴¹ *Manila Railroad Co., v. Velasquez*, 32 Phil. 286. In this case, the Supreme Court stated:

"The owner of condemned land is entitled to just compensation. That is all the law allows him. 'Compensation' means an equivalent for the value of the land (property) taken. Anything beyond that is more and anything short of that is less than compensation. To compensate is to render something which is equal in value to that taken or received. The word 'just' is used to intensify the meaning of the word 'compensation'; to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample. 'Just compensation,' therefore * * * means a fair and full equivalent for the loss sustained." (*Tañada & Carreon, Political Law of the Philippines*, (1962 ed), Vol. II, p. 101).

As expressed by the U.S. Supreme Court:

"The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.

It is conceivable that an owner's indemnity should be measured in various ways depending upon the circumstances of each case and that no general formula should be used for the purpose. In an effort, however, to find some practical standard, the courts early adopted, and have retained, the concept of market value. The owner has been said to be entitled to the "value," the market value, and the "fair market value" of what is taken. The term 'fair' hardly adds anything to the phrase 'market value,' which denotes what 'it fairly may be believed that a purchaser in fair market conditions would have given,' or, more concisely, 'market value fairly determined.'" (*United States of America v. Victor No. Miller et al.*, 87 L. Ed., p. 342-343).

"These questions are not resolved by the familiar formulas available for the conventional situations which gave occasion for their adoption. As Mr. Justice Brandeis observed, 'Value is a word of many meanings.' *Southwestern Bell Telephone Co. v. Public Service Comm.*, 252 U.S. 276, 310, 43 S. Ct. 544, 554, 67 L. Ed. 981, 31 ALR 807. For purposes of the compensation due under the Fifth Amendment, of course, only that 'value'

various matters, including but not exclusively, standards or formulas provided by law.⁴² Under the Code, the courts are free to arrive at any *amount* or *sum* they deem reasonable.⁴³ This insures that the compensation will be adequate in amount.

The more serious question is whether the Constitution prescribes a particular *form* of property for the payment of just compensation.

It is agreed that whatever be the case with other Constitutions, *our* Constitution does not expressly require that just compensation be money. Its language in connection with expropriation is wholly free of any express reference to any *pecuniary* standard. There is, of course, the view that the requirement of money is express, because the term "just compensation" means money, but any tyro can see that this assertion involves interpretation, not merely reading.

need be considered which is attached to 'property,' but that only approaches by one step the problem of definition. The value of property springs from subjective needs and attitudes; its value to the owner may therefore differ widely from its value to the taker. Most things, however, have a general demand which gives them a value transferable from one owner to another. As opposed to such personal and variant standards as value to the particular owner whose property has been taken, this transferable value has an external validity which makes it a fair measure of public obligation to compensate the loss incurred by an owner as a result of the taking of his property for public use. In view, however, of the liability of all property to condemnation for the common good, loss to the owner of non-transferable values deriving from his unique need for property or idiosyncratic attachment to it, like loss due to an exercise of the police power is properly treated as part of the burden of common citizenship. See *Omnia Commercial Co. v. United States*, 261 U.S. 502, 508-509, 43 S. Ct. 437, 438, 67 L. Ed. 773. Because gain to the taker, on the other hand, may be wholly unrelated to the deprivation imposed upon the owner, it must also be rejected as a measure of public obligation to requite for that deprivation. *McGovern v. New York*, 229 U.S. 363, 33 S. Ct. 876, 57 L. Ed. 1228, 46 L.R.A.N.S., 391; *United States ex rel. T.V.A. v. Powerson*, 319 U.S. 266, 63 S. Ct. 1047, 87 L. Ed. 1390.

"The value compensable under the Fifth Amendment, therefore, is only that value which is capable of transfer from owner to owner and thus of exchange for some equivalent. Its measure is the amount of that equivalent. But since a transfer brought about by eminent domain is not a voluntary exchange, this amount can be determined only by a guess, as well informed as possible, as to what the equivalent would probably have been had a voluntary exchanges of similar property have been frequent, the inference is strong that the equivalent arrived at by the haggling of the market would probably have been offered and accepted, and it is thus that the 'market price' becomes so important a standard of reference. But when the property is of a kind seldom exchanged, it has no 'market price,' and then recourse must be had to other means of ascertaining value, including even value to the owner as indicative of value to other potential owner enjoying the same rights. Cf. *Old South Association v. Boston*, 12 Mass. 299, 99 N.E. 235. These considerations have special relevance where 'property' is 'taken' not in fee but for an indeterminate period." (*Kimball Laundry Co. v. United States*, 69 S. Ct. 1438).

⁴² TAÑADA & CARREON, *POLITICAL LAW OF THE PHILIPPINES*, (1962 ed.) Vol. II, pp. 101-102.

⁴³ Secs. 56 and 155, Republic Act No. 3844.

At any rate, this is improbable because if the Constitution is meant to signify money where it reads "just compensation," another expression would have been used, as there is no dearth of words to express the thought.

But if payment in money is not expressly provided for in our Constitution, is it an *implied* requirement?

In the usual situations involving the expropriation of private property, the circumstances *reasonably require* the payment of money and to this extent such payment may be deemed *fairly implied* in the constitutional mandate of just compensation.

In such usual situations, the great weight of authority is that the property taken by expropriation should be paid for in cash.

Usually payment for property taken under the power of eminent domain must be made in money unless there is an agreement to the contrary. According to some cases, it is erroneous to reserve to the landowner certain easements or privileges, or to provide that the condemnor shall do certain things for the benefit of such owner in payment or reduction of damages, but the view has been taken that petitioner's attempt to condemn a special easement, leaving all other rights, privileges, and easements vested in the owner, is not an attempt to pay part of the compensation, in property or an interest herein, and, therefore, not violative of the rule requiring the payment of compensation in money.

While some statutes provide for the substitution, in certain cases, of other real property where real property which is already devoted to certain public purposes is taken, usually the owner cannot be compelled to accept other property in payment, as, for example, other lands, or a grant of a right of way over adjoining land, nor can he be required to accept the bonds of the condemning corporation, nor can he be required to accept scrip, or improvement certificates. The giving of a check to the landowner, which is finally rejected because of an erroneous notation thereon as to the purpose of the check, does not constitute payment.⁴⁴

Few constitutions prescribe the means by which compensation shall be paid, but it is invariably held that there is an implied requirement that the compensation be in money. Hence it is that statutes have been held to be unconstitutional where they provide that the owner of lands taken shall be awarded other lands in satisfaction, or that he shall take his payment in warrants or in stock or bonds of the corporation acquiring the lands in condemnation proceedings.⁴⁵

Notwithstanding the generality of the language in which the rule is couched, however, exceptions are recognized. Cash payment is not compelled by due process in situations where *payment in some other form is reasonable*. In such exceptional cases, there is no im-

⁴⁴ 29 C.J.S. 1029-1030.

⁴⁵ 18 Am. Jur. pp. 752-753.

plied requirement that just compensation means the payment of money.

Thus, the great weight of authority is to the effect that where the condemnor sets off the value of easements, rights or beneficial interests in the land expropriated against the damages sustained, there is just compensation, notwithstanding that to the extent of the set off, the compensation was not in money.⁴⁶

And it is settled that where special benefits accrue to the landowner from the expropriation, such special benefits may be set off against the damages and the value of such benefits is deemed just compensation although not in money.⁴⁷

Admitting that these cases may be persuasive on the point, the landowners then argue that here, as to some lots, parcels of tracts, special benefits set off against the value of the part taken, as well as against severance damage, resulted in no award in money to the landowners. Certainly, they say, since they get no money at all for the part taken, they have been denied just compensation therefor. But the Fifth Amendment does not require payment in money. The constitutional command is "just compensation." And the Supreme Court has held that special benefits to the remainder of a lot, parcel or tract is just compensation." And the Supreme Court has held that special benefits to the remainder of a lot, parcel or tract is just compensation for the part taken. Merely because the value of the special benefits is the same as, or greater than, the sum of the value of the part taken and severance damages to the remainder, thereby requiring no payment in money to the landowner, that does not mean, logically and mathematically it cannot mean, that just compensation has not been awarded to the landowner for the part taken. Money is but a medium of exchange. When just compensation is obtained through direct benefits to the remainder, use of the medium becomes unnecessary. The quotations, urged by landowners, from certain cases which indicate that just compensation means money are aberrations which become clear when the full text of the opinions are read.⁴⁸

In construing the provision of the Indian Constitution on compensation for expropriated property, the Allahabad High Court ruled:

Compensation in article 31(2) means the equivalent in value of property taken or acquired, subject only to this qualification that such equivalent need not be paid in money. Any provision for giving by way of compensation less than the equivalent will not amount to compensation in law and will constitute a contravention of that clause.⁴⁹

⁴⁶ *De Penning v. Iowa Power and Light Co.*, 33 NW 2nd. 503. Also cases collected in 26 L.R.A. pp. 753-755.

⁴⁷ *U.S. v. Miller*, 317 U.S. 369, 63 S. Ct. 276, 87 L. Ed. 336; *Bauman v. Ross*, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270.

⁴⁸ *U.S. v. 1000 Acres of Land*, 162 F. Supp. 219.

⁴⁹ *Rajah Suryapal Singh v. U.P. Government*, A.L.R. 1951, Allahabad 675. cited in Pylee, CONSTITUTIONAL GOVERNMENT IN INDIA, New York (1960) p. 280.

In ruling thus, the High Court sustained the constitutionality of the Uttar Pradesh Zamindari Abolition and Land Reform Acts of 1950, which provided for compensation of expropriated lands partly in cash and partly in bonds.⁵⁰

Our Supreme Court has indicated that just compensation may consist of assets paid over, not necessarily in pecuniary form. In the case which comes closest to this point,⁵¹ the City of Baguio sought a declaration of its rights under Republic Act No. 1383, claiming that insofar as said Act purported to transfer its municipal waterworks to the National Waterworks and Sewerage Authority, "said Act is unconstitutional because it has the effect of depriving the plaintiff of the ownership, control and operation of said waterworks system *without compensation and without due process of law.*"

On the question of compensation, the law provides the following:

x x x All existing government-owned waterworks and sewerage systems in cities, municipalities, and municipal districts, including springs and other water sources, as well as the waterworks and sewerage bonds, sinking funds, and all indebtedness in general of the said Metropolitan Water District, and government-owned waterworks and sewerage systems are transferred to the National Waterworks and Sewerage Authority, and the Board is hereby authorized and directed to receive and assume all such assets and liabilities on behalf of the said Authority and in turn to pledge such assets as security for the payment of the waterworks and sewerage bonded debt.

The net book value of the properties and assets of the Metropolitan Water District and of government-owned waterworks and sewerage systems in cities, municipalities, or municipal districts, and other government-owned waterworks and sewerage systems shall be received by the Authority in payment for an equal value of the assets of the National Waterworks and Sewerage Authority.⁵²

In finding for the plaintiff corporation, the high court was careful to stress that the constitutional defect of the law was *not the form* in which compensation was to be paid but its deficiency in administrative provisions as will assure that the compensation provided will be paid. In short, the defect was inadequacy of provision for effective payment of the compensation provided.

It is clear that the State may, in the interest of national welfare, transfer to public ownership any private enterprise upon payment of just

⁵⁰ *Ibid.*, 278.

⁵¹ *City of Baguio v. NAWASA*, G.R. No. L-12032, Aug. 31, 1959; 57 O.G. 1579. To the same effect, *City of Cebu v. NAWASA*, G.R. No. L-12892, April 30, 1960.

⁵² Sec. 8, Republic Act No. 1383.

compensation. At the same time one has to bear in mind that no person can be deprived of his property except for public use and upon payment of just compensation. There is an attempt to observe this requirement in Republic Act No. 1383 when in providing for the transfer of appellee's waterworks system to a national agency it was directed that the transfer be made upon payment of an equivalent value of the property. Has this been implemented? Has appellant actually transferred to appellee any asset of the NAWASA that may be considered just compensation for the property expropriated? There is nothing in the record to show that such was done. Neither is there anything to this effect in Office Memorandum No. 7 issued by the NAWASA in implementation of the provision of Republic Act No. 1383. The law speaks of assets of the NAWASA but they are not specified. While the Act empowers the NAWASA to contract indebtedness and issue bonds subject to the approval of the Secretary of Finance when necessary for the transaction of its business (sec. 2, par. [L], sec. 5, Act No. 1383), no such action has been taken to comply with appellant's commitment insofar as payment of compensation of appellee is concerned. As to when such action should be taken no one knows. And unless this aspect of the law is clarified and appellee is given its due compensation, appellee cannot be deprived of its property even if appellant desires to take over its administration in line with the spirit of the law. We are therefore persuaded to conclude that the law, insofar as it expropriates the waterworks in question without providing for an *effective payment* of just compensation, violates our Constitution.⁵³

The suggestion is clear that had the statute provided for the payment of NAWASA bonds or other certificates of indebtedness as compensation for the waterworks of plaintiff corporation, computed according to its net work value, there would have been compliance with the compensation requirement of the Constitution. The law was defective in failing to provide for administrative directives *that would get paid to the parties concerned the compensation provided.*

V. CASH REQUIREMENT DOES NOT APPLY TO THE CODE:

The doctrine prevailing even in States where the constitution does not expressly require cash, that compensation implies and requires the payment of money for expropriated property, is easily understandable in the light of the factual situations in which it was developed. Analysis of the cases shows that under the circumstances, the payment of money was the only *fair and reasonable* mode of compensation. In virtually all these cases, the taking consisted of isolated, sporadic acts of condemnation for community improve-

⁵³ *City of Baguio v. NAWASA, supra.*

ments⁵⁴ or for the development of corporate business,⁵⁵ involving relatively small pieces of property with a value, in every case, well within the capacity of the condemnor to pay in cash.

In many of the cases, especially the earlier ones, the purpose of the requirement was to protect the owner whose property has been taken from being forced to accept other property in payment which he did not want or need and which was doubtful as to present value or prospects.⁵⁶ In these cases, the properties taken were small parcels with small value, which the condemnor could presumably well afford to compensate in cash.

In striking contrast, the expropriation authorized under the Code has for its aim no less than to modernize agriculture in the Islands, enhance productivity and stabilize internal security by liquidating the oppressive tenancy system and satisfying the ancient land hunger of the peasantry. To succeed in these aims, vast tracts of land must be taken within a limited time schedule, all in all not less than *two* million hectares of agricultural land. The total value of these lands amounts to an astronomical sum, which is far beyond the capacity of the national budget if payment must be made immediately in cash. So great is the amount of money involved that even if the Government could get the required sum (and it can if forced to), it might not be feasible to pay entirely and immediately in cash, in view of the grave perils of inflation.

In view of these circumstances, expropriation under the Code should not be held subject to the doctrine that compensation means immediate payment of money. The situation is entirely divorced from the circumstances of the various cases for which the rule was devised. Because of the extreme disparity of the circumstances, it would, indeed, be unreasonable to apply the doctrine to expropriation under the Code. The dominant considerations of budgetary incapacity and risk of inflation, coupled with the irresistible compulsions underlying the reform program, clearly underscore the system of deferred payment under the Code as the *reasonable* mode of compensation. Land reform is more than getting of a roadway, the re-location of a railroad track, the improvement of drainage and the

⁵⁴ Typical examples are: *People v. Reed*, 33 P.2d. 879 (highway); *Shurtleff v. Salt Lake City*, 82 P.2d. 861 (water supply); *Wassenich v. City*, 186 P. 533 (street); *State v. Smith*, 171 P.2d. 853 (highway); *Hoesly v. Dept. of Roads and Irrigation*, 9 NW 523 (highway); *City of Minot v. Olson*, 173 NW 458 (alley opening).

⁵⁵ *De Penning v. Iowa Power and Light Co.*, 33 NW 2d 503 (site for power transmission equipment); *Chicago, S.F. & C.R. Co. v. McGrew*, 104 Mo. 282 (railroad right of way); *Ham v. Salem*, 100 Mass. 350 (right of way of water company).

⁵⁶ See Note, 26 L.R.A. 753-755.

like, which is the sort of situation presented in these cases in which the doctrine was developed. Such improvements merely tend to minister to the *convenience* of the public through an improvement in facilities. Even in those cases where the necessity of the taking is clear, the extent of the benefit is *local* for the most part. None of these cases presents a situation where expropriation is an *emergency* instrument to achieve social justice and to correct widespread maladjustments which impede economic growth, depress the farm population and threaten the stability of the existing order. As they have never been confronted with the awful task of remaking their society through a redistribution of rights over land, American judges have been, and continue to be, justified in insisting that expropriation should not be undertaken until the condemnor can afford to pay in cash. The impact of this doctrine has been merely to postpone improvements or the expansion of business. No crisis that can produce social upheavals is likely to result just because, for lack of immediate cash, a street could not be widened, or a school built, or a railroad track extended or relocated. Secure in the strength of an industrial economy able to provide the highest standards of living the world has ever known, American judges merely reflect the common sense of their affluent society in requiring that no one, whether a town, county or railroad company, should venture on getting something by expropriation unless there is ready cash to pay for it.

Undoubtedly, this is a sane rule and would receive indorsement of our courts in similar situations. Thus, cash on hand should be required where a province wishes to secure a right of way, or where a town desires to have a lot for a school site, or where a public utility would like certain parcels of land for its telephone poles or electric generators.

Our Rules of Court, in fact, assume the rule to be thus⁵⁷ and the few cases on expropriation decided by our Supreme Court involve compensation in cash.⁵⁸

But land reform is quite, of course, another thing. The considerations already mentioned which should control the question of compensation are so distinctive as to make expropriation under the Code *sui generis*. The urgency of reform, the necessity of prompt action, the vastness of the properties affected and the great sums

⁵⁷ Rule 69, Rules of Court.

⁵⁸ *Manila Railroad Co. v. Velasquez*, 32 Phil. 286; *Manila Railroad Co. v. Fabie*, 17 Phil. 206; *City of Manila v. Estrada*, 25 Phil. 208; *Ilocos Norte v. Cia. General*, 53 OG 7687; *Prov. Gov't. of Rizal v. Caro de Araullo*, 58 Phil. 308; *Phil. Oil Dev. Co. v. Go*, G.R. No. L-4007, Jan. 23, 1952; *Phil. Railway Co. v. Solon*, 13 Phil. 34; *Republic v. Lara*, 50 O.G. 5778; *City of Manila v. Ruy-mann*, 37 Phil. 421; *City of Manila v. Roxas*, 60 Phil. 215.

involved which the budget cannot provide and which the government should not pay over at the risk of inflation, all these factors combine into a situation where *reasonableness* lies with deferred payments, not with cash on the line.

VI. DEFERRED PAYMENTS CONSTITUTIONAL:

One thing should be made very clear. In stressing that for purposes of the Code, bonds satisfy the requirement of just compensation, what is meant is not that payment will not be made in cash, but that such payment is deferred to the date of maturity of the bonds.

The compensation scheme provided in the Code is not an undertaking to pay in *kind* for expropriated lands; it is on the contrary, an undertaking to pay the full value in cash. However, only ten per cent of the compensation due is immediately payable in cash; to the extent that bonds are held, the payment of cash is deferred.

It should be stressed, in this respect, that while the Constitution expressly enjoins the payment of just compensation, it does not expressly require *immediate* payment nor does it *forbid* postponement of full compensation.

There are authorities to the effect that the just compensation requirements of the Constitution are not violated by a statutory deferment or postponement of compensation and that a legislative determination of such period of deferment will be deemed reasonable, unless clearly shown to be otherwise.⁵⁹

The Fourteenth Amendment to the Federal Constitution further requires that the statute authorizing the state to take property for public uses shall provide for the payment of the compensation due the owner for such taking within a reasonable time thereafter. *Bragg v. Weaver, supra*. This proposition has also been decided in this jurisdiction. *McGibson v. County Court of Roane County, supra*. What criterion shall be used in determining what is a reasonable time is not disclosed by the cases. We think, however, that, if there is a reasonable basis for postponing the time of the determination and payment of the compensation due the owner, the legislative determination of what such time is will not be unconstitutional.⁶⁰

While the facts of the case in which this principle was announced have no analogy with the situation presented by the Code, as to the duration of the postponement, particularly, yet the principle is sufficiently general and persuasive and should be held to govern delay in the payment of full compensation for lands expropriated under

⁵⁹ *Simms v. Dillon*, 193 S.E. 331. Also 18 Am. Jur. pp. 949-950.

⁶⁰ *Ibid.*, p. 334.

the Code. Reasonableness in delay is sufficiently made out by the various considerations previously discussed, especially the budgetary difficulties as well as the risks of inflation. No serious prejudice actually results to the bondholder from the delay, as he is compensated for his damages by way of interest.⁶¹

The U.S. Supreme Court apparently sanctions this doctrine of reasonable delay, since it has held in many cases that just compensation requirements would be satisfied, notwithstanding delay in payment, if interest at the proper rate is added to the compensation based upon the value of the property at the time of the taking.⁶²

Under the Code, the owner is protected from unjust and serious loss by the provision for interest.

VII. PRECEDENTS EXIST FOR UPHOLDING CONSTITUTIONALITY:

Apart from the foregoing arguments, the constitutionality of the compensation provisions of the Code has the support of distinguished precedents.

In Japan, the land reform law, which provided for compensation partly in bonds, was upheld against the claim that it violated the compensation requirements of the Japanese Constitution of 1947.⁶³

In India, the land reform laws of many states were upheld as constitutional notwithstanding provisions for payment of bonds for lands thereunder expropriated.⁶⁴

In England, compensation is not required by the Constitution to be in cash and large-scale expropriation of property, through nationalization measures, have been paid chiefly with bonds and government securities.⁶⁵

In England, prior to nationalization, cash was more frequently used, although not constitutionally required. Cash payments were considered

⁶¹ Sec. 76, Republic Act No. 3844. The guaranteed return on shares of stock in the Bank is 6%, without prejudice to a greater rate in case the earnings of the Bank permit (Sec. 77, Republic Act No. 3844).

⁶² *Brooks-Scanlon Corporation v. U.S.*, 26 US 106, 44 S Ct 471, 68 L Ed 934; *US v. Rogers*, 255 US 163, 41 S Ct 281, 65 L Ed. 566; *Seaboard Air Line Railway Co. v. US*, 261 US 299, 43 S Ct 354, 67 L Ed 644. Also 18 A. Jur. Sec. 274, p. 915.

⁶³ Hewes, Jr., *JAPAN—LAND AND MEN* (An account of the Japanese land reform), (1955) pp. 109-110.

⁶⁴ *Surpayal Singh v. U.P. Government*, A.I.R. 1951, Allahabad 675; the *State of Bihar v. Sri Kameswar Singh* 1952, S.C.J. 354, cited in Pylee, *op. cit.*, pp. 278-279.

⁶⁵ *O'Neill v. Northern Ireland Transport Board*, (1938) N. Ir. R. 104 (C.A. 1937).

impractical for nationalization both because of the difficulty of raising the requisite amounts and because of the unsettling effect on the money market of its appearance in such large quantities. Thus, the major items in each of the statutes were paid in low interest bonds.⁶⁶

In Australia, where similar nationalization measures were undertaken, it has been pointed out that since the effect of large cash payments in nationalization is that owners receive compensation in an inflated currency actually worth less than the assets sold, a cash basis of compensation is unfair.⁶⁷

In France, a major democratic power in Europe, large-scale expropriation was compensated in government securities, or in bonds of the public corporations created by the nationalization laws.⁶⁸

VIII. DEFERRED PAYMENTS ESSENTIAL TO JUST COMPENSATION:

The system of deferred payments provided in the Code is necessary to prevent not only unbearable financial strain upon the Government and the crippling effects of inflation on the economy as a whole, but also hardship and serious prejudice to the individual landowner. The wholesale immediate payment of *cash*, in the astronomical amounts called for by the land reform program, will depreciate the currency in the hands of the landowners and wipe out a substantial proportion of the value of the compensation paid to them.

In a purely technical sense, the Government faces no difficulty in raising money to meet the needs of the land reform program. The difficulty exists only if the Government is to depend only upon current revenues for the financing of the program. But should the necessity arise, the Government has another feasible alternative open to it, which is to make use of public credit to raise the necessary funds. Literally, this would mean printing of money. The Central Bank can then be required to release the currency notes to the Land Bank upon the security of the bonds issued by the latter Agency. By this method, the Government can have at its disposal all the money required to finance, on a strictly cash basis, the land reform program.

Apart from economic considerations, this method is immune to attack. There is no genuine constitutional objection which can be

⁶⁶ "British Nationalization of Industry—Compensation to Owners of Expropriated Property," UNIVERSITY OF PENNSYLVANIA LAW REVIEW, Vol. 97 (1949) pp. 530-531.

⁶⁷ *Bank of New South Wales v. Commonwealth* (High Ct. Aug. 11, 1948), 22 Aust. L.J. 191, 202.

⁶⁸ Pinkney, *Nationalization of Key Industries and Credit in France after Liberation*, 62 POL. SCI. Q. 368 (1947).

raised to bar its adoption with any chance of success. The validity of the managed currency system, in operation here since 1949, is too settled to permit a challenge on constitutional grounds.⁶⁹

This method, however, if legal and constitutional, has fearsome consequences especially for landowners. The sudden infusion of currency into the money stream of the country, of the magnitude required by the land reform program, will precipitate, as inevitably as the law of supply and demand will make it, a drastic cut in the value of the cash received for expropriated property. The whole country will feel the effects of inflation, but proportionally, the worst blow would be those who have too much money in their hands, including the former owners of expropriated lands. Clearly then, the insistence on outright cash payments is essentially self-defeating, for what will it profit landowners if they get all the cash they want and have it invisibly, inevitably, lose value in their hands?⁷⁰

The deferment of compensation then, as provided in the Code is required in order that the landowners will be justly compensated. Full cash payment will not be *fully just compensation* if *after payment*, the value becomes less and less adequate because of currency depreciation.

As in the construction of the Constitution, it is a basic rule that a proposed construction must be discounted if foreseeably productive of social disadvantages,⁷¹ the insistence on full cash payments for land taken under the Code should not be upheld.

IX. CONCLUDING REMARKS:

The forces at work behind the land reform program are many and varied and cannot be adequately dealt with in this paper. Our quest for social justice, to which this nation is formally pledged by the Constitution, the popular groping for greater equality, the search of the peasant for status through ownership of a plot of land, our aspirations towards economic abundance, and the imperatives of national security all play a part in the movement towards more equitable tenure relations in land. These considerations, though extra-legal, should carry weight in resolving the issue of constitutionality, for it is the push of these forces that carried the legislation through Congress and give the Code its life and its meaning.

⁶⁹ Republic Act No. 265 (Secs. 47-49); *People v. Esconde*, G.R. No. L-9820, Aug. 30, 1957; *Legal Tender Case*, 110 US 449, 4 S Ct 122, 28 L Ed 204; *Bakewell v. US*, 110 F2d 564, cert. den. 60 S Ct 1081, 310 US 638, 84 L Ed 1407.

⁷⁰ For an account of the hardships of Japanese expropriated landowners due to inflation, see Hewes, Jr., *op. cit.*, pp. 132-133.

⁷¹ *Krivenko v. Register of Deeds*, 44 O.G. 471.

Certainly, it is only in the context of these goals and purposes that the sacrifice which the Code exacts—a substantial sacrifice, it must be admitted—can be counterbalanced and perceived as fair and reasonable.

Those who object to the Code as violative of the Constitution are quick to assert that they are not really against land reform, only it must be done in the constitutional way. What they mean is that reform is all very well provided that the interests they hold dear are not at all sacrificed. But this view misapprehends the nature of our fundamental law. The Constitution is an instrument for getting things done, not a conserver of the status quo. It finds *significance* in the *exercise* of the power it has allocated, not in the stay of the government's hand. The exercise, of course, is subject to the various limitations therein provided, but as shown by American experience, these limitations do not forbid sacrifice, they merely require that the sacrifice should be reasonable. Those, of course, who do not appreciate the *crisis* which confronts our society today will never be persuaded to regard the Code as reasonable. But their blindness should not control, for they would lead us to a policy of drift and this policy, considering the pressures behind the current emergency, can be *our* road to disaster.⁷²

⁷² Ladejinsky, W., "Land Reform in Japan," in LAND TENURE, p. 226.

Observed Mr. Ladejinsky:

"In agrarian countries the cultivator of the soil must be placed 'in the center of the peace.' No government can count on popular support without the peasant support; it is that or no support at all. The Communists are aware of it, and have therefore placed the land question with the slogan 'land for the landless,' in the center of Asian politics. The Communists are masters at exploiting agrarian discontent for their own political ends. This was their main weapon of seizing power in Russia, and this is the manner in which the Chinese Communists defeated the Nationalist government in China. The lessons of this strategy should be all too clear to the non-Communist regimes. This is not the case, unfortunately. The tendency to maintain the status quo in the face of the Communist exploitation of the peasant's hunger for landownership is still overwhelming. In effect this means that the anti-reform landlords and governments play into the hands of the Communists, they become their unwilling allies and the creators of a revolutionary situation from which only the Communists stand to benefit." (pp. 228-229).