COMPENSATION IN LAND REFORM CASES: A COMPARATIVE PUBLIC LAW STUDY

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I. REFORM OBJECTIVES AND PAYMENT SCHEMES

> If we are aiming . . . at changes in the social structure, then, inevitably you cannot think in terms of giving what is called full compensation. Why? Well, firstly, because, you cannot do it. Secondly, because it would be improper to do it, unjust to do it, and it should not be done even if you can do it . . . .
>
> —JAWAHARLAL NEHRU**

> I ask, how will you get it then? Don't believe you can get it without buying: you may pay for it in gold or blood, but pay for it you must, by one of the two—and gold is the cheaper.
>
> —ERNEST JONES+

A. THE PROBLEM SET OUT

A core and crucial issue in land reform cases concerns the payment of compensation.[1] Initially, the question is whether the state should pay for the land it takes.[2] Where the government or party in power suffers from no constitutional inhibitions, as in cases of reforms carried out during or after a successful revolution,[3] the answer often lies in the use of confiscatory powers.[4] But where the state constitution declares that

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** *Lok Sabha* Debates, March 14, 1955; quoted in D.N. Banerjee, *Our Fundamental Rights, Their Nature and Extent*, at 319. (Calcutta: The World Press Private Ltd., 1960).

+ Quoted in Eldon E. Barry, *Nationalisation in British Politics*, at 165. (Stanford: Stanford Univ. Press, 1965). Jones was a Chartist, a leader in the land nationalization movement in England.

[1] Apart from constitutional compulsion, the need for compensation reflects two attitudes: a sense of justice of the reformers, and their insecurity and fear of a violent backlash from the landlord class. Elias H. Tuma, *Twenty-Six Centuries of Reform*, A Comparative Analysis, at 190. (Berkeley and Los Angeles: Univ. of California Press, 1965). Baljit Singh and Shridar Misra, *A Study of Land Reforms in Uttar Pradesh*, at 79. (Honolulu: East-West Center Press, 1965). Roy L. Prosterman, *How to Have a Revolution Without a Revolution*, 42 WASH. L. Rev. 189, 194.

[2] Long debates preceded the adoption of the Indian zamindari abolition acts and the Philippine Land Reform Code, mainly on the issue of compensation. Guru C. Singh, *Agrarian Reforms in India*, at 17. (Delhi: Atma Ram & Sons, 1952). Raul S. Manglapus. *Land and Ideology*, 2 Solidarity (8)1. (Manila: Solidaridad Publishing House, 1967).

[3] Recent examples of reforms carried out in a revolutionary context are those of mainland China and Cuba.

[4] Cf. Communist China's *Agrarian Reform Law*, (passed June 28, 1950), art. II: "The land, draft animals, farm implements and surplus grain of the landlords shall be confiscated, but their other properties shall not be confiscated." (Peking:

no private property shall be taken for public use without just compensation,[5] severe constraints must be satisfied for legislation to pass unscathed the challenges of nullity. Combined with other basic rights broadly categorized as equal protection, freedom of contract, and due process, the "public use — just compensation" clause helps build up a juristic arsenal for constitutional attack intended to deter or defeat land reform statutes.[6]

This introduction, then, hopes to place the compensation issue in focus. It provides a perspective necessary for a more detailed discussion of court cases involving the constitutional aspects of compensation. It sets out the thesis problem and its purpose and scope. In treating of patterns of land reform legislation and compensation scheme, it draws particular attention to the reform objectives and the mechanics of payment for the land taken.

What lends urgency to the compensation issue is a fact situation in this context bordering on the paradoxical. Even when compensation is recognized as a legal requisite, governments embarking on land reform must face an economic dilemna. One one hand, it has been observed that those needing urgently to overhaul their land systems are precisely the poor countries who do not have the money to underwrite such a massive enterprise but must somehow accomplish it as one measure promising to help break their cycle of property.[7] On the other hand, it

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Foreign Languages Press, 1953, ed.). See also Pierre George, *Universal and Particular Aspects of the Problem of Agrarian Reform*, 6 R. OF CONTEMPORARY L. 5, 14-15. Land reform carried out in 1789, during the French Revolution, provided compensation initially but under pressure of peasants, payments were cancelled. Tuma, *op. cit.*, at 54, 189.

[5]U.S. CONST. amend v. Cf. PHIL. CONST. art III, sec. 1 (2); "Private property shall not be taken for public use without just compensation. Puerto Rico Const. art. II, sec. 9: "Private property shall not be taken or damaged for public use except upon payment of just compensation in the manner provided by law." INDIA CONST., art. 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 the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate."

[6]Court appeals delayed the implementation of the 500-acre law in Puerto Rico at least four years (Jan. 28, 1936 test case filed; March 25, 1940, U.S. Supreme Court affirmed the law's validity in *People v. Rubert Hermanos* Inc., 309 US 543.) Court action delayed the vesting of estates under the zamindari abolition act of Uttar Pradesh at least two years. O.P. Tewari, *U.P. Zamindari Abolition and Land Reforms Act*, at 37 (3d ed.) (Allahabad: Allahabad Law Agency, 1965).

[7]Economists too many to name regard agricultural development as a precondition to sustained industrial growth, for "a productivity revolution in agriculture is required to feed the expanding population." Walt Rostow, *The Stages of Growth as a Key to Policy*, in Leighton and Sanders, *Transition and Tension in the Underdeveloped World*. (Washington: Armed Forces College, 1963). The United Nations considers land reform as a prerequisite to agricultural growth. United Nations, *Land Reforms Defects in Agrarian Structure as Obstacles to Economic Development*. (New York: U.N. 1951). But cf. comment: "If we consider the recent economic history of the countries now called advanced, we must admit frankly that there is really no evidence

is argued that even if cash payment were possible, considering the magnitude required, there would arise a danger of inflation[8] that could nullify any gain in real per capita income which is precisely the rationale of land reform as a spur to social and economic development.[9] Seen in this light, the problem that confronts these poor countries forms a dilemna whose horns constitute impossibility and frustration.[10] The alternatives appear to be a choice between taking without paying, which amounts to an act of confiscation; or taking only what it can pay for, which, in the absence of direct foreign aid,[11] means delay if not death of the reform scheme.

Leaving aside the fiscal dilemna, compensation does raise significant problems in constitutional law. The terse simplicity of the eminent domain clause of the Fifth Amendment furnishes no facile guide even for American courts,[12] who must fill in its content on a case by case basis even as they must distinguish its operative scope from that of the amorphous concept of police power.[13] Courts then of those states who adopted, even if partially, the American constitutional model with its bill of rights and separation of powers are at a position of compounded difficulty: they must reconcile borrowed evolving doctrines with native novel fact situations that land reform cases spring.[14]

The elastic natural-law character of the word "just", evoking as it does political ethics and juridical polemics,[15] alone suffices as a warning against easy constitutional construction. Given the legislative ability to devise compensation schemes — regardless of whether it is disguised diluted or delayed[16] — added to the debatable nature of land reform

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at all to suggest that land reform has been a condition of development." Doreen Warrimer, *Land Reform and Economic Development*, at 4-5. (Cairo: National Bank of Egypt, 1955).

[8]In the Philippines, for example, it is estimated that to pay for two million hectares tenanted land at ₱1,000 per hectare would mean ₱2,000.000,000 outlay. This amount is almost equal to the national annual budget of the government. "The government can pay so much cash only by issuing new money and creating inflation." Don M. Ferry, *Social Aspects of Land Reform*, at 145, in Gerardo P. Sicat (ed.), The Philippine Economy in the 1960's. (Quezon City: University of the Philippines, 1964). It must be noted, however, that the peso was devalued in 1962, partly because of existing inflation.

[9]Raising the standard of living of the people is by definition the objective of economic development.

[10]Cf. Jacob Oser, *Promoting Economic Development*, at 111-13 (Evanston: Northwestern Univ. Press, 1967).

[11]Prosterman proposes an "international consortium" to finance land reform, rather than bilateral aid. 42 WASH. L. REV. 189. His discussion, however, is still incomplete to permit critical comments.

[12]See Allison Dunhan, *Thirty Years of Supreme Court Expropriation Law*, 1962, S. Ct. R. 63.

[13]*Id.*, at 73. See Freund, *Police Power*, at 546. (Chicago: Callaghan & Co., 1904).

[14]Guillermo S. Santos and Artemio C. Macalino, *The Agricultural Land Reform Code*. at 79. (Manila: Central Book Supply Inc., 1963).

[15]The word "just" is absent from art. 31 (2) of the Indian Const.

[16]Kenneth L. Karst, The Uses of Confiscation, 63 MICH. L. REV. 327.

itself,[17] the courts face indeed unexpected complexity in defining the reach of reform statutes and the extent of compensation required. The difficulties the courts find could range from questions about the meaning of key words[18] to challenges concerning the judicial power to decide compensability,[19] not only by the parties litigant but even by legislative or executive departments and by constituent assemblies.[20]

All these elevate consideration of land reform compensation from the crude choice between payment and non-payment to a delicate balancing of interests characteristic of policy adjudication.[21] Technical questions are assuredly present: Whose land could be taken? What type should be taken first? How much should be paid for it? What factors determine the amount payable? In what form must the payment be — cash or kind, e.g. stocks and bonds? When should payment be made and under what conditions, if any? Further, collateral inquiries also arise. Who decides, under what rules, the substantive questions of compensability, including eligibility therefor? What matters are open to judicial scrutiny, and what are reserved to legislative, executive or agency determination? Are there clear criteria concerning compensation; are there remedies in case of breach? These are pressing problems. But over these loom large three desiderata, often rhetorically phrased as the issue of power, the issue of equality, and the issue of social justice.[22] And as cases show, even if muted, the over-all policy question is nevertheless present, as it is the existential root of tenure legislation: What is to be done with the rural poor — the tenants, the subtenants, and farm laborers — landless all but hungering for land?[23]

Thus, in perspective, compensation is but the nub on which turns multi-faceted controversies concerning land reform, and it is asserted that on its resolution depends whether the reform succeeds or fails as a peaceful process.[24] Variously this issue is clothed in the ritual forms[25] of

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[17]The debate begins with definitions. Philip M. Raup, *Land Reform and Agricultural Development*, at 268 in Southworth & Johnson (ed.), *Agricultural Development and Economic Growth*. (Ithaca: Cornell Univ. Press, 1967).

[18]The key words — property taken, public use, just compensation — are each a source of dispute even in ordinary eminent domain cases. Land reform cases add more: "estate", "vesting", "exclusion" "deductions", "real value", "settlements", etc.

[19]Golaknath v. Punjab State, 2 S.C.R. 762, (1967); Sajjan Singh v. Rajasthan State, 1 S.C.R. 932, (1965).

[20]Banerjee, *Our Fundamental Rights*, at 313 28.

[21]It requires no showing that policy is settled not only by legislature but also by the courts, and that the distinction between policy and judicial questions is at most shadowy.

[22]Raup, *op. cit.*, at 297. See also Barbara Ward, *The Rich Nations and the Poor Nations*. (New York: Norton & Co., 1962), at 111-12.

[23]For Philippine land tenure statistics, see Robert Hardie, *Philippine Land Tenure Reform*, (Manila: U.S. Mutual Security Agency, 1952).

[24]Oser, *op. cit.*, at 111. Cf. Prosterman, *op. cit.*, 42 WASH. L. REV. 189, 194.

[25]In Puerto Rico, the action is quo warranto; in the Philippines, expropriation; but in India, vesting is by proclamation.

advocacy, but its substance remains: is the compensation scheme just and reasonable? Briefly, is it constitutional?

B. SCOPE AND PURPOSE OF THE STUDY

Three countries — India,[26] the Philippines[27] and Puerto Rico (USA)[28] — provide the basic subject matter of this study. Centering attention on cases dealing with land reform as decided by their supreme courts, the study also takes into account the constitutional provisions that underlie those decisions as well as the reform statutes. While rural land is the object of these reforms,[29] references are made to cases involving urban land and other types of property insofar as the decisions lay down guiding principles on taking and compensability.

The aim of this study is to find out how just compensation is formulated and applied to land reform cases by the courts.[30] The approach adopted is comparative in the sense that patterns of land reform and payment schemes are contrasted, basing upon court decisions. As a public law study, the stress is on comparable constitutional concepts brought out by those cases. Further, the study seeks to discern how far American legal principles and precedents are applied or modified, if not rejected, by the subject countries pursuing as they do a common but not identical objective of land redistribution differing from the American national experience. Those precedents are mainly fashioned from the application of the Fifth Amendment[31] of the Federal Constitution (read in relation to the Fourteenth Amendment)[32] and other provisions of the bill of rights.[33]

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[26]India being a federal state, land reform is carried out by each particular state in the union. See *Agricultural Legislation in India* for land reform acts concerning zamindari abolition (vol. IV) and tenancy regulations (vol. V).

[27]There have been two major land reform laws in the Philippines: (1) Land Reform Act of 1955 (Rep. Act No. 1400), and (2) Agricultural Land Reform Code, 1963 (Rep. Act. No. 3844).

[28]In Puerto Rico, the basic law on corporate land limitation is the 500-acre law (28 L.P.R.A., sec. 401). To implement this limitation and to promote positive land reform programs, Puerto Rico enacted the Land Law, April 12, 1941, No. 26 (28 L.P.R.A. sec. 241).

[29]The Philippine 1955 Act included expropriation of urban property (Rep. Act. No. 1400, sec. 3 (5). In Uttar Pradesh, India, there is a separate Urban Area Zamindari Abolition and Land Reforms Act (U.P. Act No. IX of 1957).

[30]The "court" referred to in this study is the Supreme Court in each country. If decision of a lower court is used, an indication is made.

[31]The comparative provisions were set out at n. 5, 1-A, *ante*.

[32]U.S. CONST. amend. XIV "... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." Cf. India Const. art. 14: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Philippine Const. art. III, sec. 1 (1): "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws." PUERTO RICO CONST. sec. 7: "...No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws."

[33]U.S. CONST. amend. IV; amend IX. Cf. Puerto Rico Const. art II, sec. 7: "No laws impairing the obligation of contracts shall be enacted." PHIL. CONST. art. III, sec. 1(10): "No law impairing the obligations of contracts shall be passed."

The importance of these precedents is best appreciated if one recalls that both the Philippines and Puerto Rico trace the history of their constitutions to American roots. In fact, their present constitutions[34] still bear the official sanction of both the Congress and the President of the United States; that of the Philippines because it was passed before she became an independent republic and that of Puerto Rico because she remains a commonwealth of unique status[35] under the American federal system. Thus, while they both inherited their civil law, including the law on property,[36] from Spain, their political law derives from the American conception of ordered liberty.

India presents a contrast. With a rich background of Hindu and Muslim legal systems, her jurisprudence also bears the imprint of Anglo-Saxon common law.[37] While her constitution leans toward a conception of a socialist state,[38] in contrast to both the capitalist and communist systems, her constitution, like the American, recognizes the sovereignty of the people, embodies a republican and federal form of government, and follows the principle of separation of powers, at least with reference to an independent judiciary.[39]

Justice Douglas, in his Tagore law lecture,[40] discoursed on comparable provisions found in the American and Indian constitutions. Speaking of the bill of rights, he noted:

> "There is no Due Process Clause in the Indian Constitution. There are instead, provisions of the following character:
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> 'Article 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.
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> Article 31 (1). No person shall be deprived of his property save by authority of law.' "[41]

Justice Douglas went on to observe that while the Indian courts had rejected the contention that these formed the equivalent of the American Due Process Clause, insofar as procedural requirements are involved,[42] he discerned in Indian judicial decisions a flavor of due process when it came to questions of substantive law reminiscent of American decisions.[43]

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[34]Philippines: Ordinance appended to the Constitution; Public Act 127, March 24, 1934 amend. Aug. 7, 1939. Puerto Rico: Jt. Res. July 3, 1952, 66 Stat. 327.

[35]Puerto Rico is neither a state nor a colony.

[36]They both trace their civil codes to the Civil Code of Spain.

[37]Alan Gledhill. *Republic of India: Development of Laws and Constitution* (2d ed.) (London: Stevens, 1964).

[38]Ayyar, *Planning the Indian Welfare State*, at 41.

[39]But a distinction must be noted. In India, the residual powers belong to the union Parliament, not the state legislatures. INDIA CONST. art. 248 (1). Cf. U.S. CONST. amend X.

[40]William O. Douglas, *From Marshall to Mukherjea.* (Calcutta: Eastern Law House Ltd., 1956).

[41]*Id.*, at 11, 216.

[42]Gopalan v. Madras, 13 S. Ct.J. 174.

[43]Krishnappa v. Bangalore City Bank, A.I.R. 41 S.C. 59.

On expropriation itself, the parity of constitutional provisions is even more significant. While Article 31 (2) has undergone several amendments,[44] to be discussed in this study, the original provision prohibited acquisition of property for public purposes "unless the law provides for compensation" and "either fixes the amount of compensation, or specifies the principles on which, and the manner in which the compensation is to be determined or given." The travail of this clause from the Indian first[45] to the 17th amendments[46] provides interesting comparative material as counterpoint to the U.S. court's reading of the American Fifth Amendment.

Taking off, then, from the controversial Indian amendments bearing on agrarian reform[47] and the perceptible trends presaging change in the American court's views on public purpose and just compensation,[48] this paper dwells on three main topics. The first part considers the justiciability of compensation and related issues, which in a sense also defines the role of the judiciary vis-a-vis the political branches concerning the enforcement of laws embodying land reform policies. The second discusses the challenges to the validity of land reform laws as they relate to the compensation provisions. The third portion dwells on the technical problems, primarily the "measure" of market value, including the factors in price determination which the court accepts or rejects. It also considers the use of non-cash payments such as bonds and stocks. Further, it sees whether there are evolving standards of compensabilitiy applicable to land reform taking. The contrasting concepts of eminent domain and police power,[49] both of which play a significant role in social legislation and expropriation, provide a useful matrix for unfolding the court's attitudes toward compensation.[50]

While the introduction furnishes the conceptual background of reform legislation,[51] the conclusion aims to pull into shape the whole discussion of the topics covered with reasonable inferences from the courts' resolution of the issues presented. The problem having been set out in this intro-

[44]See D. Munikanniah, *Amendments to the Constitution*, particularly Appendix VI, 225. (New Delhi: Davaloor Law House, 1964).

[45]Passed June 18, 1951; India Ministry of Law, *op. cit.*, at 277.

[46]Passed June 20, 1964; *id.*, at 328.

[47]Munikanniah, *op. cit.*, 234, 287.

[48]Berman v. Parker, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27, U.S. v. Cors, 337 U.S. 325, 69 S. Ct. 1086, 93 L. Ed. 1392.

[49]Dunham, *Thirty Years of S. Ct. Expropriation Law*, 1962 S. Ct. R. 63, 73.

[50]Frank I. Michelman, *Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HAVARD L. REV. 1165, 1171, which suggests abandoning the case-by-case study of court decisions and adopting, instead, a "test of fairness".

[51]For chronological list of legislative enactments related to tenancy and land reform, see Emmanuel S. Abensaur and Pedro Moral-Lopez, *Principles of Land Tenancy Legislation*, 100. (Rome: FAO, 1966).

duction, the conclusion attempts to delimit the elusive concept of "just compensation" in terms of the minimum[52] constitutionally acceptable.

The American court has repeatedly warned against reducing the concept of just compensation into a rigid formula.[53] In its view the law is best scratched out case by case,[54] continually drawing under pressure of contending interests a fresh line between what is and what is not adequate. Although this approach leaves the court free from paralyzing effects of *stare decisis*, which is its merit, it has been observed, however, that it has led to "a long series of judgments that appear to make up a crazy-quilt pattern of Supreme Court doctrine on the law of expropriation."[55] Heeding then the warning yet also aware of conflicting decisions, a fair objective is to reduce the area of uncertainty and of conflict by distinguishing and reconciling the cases toward a statement of basic principles. And this objective, briefly, is the burden of this paper.

C. PATTERNS OF LAND REFORM AND COMPENSATION SCHEMES

Why should land reform be undertaken? One short answer is that the original land system has become "extremely irrational"[56] and must be made reasonable. Irrationality here consists of too much land in the hands of but a few, the landlords, who do not till the land; while the mass of actual tillers do not own land they cultivate.[57] The long answer is two-fold: land reform is imperative (1) because the prevailing tenure is

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[52]From the viewpoints of the landowner, the government as taker, and the tenants as beneficiary.

[53]U.S. v. Toronto, H. & B. Nev. Co., 338 U.S. 396.

[54]Martin v. District of Columbia, 205 U.S. 135, 139. Willard B. Cowles, *Property Interferences and Due Process of Law*, at 53. (Washington: American Council on Pacific Affairs, 1941).

[55]Dunham, *op. cit.* 1962 S. Ct. R. 63.

[56]Liu Shao-Chi, *The Agrarian Reform Law*, at 63-64. (Peking: Foreign Languages Press, 1953).

[57]The exact figures are hard to find as to exactly how much land is directly or indirectly controlled by landlords. In India, it is estimated that at the time of the adoption of the zamindari abolition acts, 40% of the total area of India (811 million acres) was under the zamindari tenure. See Planning Commission, *Reports of the Panel of Land Reform*, at 2-5. In the Philippines, it was estimated 40% of 1.6 million farms were operated by tenants. Hugh L. Cook, *Land Reform and Development in the Philippines*, in Walter Froelich, ed., *Land Tenure, Industrialization and Social Stability*. (Milwaukee: Marquette University Press, 1961.) For Philippine land tenure statistics, see U.S. Mutual Security Agency, *Philippine Land Tenure Reform Analysis and Recommendations* (Hardie Report), Appendix A. (Manila, 1952. Mimeographed copy at Cornell Library.) In Puerto Rico, in 1930, sugar interests controlled 400,000 acres of farm land. S.C. Descartes, *Historical Account of Recent Land Reform in Puerto Rico* in Caribbean Commission, *Caribbean Land Tenure Symposium*, (Washington, Caribbean Research Council, 1946). Four companies alone controlled 177,000 acres, over one-fourth of the entire land suitable for continuous cultivation in the island. Rossen, *Puerto Rican Land Reform*, 73 YALE L.J. 334, 337. Puerto Rico has a total area of 2,198,400 acres, only 1,222,284 are tillable; 251,000 acres—one-fifth of land adopted to agriculture in 1935—were planted to sugarcane of which 196,757 acres or over 70% were owned by absentee landlords. (28 Laws of Puerto Rico Ann. 241-42).

an obstacle to economic progress, particularly agricultural production;[58] and (2) because the original system has resulted in "injustices" and therefore must be altered if a "more just, more equal"[59] social order is to be built. The first emphasizes economic growth of the nation; the second stresses personal and social justice. Whether the first reason comes before the second, a vital point in setting strategic priorities of action and decision-making, is a fine but debatable issue.[60]

1. *Yet, what is land reform?*

An analogy has been ably, though startlingly, drawn by Heilbroner[61] between land and share reform:

> "To take but one instance, when we approach the question of the rationalization of agriculture, we tend to slough off the problem as one which can be solved by 'land reform'. But we forget that land reform, for nations in which land-ownership is the central pillar of the structure of social privilege, is not a small concession to be wrung from landowning groups, but a profound and wrenching alteration of the very basis of wealth and power. We can better imagine the ease with which it may be accomplished by supposing that we [Americans] were an underdeveloped country and that some superior power offered us aid on the condition that we undertake 'share reform'—that is redistribution (or even abolition) of our present concentrated ownership of corporate securities. How rapidly would our own powers-that-be acquiesce in such a proposal?"[62]

While *reform* as a word has positive connotations,[63] in the sense of change directed to improvements in the existing order without the violence characteristic of a revolution, *land reform* as an idea evokes ambivalent responses.[64] In the extreme it is observed that "it is communism", while to others it is labelled as "a weapon against communism."[65] While this ideological name-calling may sound puerile, it nevertheless enters into judicial decisions in a type called "the argument of fear"[66] and, even more

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[58]United Nations, Department of Economic Affairs, *Land Reform: Defects in Agrarian Structure as Obstacles to Economic Development.* (New York: U.N., 1951).

[59]Doreen Warrimer, *Economics of Peasant Farming,* at 31, 2d Ed. (New York: Barnes & Noble, 1964).

[60]In the Philippines, the priority appears to have been set by law: share tenancy will be abolished first, then land will be taken by the state for redistribution to tenants. See Orlando J. Sacay, The Philippine Land Reform Program, 2 PHIL. ECO. J. 169, (1963).

[61]Robert L. Heilbroner, *The Great Ascent,* (New York: Harper & Row, 1963).

[62]*Id.*, at 152.

[63]There is a contrary view, that land reform is a measure which is distasteful though unavoidable, and often associated with violence. Philip M. Raup, *Land Reform and Agricultural Development,* in Southworth & Johnson (ed), *Agricultural Development and Economic Growth.* (Ithaca: Cornell University Press, 1967).

[64]See generally Elias H. Tuma, *Twenty-six Centuries of Reform—A Comparative Analysis.* (Berkeley & Los Angeles: University of California Press, 1965).

[65]Doreen Warrimer, *Land Reform and Economic Development,* at 3. (Cairo: National Bank of Egypt, 1955).

[66]Sajjan Singh v. Rajasthan St. 1 S.C.R. 932 (1965); Golaknath v. Punjab 2 S.C.R. 762 (1967), at 815, where fear of a revolution was brushed aside by the court as an argument of respondent.

significantly, influences legislation.[67] Further it has crept into policy-formulation involving supranational organizations, e.g. the Alliance for Progress.[68]

Another extreme view attributed to the landless and the tenants themselves, with particular reference to the Philippines, is that land reform "came to mean . . . that the government would be a sort of benign magician, unfettered by economic and fiscal laws, who could be depended upon at all times for unlimited capital, managerial guidance, marketing services, or subsidies whenever production costs increased."[69] Such "juvenile concept" fostered among the landless perhaps sprang from the range of services proferred by the government as embodied in reform statutes now consolidated in the land reform code.[70]

The Puerto Rican public opinion on land reform is even more varied; its very existence has been denied by the opposition party,[71] even though the present ruling party[72] rode to power on the land issue and thus considers the reform a success. "To speak of agrarian reform," the opposition leaders declare, "constitutes an act of unheard of cynicism."[73] Obviously these differing views result from lack of consensus as to what constitutes land reform.

Indian courts take judicial notice of the fact that in less than two decades since India's independence there has been an "agrarian revolution."[74] Except for transference of millions of acres from intermediaries to the government and the tillers, if one judges from the nine volumes of agricultural legislation,[75] there is variety in the content of that "revolution" to require elaboration as to what is referred to. Gunnar Myrdal, in his inquiry into the poverty of Asian nations,[76] reported conflicting claims:

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[67]The Philippine Land Reform Act of 1955 (Rep. Act No. 1400), enacted under President Ramon Magsaysay's administration was a remedial measure intended to counteract the *Huk* menace in Central Luzon. That menace continues to this day and lends urgency to President Ferdinand Marcos' land reform program.

[68]The influence of the Cuban Revolution is a major reason for increasing attention to land reform in Latin America. Joseph R. Thorne, *The Process of Land Reform in Latin America,* 1968 WIS. L. REV., at 9.

[69]Jose A. Lansang, *The Political Answer to Land Reform,* at 67, in 1 SOLIDARITY 66.

[70]Land Reform Code, Rep. Act No. 3844, passed in 1963, provides for services in management marketing, credit, cadastral survey and registration, legal services, aside from agricultural extension.

[71]The opposition belongs to the *Independentistas,* the Pro-Independence movement, as well as the Statehood Republican Party.

[72]Partido Popular Democrata, the party of Munoz Marin.

[73]See Matthew Edel, *Land Reform in Puerto Rico,* (Part Two) at 43 in 2 CARIBBEAN STUDIES (No. 4), 28.

[74]Golaknath v. Punjab, 2 S.C.R. 762, 807 (1967).

[75]India, Ministry of Food and Agriculture, *Agricultural Legislation in India,* (Delhi: Government of India Press, 1953).

[76]Gunnar Myrdal, *Asian Drama* (3 Volumes). (New York: Pantheon Books, 1968).

(a) the reduction of status of intermediaries or rent-receivers is hailed as liberating cultivators from a long period of subjugation; and (b) this measure, costing state governments large amounts of compensation, has failed to make "any fundamental change in the economic and social conditions in the countryside."[77]

Leaving aside the dispute, which is in effect a value judgment on the consequence and not the content of legislation, an attempt has been made to classify measures of land reform into two: (a) reform of the system of landholding; and (b) measures for the reform of the system of land cultivation.[78] Abolition of intermediaries and regulation of tenancy would be in the first group. In the second would be those laws on ceilings of landholdings, cooperative farming, consolidation of holding; and Bhoodan and Gramdan movements. There are those, however, who assert that mainly these laws while affecting rights on land are measures of land revenue administration.[79] Moreover, the constitutional protection afforded a class of laws falling under the heading of agrarian reform includes not only those categorized above also laws on land taxes, or revenue codes.[80] And a generous but certainly relevant compilation of these agricultural measures has included laws dealing with irrigation and water rights, reclamation, credit, and prohibition of usury, as well as agricultural debtors' relief.[81]

What does emerge certain from these attempts at labelling and classifying is the lack of consensus regarding the precise denotation of land reform.[82] Yet labelling is not exactly an idle task. The validity of legislation or the jurisdiction of a court may depend on proper classification of a challenged provision or statute. For instance, devolution of property by inheritance commonly under the civil code could be placed under the land reform code[83] transferring jurisdiction thereby from the civil courts to the agrarian courts. Or a particular act done under the land reform code could result merely in violation of a particular contractual relation rather than in crime punishable normally by the penal law.[84] Moreover, under cover of constitutional provisions, certain laws on land may claim

[77] *Id.*, at 1306.

[78] Sulek C. Gupta, *India's Agrarian Structure.* (New Delhi: Mainstream Publication, 1966).

[79] Shri Morarjibhai Desai, *The Indian Land Problem and Legislation,* at 504 (Bombay: N.M. Tripathi Ltd. 1954).

[80] INDIAN CONST. art. 31(B), Ninth Schedule.

[81] India, Ministry of Law, *Agricultural Legislation in India.*

[82] Philip M. Raup, *Land Reform and Agricultural Development* at 268 in Southworth and Johnson (ed.) *Agricultural Development and Economic Growth.* (Ithaca: Cornell University Press, 1967).

[83] For example in sec. 62, Phil. Land Reform Code, transfer of land is limited to the hereditary succession of only one heir.

[84] Jose W. Diokno, *Legal Aspects of Land Reform,* at 7, in 2 SOLIDARITY (No. 8) 4.

immunity from attack in court simply because they are passed pursuant to a land policy.[85] While the practice of courts is to specify provisions of particular statutes deemed or alleged as controlling,[86] still it is worth knowing precisely whether such statutes would fall into a general class of agrarian reform legislation.

Without getting embroiled in semantic war, it is perhaps best to survey the usage of land reform and pick one, with or without modification, for the purpose of precision. It must be stressed that neither the Philippine Land Reform Code,[87] the Puerto Rican Land Law,[88] or the Indian reforms acts (e.g. the Uttar Pradesh Zamindari Abolition and Land Reforms Act)[89] define what land reform is but these acts spell out their objectives[90] For this paper, then, the choice of usage concerning the meaning of land reform must be correlated with those objectives.

Despite the absence of a general agreement on the definition of land reform,[91] two tendencies could be discerned. The first is exemplified by that adopted by the United Nations[92] which treats land reform *broadly* as equivalent to agrarian reform and includes changes in land tenure as well as improvement in essential services relating to agricultural credit, supply, marketing, extension and research, plus re-structuring of land taxes.[93] The distinctive feature of this approach is the combination of redistribution of rights in land with the supporting integrated programme for maximizing agricultural output.[94] The programme may include politically oriented plan for community development,[95] and an administrative

[85]The Indian constitutional amendments (first, fourth, and seventeenth) exclude a total of 64 laws from judicial challenge. See Ninth Schedule, art. 31B of the Indian Constitution. (Ministry of Law, *Constitution of India*, Government of India Press, 1965).

[86]The procedural difficulty in cases involving land reform statutes is that these statutes often take the form of a code regulating diverse subjects, from expropriation to usury. Thus, in the Philippines, expropriation would fall under special civil actions, settlement of estate under special proceedings, and usury under criminal procedure.

[87]Rep. Act No. 3844, approved August 8, 1963.

[88]Act of April 12, 1941, No. 26, effective 90 days thereafter. (Title 28, Laws of Puerto Rico Ann.), hereinafter cited as L.P.R.A.

[89]Uttar Pradesh Act 1 of 1951. (India, Ministry of Law, Vol. IV), Agricultural Legislation, at 228

[90]Philippines: Land Reform Code, sec. 2 Puerto Rico: Statements of Motions, Land Law, in 28 L.P.R. at 241-44; Uttar Pradesh: Statement of Objects and Reasons, U.P. Gazette Extraordinary, June 10, 1949, quoted in U.P. Srivastava, *Commentaries on the Uttar Pradesh Zamindari Abolition and Land Reforms Act.* 1950 (3rd Ed.) at 1-2. (Lucknow and Delhi: Eastern Book Co., 1967).

[91]Raup. *op. cit.*, at 268.

[92]United Nations, *Progress in Land Reform.* (New York: 1954, 1956, 1962).

[93]The relation of land reform to taxation is more real in India than in the Philippines or Puerto Rico. The tax provision of the Philippine Land Reform Code was omitted. See Sacay, op. cit., at 175.

[94]Increase in output, however, could be initially set back by land reform.

[95]In Puerto Rico, the Land Authority has a Social Programs Administration, an office whose function is "reinstallation" of *agregados* in rural communities. See 28 L.P.R.A. sec. 521. In the Philippines, "Operations Central Luzon" was a joint

scheme for increased revenue collection.[96] The flaw in this pattern lies in the multiple contradictions within itself. Thus, breaking up large estates may actually minimize output. It may sow instead of solve community disorder.[97] Tax collections may actually drop as new owners fall into exempt categories or are simply unable to pay the purchase installments and the taxes simultaneously.[98] On the other hand, the obvious merit of this integrated scheme is the balanced development of all sectors that tenure changes alone could not bring about.[99] A broad conception of land reform, then, combines all "measures designed to eliminate obstacles to economic and social development arising out of defects in agrarian structure."[100]

Sharply differing from this is the narrow usage of land reform.[101] Here distinction is made between changes in tenure and improvements in technology or operations.[102] While "rapid improvements in one of more sectors of the agrarian structure" is subsumed in the broad term agrarian reform,[103] this concept is refined further to consist of two processes. First, alteration in patterns of cultivation, scale of operations, and even terms of holding as distinct from operation are all classed as *land operation reform.*[104] Second, the "redistribution of property in land for the benefit of small farmers and agricultural workers" or, briefly, transfer of ownership from lord to tiller, is classed as *land tenure reform.*[105] And this second process is regarded as the traditional though narrow acceptation of *land reform.*[106] The flaw in this narrow view, from the operational viewpoint, is that it limits government action—e.g. it does not include rent regulation, tenancy share control, land resettlement, or farmers' cooperative organization[107] — which many governments undertake in the name of

land reform community development project. In India, zamindari abolition acts provided for restoration of village autonomy, thru Gaon Panchayats.

[96]In Uttar Pradesh, however, increases in land revenue resulted from increases in rates on marginal land and on the assessment of new areas. Singh and Misra, *A Study of Land Reforms in Uttar Pradesh.* (Honolulu, East-West Center Press, 1965).

[97]The Philippine experience in Central Luzon seems to indicate land reform will not abate violence and dissidence. See Diokno, *op. cit.*, at 11.

[98]The failure of the Puerto Rican proportional-profit farms could be traced to their being saddled by taxes as well as land rents payable to the government. Edel. *op. cit.*, at 38.

[99]It must be noted, however, that balance in economic development would also call for attention to industrialization. Balanced growth must take place on a broad front. See Jacob Oser, *Promoting Economic Development,* (Evanston: Northwestern University Press, 1967).

[100]United Nations, *Progress in Land Reform,* 1962.

[101]See Warrimer, *op. cit.* (1955), at 1.

[102]Tuma, *op. cit.*, at 12-14.

[103]*Id.* at 14.

[104]*Id.*

[105]*Id.*

[106]Warrimer, *op. cit.* (1955).

[107]"From the review of land reform legislation, it is clear that diversity of all sorts is the striking characteristics of all these reforms. Desai, *op. cit.*, at 501.

"land reform." Its merit is that resistance to tenure reform may be isolated from that of operation reform, in terms of mechanization for example, and make possible the introduction of one regardless of attitude to the other.[108]

Considered in relation to the compensation issue, it may appear at first blush that the breadth of land reform as a concept is not material since in either case there is taking[109] of land for redistribution. As the cases will show, however, it does matter how land reform is conceived of in a particular jurisdiction. If land reform, for instance, includes regulation of tenancy,[110] then acts of deprivation allegedly resulting from diminution of shares of the landlord by operation of law might be rationalized as non-compensable under the doctrine of police power.[111] However, if it is narrowly interpreted to refer only to particular sizes and types of holding, taking may be barred despite an offer of compensation on the ground of absent public purpose, when small areas or unlisted types are expropriated.[112]

2. What are the objectives of land reform?

Essential to the differentiation among types of reform adopted is a clear idea of just what reform measures are expected to accomplish.[113] These objectives, moreover, determine also the extent to which compensation ought to be given the previous landholders.[114] While the laws themselves spell out these objectives, care is needed to read between the lines for the listing may not be comprehensive but only illustrative of legislative intent. Usually the enumeration of purposes does not indicate the priorities assigned to them. In comprehensive attempts, the stated objectives may work at cross purposes among themselves. Or, as alleged in certain cases, the statute states specific objectives that serve as a disguise for others such as those said to modify rental rates but in reality lower the base for compensation payable for the land taken.[115] Also, it must be recalled that the reform measures themselves may turn out to

[108]Tuma, *op. cit.*, at 14.

[109]Taking in this context is understood in a neutral sense and might include expropriation, forfeiture, or acquisition.

[110]In the Philippines, the Agricultural Tenancy Act, Rep. Act No. 1199 (1959) is still operative in regions not proclaimed as land reform areas.

[111]Ramas v. Court of Agrarian Relations, G.R. No. 19555, May 29, 1964; 4 C.A.R. J. (2) 142

[112]Cf. Guido v. Rural Progress Adm., 84 Phil. 847 (1949).

[113]See Tuma, *op. cit.*, particularly XII, Reform Objectives and Processes, for general discussion.

[114]John W. Mellor, *The Economics of Agricultural Development*, at 263. (Ithaca: Cornell University Press, 1966).

[115]Gajapati Narayan v. Orissa State, 1954 S.C.R 1.

be but instruments of a larger policy,[116] and land reform then is merely an intermediate and not the final goal.[117]

The Philippine Land Reform Code in this regard is instructive, for its stated policy purpose explicitly avows the intent to "divert landlord capital in agriculture to industrial development."[118] The Indian laws are less explicit but contemporaneous statements and acts of the legislature and the executive reveal a similar notion of land reform as a pre-condition to industrialization.[119] On the other hand, a clear bifurcation between agriculture and industry in policy formulation has been adopted by Puerto Rico to the extent that, when land expropriation was seen as a probable deterrent to the entry of foreign investments in industry, land reform had to be decelerated.[120] Still in all these three instances it must be recognized that industrial development is the long-range objective, even if the direct and short-range objective is redistribution of land.[121]

Another way of classifying reform objectives is by dividing them into the classical triad of economic, social and political.[122] The difficulty with this type of distinction is that it draws only vague and deceptive lines. Witness this attempt: "Economic objectives deal with the production and allocation. Social objectives include distribution of income and wealth, and status of the peasant in society. Political objectives include promotion of political stability, legitimacy of the political system, and national security."[123] Its value, aside from felicity of jargon, is that it allows partisans or critics of reform to focus from a particular viewpoint on an aspect of reform measure. Its difficulty is that in specific cases like elimination of peasant unrest, reality thwarts identification; such unrest could be social, political and economic in turn or simultaneously.[124]

Such conceptualism, in relation to compensation, may lead to the assertion, as Warrimer[125] argues, that there is no reason for compensation. "In economic terms," she says "there can be no ground for paying

[116]In most Asian countries, land reform is directly related to population pressure, hence reform measures must take into account labor force utilization or manpower policy. Myrdal, *op cit.*, at 1244.

[117]In non-communist countries, land reform is also seen as a political weapon against internal subversion; this appears also to explain American interest on reform measures. See Clyde C. Mitchell, *Land Reform in Asia*, (Washington: National Planning Association, 1952).

[118]Land Reform Code, sec. 2 (1).

[119]Mahesh Chand, *Agrarian Legislation in India*, 6 R. OF CONTEMPORARY L. 53.

[120]Edel, *op. cit.* (part one), 2 CARIBBEAN STUDIES (3), at 56.

[121]That is, redistribution only of lands above a legal maximum allowed by law. For, microfundia could be disastrous to agriculture as latifundia. See Rene Dumont, *Types of Rural Economy*, at 516. (London: Methuen and Co., 1957).

[122]Tuma, *op. cit.*, at 180-86.

[123]*Id.*, at 180.

[124]See Erich H. Jacoby, *Agrarian Unrest in Southeast Asia.* (London: Asia Publishing House, 1961), for a general discussion.

[125]Warrimer, *Land Reform and Economic Development*, (1955).

compensation at all since the existing prices of land are monopoly prices. The price that is fixed in reform legislation is determined by political bargaining power."[126] From an economist's viewpoint, Mellor[127] conveys a similar suggestion: "Substantial compensation will certainly defeat an objective of income redistribution and may through maintenance of economic power also defeat an objective of changed political power as well."[128]

History is also read into the objectives of reform. The Puerto Rican *latifundia*,[129] the Indian *zamindari*,[130] and the Philippine *hacienda*[131] sprang out of and received official protection during colonial rule. Their abolition constituted an effective plank in the platform of the independence campaign.[132] Land to the tillers was a war cry as resounding as liberty itself. In Puerto Rico and the Philippines confiscation of Spanish friar lands were resorted to, in the course of uprisings;[133] however, their effects were short-lived as the Treaty of Paris between the United States of America and Spain guaranteed the protection of property of Spanish subjects and and the Catholic Church.[134] The policy of confiscation was rejected, and to acquire the friar lands legitimately, purchase by the government was arranged with the Vatican.[135]

In India, permanent settlement with zamindars instituted by Lord Cornwallis sprang from the revenue needs of the East India Company.[136] The British administrators had previously failed to collect land taxes through paid collectors and by tax farming auctions.[137] They turned to the zamindars, the rent receivers, who had risen to local power by the use of force or abuse of office during the last chaotic years of the Moghul empire. The early success of the settlement idea justified the company's trust in the zamindars' efficiency.[138] The idea's fatal flaw, however,

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[126]*Id.*, at 16.

[127]Mellor, *The Economics of Agricultural Development*.

[128]*Id.*, at 263.

[129]A landed estate of the plantation type.

[130]A proprietary estate; also, a system of land tenure whereby one person or a few persons possess proprietary rights (as against the cultivator) and are made responsible for the land revenue of the entire estate.

[131]A landed estate, usually family-owned.

[132]The Congress Party in India and the Populares in Puerto Rico have campaigned successfully on the land issue. The Katipunan, a revolutionary organization in the Philippines, espoused redistribution of friar lands in the rebellion against Spain.

[133]See Frank T. Reuter, *Catholic Influence on American Colonial Policies*, particularly Ch. Five, The Spanish Friars and the Land Controversy, at 88. (Austin: University of Texas Press, 1967).

[134]Treaty of Paris, December 10, 1898, art. VIII and IX; I L.P.R.A. 1.

[135]Reuter, *op. cit.*, particularly Ch. Seven, The Taft Mission to Rome. at 137.

[136]George Campbell, *The Tenure of Land in India*, in *Systems of Land Tenure in Various Countries*. (The Cobden Club, London: Macmillan and Co., 1870), at 167.

[137]*Id.*, at 169.

[138]India, Ministry of Law, IV Agricultural Legislation, at v.

soon surfaced when the zamindars resorted to rack-renting and sub-infeudation[139] to increase their own share of the land revenue while the British share remained constant according to the terms of settlement.[140]

The entry of American sugar companies to Puerto Rico added to the land problems which Spain left.[141] In fact, the campaign to reform land tenure in Puerto Rico, by legal and political action, was directed against the sugar estate.[142] Ignoring the five-hundred acre ceiling on holdings embodied in Puerto Rico's organic law,[143] the sugar companies acquired varying sizes of latifundia but all vastly beyond the legal maximum.[144] The end result was that by 1929 almost half the cultivable land of Puerto Rico was in the control of sugar cane interests.[145]

The American impact on agriculture in the Philippines differed from that in Puerto Rico, mainly because despite the higher ceiling on corporate holding,[146] United States mainland capital was attracted less to agriculture than to industry, e.g. mining.[147] But, indirectly, the Philippine agricultural system was transformed by the opening of the American market,[148] particularly in sugar. To problems fostered by the Spanish land-grant or encomienda system, which spawned a small class of wealthy but absent landlords, were added the problems of title registration whereby large landowners through court action would claim adjacent untitled holdings resulting in the elimination of small owners and the increase of landless tenants and laborers.[149] The bloody agrarian uprisings did not end with the Spanish rule; at least two serious revolts took place during the American regime;[150] and, shortly after independence, those uprisings took in disparate issues and gathered sufficient force, under a leadership

[139]The "chain of sub-infeudation" is illustrated in Radhakomal Mukerjee, *Land Problems of India*, at 111-14. (London: Longman Green & Co., 1933).

[140]See B.R. Misra, *Land Revenue Policy in the United Provinces under British Rule*. (Benares: Nand Krishna and Bros., 1942). Campbell, *op. cit.*, at 1970.

[141]Thomas D. Curtis, *Land Reform, Democracy and Economic Interest in Puerto Rico*, particularly Ch. II, Economic Interest Groups and Land Tenure. (Tucson: Universiy of Arizona, 1966).

[142]Miguel Guerra-Mondargon, *The Legal Background of Agrarian Reform in Puerto Rico*, in Caribbean Commission, *Caribbean Land Tenure Symposium*, at 113-14.

[143]Joint Resolution of May 1, 1900, No. 23, 31 Stat. 716, 48 USCA, sec. 752.

[144]People v. Fajardo Sugar Co., 51 P.R.R. 851, 857.

[145]See Edel, *op. cit.* (Part one), at 28; Rosen, op. cit., 73 YALE L.J. 334, 337; Descartes, *op. cit*, at 129.

[146]PHIL. CONST., art. XIII, sec. 2. The ceiling set for corporate holding is 1,024 hectares.

[147]Cf. Golay, *The Role of American Investment*, in *The United States and the Philippines*, 95. (Englewood Cliffs: Prentice-Hall, 1966.

[148]T. Agoncillo and O. Alfonso, *A Short History of the Filipino People*, at 422-26. (Quezon City: University of the Philippines, 1961).

[149]J.E. Spencer, *Land and People in the Philippines*, (Berkeley: University of California Press, 1952).

[150]These were the *Sakdal* and *Colorum* uprisings. Agoncillo, et al., *op. cit.*, at 428-29.

regarded as communist-inspired,[151] to be dignified as a rebellion.[152] To this day, the problem of Huk dissidence and land tenure are so intertwined that they are regarded as requiring an integrated solution.[153] But despite two land reform acts,[154] and a host of related measure, agrarian unrest continues.[155]

While legal action to break the latifundias in Puerto Rico has relaxed,[156] the Indian and Philippine governments pursue a spirited campaign to abolish the zamindari system and to expropriate the absentee landlords, respectively. Cases in court testify to the equally robust resistance the zamindars and landlords offer.[157] There is no critical consensus[158] about the failure or success of the government program of reform in either case, so far, that it is prudent to await more historical evidence before delivering judgment.

What the historical approach contributes to the clarification of the reform objectives is the theory of restitution as the basis of redistribution. According to Karst,[159] this theory as used in Mexico supplied a moral sanction to what would have been undisguised confiscation. If the claim is that land is merely being returned to the true owners, the native villagers, from the descendants of the conquerors who had divested them of their land by force and fraud, then apprehension is removed that "property" is no longer respected. Instead it promotes the idea that "property is indeed sacred and ownership is eventually vindicated."[160] As

[151]The use of "communist" as a label ought to be deplored for it beclouds genuine issues of peasant discontent. In this case, however, the appellation appears accepted. See Agoncillo, *et. al., op. cit.*, at 514; and Frank H. Golay, *The Philippines Public and National Economic Development*, at 267. (Ithaca: Cornell University Press, 1961).

[152]Rebellion, defined under the Philippine Revised Penal Code (Act No. 3815) Art. 134, has been applied in the conviction of Huk leaders.

[153]Leon O. Ty, *Land Reform Makes Headway*, The Examiner (newsweekly), July 2, 1967, at 3.

[154]Land Reform Act of 1955 (Rep. Act. No. 1400); and Land Reform Code, 1963 (Rep. Act. No. 3844).

[155]Jose W. Diokno, who is a member of the Philippine Senate, gives a remarkable insight into the problem of dissidence: "By the landlords' refusal to assail the Land Reform Code frontally, and our leaders' inability to maintain law and order, they have helped the Huks create an issue that transcends Land Reform." That is, whether the present government still has the right to govern, particularly in Central Luzon. Diokno, *op. cit.*, at 11.

[156]Edel, *op. cit.* (part one) at 59.

[157]Aside from court cases, the most serious threat to land reform lies in administrative nullification.

[158]However, Indian planners had cautiously phrased their appraisal, with a note of dissatisfaction, that "the impact of land reform has been smaller than hoped for." India Planning Commission, *Third Five-Year Plan Summary*, at 96. (Delhi: Government of India Press, 1962). The Philippine reform, compared to that of Taiwan or Japan, has been slow. See Manuel P. Manahan, *The Prospects for Land Reform*, 2 Solidarity (8) 12-16.

[159]Karst, The Uses of Confiscation, 63 MICH. L. REV. 327.

[160]*Id.*

applied to India, *after a century and a half it might seem fantastic that such ancestral claims could be sorted out,* so as to reinstate the original class of peasants who had lost their rights under the early British land settlements "But the Indian caste system to a considerable extent," explains Myrdal, "permits the descendants of the original peasant owners to be identified; besides there was an elaborate system of land records and records of right which had been compiled at settlements undertaken in the nineteenth century."[161]

It must be noted, however, that there is a doctrinal dispute as to whether private, in the sense of individual, ownership of land existed in India under Hindu as Muslim law.[162] Campbell[163] sought to clarify what was referred to as "property" in land and concluded that property did exist but only as to possession for cultivation.[164] The British administrators in making settlements with the zamindars debated whether to treat them as mere agents of the government, either as collectors or revenue farmers; or to recognize them as proprietors with hereditable rights in land. This latter view prevailed,[165] and to this day the proprietary interest of zamindars over land as settled by the British is accounted for, particularly in claims for compensation.[166]

While the theory of restitution is attractive, nevertheless it has been overshadowed by a more compelling one: the social function theory.[167] Property, it is asserted, exists under the protection of society and it owes its value to that protection and recognition. Property should be devoted to promote the common interests of society; or, at least, it should not be misused for individual purposes harmful to society.[168] Applied in India, this theory results in constitutional provisions that guarantee fundamental rights to property yet appear to hedge those rights with conditions as to nullify them.[169] In deprivation cases the courts are then driven to inquire how fundamental indeed are those rights.[170] While the Philippines and Puerto Rico do not subscribe openly to the concept of socialism as India does, both their constitutions carry provisions[171] concerning social interests in private property would prevail over individual interests should

[161]Myrdal, *op. cit.*, at 1309.
[162]India, Ministry of Law, IV *Agricultural Legislation*, at ii.
[163]Campbell, *op. cit.*, at 147.
[164]*Id.*, at 149-151.
[165]*Id.*, at 169.
[166]India, Ministry of Law, *op. cit.*, at XI.
[167]Lucio Mendieta y Nuñez, *Introduccion al estudio del derecho agrario.*
[168]Cf. the common-law maxim, "So use your property so as not to injure others."
[169]See C.S. Ayyar, *Planning the Indian Welfare State*, at 44-45. (Madras: Law Journal Press, 1964).
[170]Sajjan Singh v. Rajasthan State, 1 S.C.R. 932 (1965).
[171]PHIL. CONST. art. 2 sec. 5; Puerto Rico Constitution, Preamble; cf. sec. 20, disapproved by U.S. Congress, Jt. Res. July 3, 1952, 66 Stat. 327.

a conflict arise. In both countries the ultimate or residual right in property belongs to the state.[172]

Bearing in mind the foregoing discussion, one may now compare legislative expressions of policy objectives.[173] The Puerto Rican law stresses that its fundamental purpose is "to put an end to corporative latifundia and to every large concentration of land" and "to prevent the reappearance of such latifundia in the future.[174] But it adds the following: (1) if for reasons of efficiency, division is not advisable, then proportional-profit farms should be established so that while land is not parcelled, its produce may be distributed in the form of dividends to the workers;[175] (2) those who own no lots must be provided with a piece of land where they may build homes "in full enjoyment of the inviolability guaranteed by law for the homestead of the citizen,[176] (3) prevent coercion of farm workers and leave them free "to sell their labor through fair and equitable bargaining,"[177] and (4) as part of the "moral purpose" of legislative policy furnish other means whereby the social class *agregados*[178] may disappear.

Comparatively, what the Philippine Land Reform Code seeks to abolish is share tenancy[179] which is declared contrary to public policy. It sets up two stages of reform: (1) establishment of leasehold to replace share tenancy;[180] and, (2) establishment of family-size farms as the basis of agriculture.[181] Like the Puerto Rican law, it organizes a Land Authority,[182] with this difference: that of Puerto Rico is an autonomous public corporation,[183] whereas that of the Philippines is an executive agency under the control of the President.[184] In both cases, the Land Authority is granted the power of expropriation.[185] But the area expropriable in the Philippines must be that exceeding seventy-five (75) hectares,[186] while

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[172]PHIL. CONST. art. XIII, sec. 1; PUERTO RICO CONST. art. II, sec. 19; PHIL. RULES OF COURT. Rule 91, sec. 5; I L.P.R.A. sec. 23.

[173]Objectives here should be distinguished from *motives*, which might not be explicitly stated in the law or during debates thereon.

[174]28 L.P.R.A. sec. 241, at 244.

[175]*Id.*, secs. 461-491.

[176]*Id.*, secs. 551-561.

[177]*Id.*, secs. 661-668.

[178]Agregado is defined in sec. 555 as one "whose only means of livelihood is his labor for a wage earned from agricultural tasks and who does not possess land as an owner."

[179]Land Reform Code, Rep. Act No. 3844 adopted in 1963 (hereinafter referred to as Land Reform Code) sec. 4.

[180]*Id.*, sec. 5.

[181]*Id.*, sec. 49.

[182]28 L.P.R.A. sec. 242.

[183]*Id.*, sec. 242 (c)

[184]Land Reform Code, sec. 49.

[185]*Id.*, secs. 53; 28 L.P.R.A. secs. 264.

[186]Land Reform Code, sec. 51 (1) (b), (c).

in Puerto Rico it is the excess of the five hundred acres[187] owned or controlled by a corporation.

The Philippine Land Reform Code goes on to provide for a declaration of rights for agricultural labor,[188] technical services to the agricultural sector,[189] a program of survey and registration,[190] a land bank, [191] and an agrarian court.[192] Explicitly, the Code declares, "It is the policy of the State: (1) To establish owner-cultivatorship and the economic family-size farm ... and, as a consequence divert landlord capital in agriculture to industrial development;[193] . . . (6) To make the small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society."[194]

Among the Indian state acts, a typical expression of objectives may be found in the Uttar Pradesh Zamindari Abolition and Land Reforms Act.[195] The immediate purpose is the acquisition of the rights of the zamindars, the rent-receivers or intermediaries who are abolished as a class.[196] In other words, what is outlawed is the "exploiter" class, rather than (as in Puerto Rico and the Philippines) the "exploited." But the intended result is the same: hopefully, the end of an oppressive relationship concerning land.[197] Instead of individual expropriation, the Indian act provides for automatic vesting in, upon which all estates shall stand transferred to, the State "free of all encumbrances"[198] since the value of those encumbrances is deducted from the payment due the intermediary and paid over to the lien-holder. Such vesting is operative throughout the state or in such areas as the Governor may specify.[199]

The zamindari system having been abolished, the act further simplifies land tenure that will prevail in the state to only four classes of holding.[200]

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[187]28 L.P.R.A. sec. 268, 402.
These sections refer to violation of the 500-acre law, and is distinct from the Land Authority's power of condemnation in sec. 264.

[188]Land Reform Code ch. II., secs. 39-48.

[189]*Id.*, ch. VI, secs. 119-125 (extension); ch. V, secs. 101-118 (credit), ch. X, secs. 160-165 (legal counsel).

[190]*Id.*, ch. VIII, secs. 132-140.

[191]*Id.*, ch. IV, secs. 74-100.

[192]*Id.*, ch. IX, secs. 141-159.

[193]*Id.*, sec. 2 (1).

[194]*Id.*, sec. 2 (6).

[195]U.P. Act I of 1951; IV *Agricultural Legislation*, 228.

[196]*Id.*, Preamble; sec. 6.

[197]There is, however, a difference. In India, all tillers are merely "brought in direct relation to the state" by the zamindari abolition act; either as tenants or proprietors who must pay rent to the state.

[198]U.P. Act I, sec. 4.

[199]*Id.*, sec. 4 (2).

[200]The new types of tenure holders are: (1) *bhumidhars*, sec. 18, 130; (2) *sirdars*, sec. 10, 131; (3) *asami*, sec. 133; and (4) *adhivasi*, sec 20. In simplified terms, a bhumidhar has full, transferable proprietary right; a sirdar is a hereditary tenant; an asami is a sub-tenant, or more properly the tenant of a bhumindhar who pays rent to the state and an adhivasi is a recognized occupant of a parcel of land. Under sec.

In addition, the act provides for cooperative farming.[201] Its unique feature is the setting up of villages into "small republics"; the village council (Gaon Panchayat) is granted powers of land management.[202] The administration of acquired estates is entrusted to the Collector, a revenue officer.[203] With comparable exuberance, the legislature proclaims a fitting summation: "The landlord-tenant system established by the British for reasons of expediency and administrative convenience, should with the dawn of political freedom, give place to a new order which restores to the cultivator the rights and the freedom which were his and to the village community the supremacy which it exercised over all the elements of village life."[204] In India as in Puerto Rico and the Philippines, land reform echoes the nostalgic notes of Jeffersonian arcadia..[205]

3. *How will the land taken be paid for?*

However lofty the purposes and the rhetoric of land reform, its proponents must all come down to earth when the mechanics of implementation is drawn out in workable detail.[206] Nothing could be more crucial to implementation than the key question: how will the land taken in the process of reform be paid for?

The act of taking could be by "expropriation" as understood in Philippine law.[207] Or it could be by "condemnation" in Puerto Rican usage.[208] Or it might be by "acquisition" as understood in Indian jurisprudence.[209] The transfer to the state of private land might be the result of voluntary purchase after a bilateral negotiation, or by force of law as in vesting through proclamation. It might even be by forfeiture action in court against violators of a ceiling on landholding.[210] But in any case, the owner could not just be dispossessed without some measure of compensation.

129, only bhumidhar, sirdar, and asami are mentioned, showing the intent of legislature to do away with the temporary class of adhivasi by letting them acquire at least asami rights.

[201]U.P. Act, sec. 295-316.

[202]*Id.*, sec. 117 (Gaon Sabha); Srivastava Commentaries on U.P. Zamindari and Land Reforms Act, at 373-75; Tenari, U.P. Zamindari Abolition, at 10.

[203]U.P. Act, sec. 25.

[204]Statement of Objects and Reasons in Srivastava, *op. cit.*, at 1.

[205]Cf. speech of sponsorship by Pandit G.B. Pant: "We have been actuated only by a desire to do all that we can do to secure justice for every one and in particular to create conditions that will enable the vast masses of our farmers, peasants and cultivators to lead a better life, to develop a true sense of social responsibility and to *regain a lost sense of community spirit*, without which democracy, whether political or economic cannot blossom." Quoted in Tewari, *op. cit.*, at 16.

[206]In the Philippines, this task is left to the National Land Reform Council, supported by regional committees and land reform project teams. Philippine Land Reform Code, Rep. Act No. 3844, secs. 126-131. In India, it falls on the state government. U.P. Zamindari Abolition & Land Reform Act. Act I of 1951, secs. 26, 64.

[207]4 MORAN, RULES OF COURT. Rule 67, sec. 1, 208.

[208]32 L.P.R.A. sec. 2901.

[209]INDIA CONST. art. 31 (2A).

[210]28 L.P.R.A. sec. 402.

For, as the Indian land reformers realized, abolition of landlordism might create for the state and for society, "problems no less difficult and dangerous than abolition with full compensation."[211]

Despite an assertion that governments of countries under a managed currency system could literally print paper money, without fear of constitutional challenge,[212] neither Indian or Puerto Rico or the Philippines has done so to finance land reform. All, however, have resorted in distinctive ways to the use of a class of investment paper: bonds. In each country, bonds have peculiar characteristics. They are usually used in combination with stocks and cash in payment of the land taken. To facilitate further discussion, a general overview of compensation schemes in each country is essential.

(a) IN THE PHILIPPINES

The Land Reform Code,[213] passed in 1963, empowered the Land Authority to negotiate with the landowner for the purphase of Land. If the negotiation fails because the owner does not want to sell or because no price is agreed upon, the Land Authority then files an action in a court of agrarian relations to expropriate land held by the owner above the maximum allowed.[214]

Whether taking be by purchase or by expropriation, the payment for the land taken will consist of the following: ten per cent (10%) cash; and the balance of ninety per cent (90%), either (a) entirely in bonds or (b) in bonds and in stocks, provided the stocks be limited to thirty per cent (30%) the total price of the land.[215]

The bonds and the stocks are issued by the Land Bank, created under the Code expressly to finance land acquisition,[216] But the bonds are unconditionally guaranteed to their full value by the Philippine government.[217] They earn six per cent (6%) interest annually, and are tax-free both on the principal and on the interest. They are negotiable, and mortgageable in government financing institutions for investment purposes up to sixty per cent (60%) of their face value. They mature in twenty-five years, unless the Land Bank, at its option, redeems the bonds earlier.[218]

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[211]Baljit Singh and Shridhar Misra, *A Study of Land Reforms in Uttar Pradesh*, at 79.

[212]Perfecto Fernandez, *The Constitutionality of the Compensation Provisions of Agricultural Land Reform Code*, 38 PHIL. L.J. 562, 587 (1963).

[213]Rep. Act No. 3844.

[214]*Id.*, sec. 53.

[215]*Id.*, sec. 80.

[216]*Id.*, sec. 74.

[217]*Id.*, secs. 76, 78.

[218]*Id.*, sec. 76.

The bonds could be used to pay for the purchase of shares representing all or substantially all of certain specified government-owned corporations, for the purchase of agricultural lands or other real properties from the government as provided in the Code, for surety or performance bonds in cases where the Government requires or accepts real property as bonds, and in payment of war reparation goods.[219]

The stock in the Land Bank, which the owner may choose up to thirty per cent (30%) of the price of his land, also has a guaranteed rate of earnings, 6% annually. The owner may participate in higher earnings of the Bank in the form of dividends.[220]

To capitalize the Land Bank further, the government may issue its own bonds or other evidences of indebtedness for sale locally or abroad, to cover the deficiency. But those issued locally would not be supported by the Central Bank. These bonds represent a liability of the national government, and not of the Land Bank.[221]

While the Code appropriates funds for the operations of the different agencies charged with implementing land reform, these appropriations are not intended for payment of land acquisitions. Such payment will not be provided for by the national government but by the Land Bank. However, a guarantee fund has been set up by the government in case the Bank would be unable to pay the bonds, debentures, and other obligations issued by it.[222]

This scheme of compensation should be contrasted with that provided by the Land Reform Act of 1955,[223] the predecessor of the Land Reform Code. The 1955 Act created a Land Tenure Administration, which was also empowered to negotiate for the purchase or to file expropriation suits to acquire land for redistribution to tenants. But the provision on payment under the 1955 Act was different. In case of voluntary sale, land certificates might be issued wholly or partly. But in cases of expropriation, the payment would be wholly in cash, unless the landowner would choose to receive land certificates. These certificates were not issued by the national government. However, they earned a lesser amount of interest: from four to five per cent (4% — 5%) depending on the period of maturity. Like bonds, the land certificates could be used (a) in payment for agricultural lands or properties purchased from the government, (b) for the purchase shares of stock of government-owned corporations, and (c) as surety or performance bonds required by the government.

[219] *Id.*, secs. 76, 80, 85.
[220] *Id.*, secs. 77, 83.
[221] *Id.*, sec. 81.
[222] *Id.*, sec. 78.
[223] Rep. Act No. 1400.

But unlike bonds, the land certificates could be used in payment of tax obligations or money debts due the government.[224]

But the most significant difference between the present Land Reform Code and the 1955 Land Reform Act is in the valuation of the land for the purpose of fixing compensation. Under the 1955 Act, the *real value* of the land in the market was to be the basis of compensation.[225] But under the Land Reform Code, compensation will be based on *rental income* of the land capitalized at six per cent (6%) per annum.[226]

(b) In Puerto Rico

The measure of just compensation in Puerto Rico is "reasonable market value."[227] Together with the declaration of taking filed court, the Land Authority must fix an estimated amount of compensation for the property sought to be acquired. That amount must be deposited in court for the benefit of the landowner. Upon such deposit, the title to the property vests in the Land Authority, while the right to compensation vests on the owner.[228] The court's duty thereafter is to ascertain the just compensation due the owner. If the court finds that the amount deposited is insufficient to pay for the true value of the land taken, the court will enter a deficiency judgment against the Land Authority.[229]

Expropriation, however, is facilitated if the landowner signs a "consent decree" agreeing to sell his land to the Authority for an agreed price.[230] But whether the land is taken involuntarily or by consent decree, the payment is in cash.[231] The source of the cash payment are direct appropriations from the Puerto Rican government, financial assistance from the Federal Government and its agencies, trust funds[232] and proceeds from the sale of land reform bonds.[233]

These bonds then, are issued not as a direct and compulsory payment to the landholder, unlike the Land Bank bonds in the Philippines. But these bonds are floated in the financial market, particularly in mainland U.S.A., where the bonds are bought as an investment.[234]

There are also two types of bonds issued to finance land reform in Puerto Rico. One type is issued by the Land Authority in an amount

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[224] *Id.*, secs. 9, 18, 19.
[225] *Id.*, sec. 12 (2).
[226] Rep. Act No. 3844, sec. 56.
[227] 32 L.P.R.A., sec. 2915; Note the use of "fair value" in 28 L.P.R.A. 402.
[228] *Id.*, sec. 2907.
[229] Id., sec. 2908.
[230] 28 L.P.R.A., sec. 406.
[231] 32 L.P.R.A., sec. 2907, specifies *money*.
[232] 28 L.P.R.A., sec. 323.
[233] *Id.*, secs. 361, 362.
[234] Edel, *op. cit.* (Part one), at 56-57.

totalling the equivalent of seventy-five per cent (75%) the price of lands it acquired.[235] They are negotiable and interest-bearing not to exceed five per cent (5%) annually. They could be sold by the Authority by public auction or in private, in the form and under terms which the Land Authority determines.[236]

This type of bonds is exclusively the liability of the Land Authority, not of the Commonwealth of Puerto Rico or of its political subdivisions. They are not payable out of Commonwealth funds, but only out of the funds of the Land Authority.[237] To assist the Land Authority, however, the Commonwealth Government could issue its own bonds if necessary.[238]

The Bankhead-Jones Tenancy Act[239] expressly included Puerto Rico within its area of operations, and under this Act a loan program was launched to provide financial assistance from the United States government to tenants wishing to buy their own lands. But this procedure did not fit in with the Puerto Rican reform plan whereby it is the government that buys the land, particularly those estates intended to be managed as proportional-profit farms.

The Land Authority was expressly authorized do all acts so as to make its bonds marketable.[240] But its flotation in the bond market was unsuccessful. Most of the funds that went to the financing of Land Reform, then, came from direct appropriations by the Puerto Rican government. And when no appropriations could be made for purchase of estates, land reform lagged.[241]

(c) IN INDIA

The legislative assemblies of the different states of the Indian union, and not the federal Parliament, legislate concerning the payment they would make for the land taken under their respective land reform programs.[242] There is therefore a wide variation of the schemes of compensation adopted.[243] But a discernible pattern could be briefly described. As a rule, the basis of payment is the net income or net assets of the estate, multiplied a certain number of times.[244] The net assets or net income is arrived at after making specified deductions from the gross in-

[235]28 L.P.R.A., sec. 361.
[236]*Id.*, sec. 362.
[237]*Id.*, sec. 370.
[238]Land Law, April 12, 1941 (1926), secs. 37-41, provided for issuance of bonds not to exceed $5,000,000.
[239]50 Stat. 522, 7 U.S.C.A. secs. 1001, 1013a.
[240]28 L.P.R.A. sec. 371.
[241]Edel, *op. cit.*, (part one), at 59.
[242]INDIA CONST. art. 246, Seventh Schedule, entry 18.
[243]Shri M. Desai, *The Indian Land Problem and Legislation*, at 501.
[244]Indian Planning Commission, *Reports of the Panel on Land Reforms*, at 18.

come or gross assets of the estate. Aside from the basic compensation thus determined, additional payment is made in the form of rehabilitation grants.[245] These grants are on the basis of a sliding scale, the smaller estates getting higher grants than the bigger estates. In one case, it was held that the basic compensation together with the rehabilitation grant constitutes the true compensation for the zamindar's estate acquired by the govenrment.[246]

By way of a more specific example, the Uttar Pradesh Zamindari Abolition and Land Reforms Act[247] provides that compensation be given in cash, in bonds or partly in cash and partly in bonds, as may be prescribed by the state government. The bonds are negotiable. They bear interest at 2½ per cent annually, payable semi-annually during the period of forty years from date of issuance, which is also the date of vesting of estates taken by the government. The government has the option to redeem these bonds earlier than the maturity date.[248] As stated in *Govindi v. U.P. State*, they are in the nature of promissory notes of the state government.[249] Cash is paid only if the amount due does not exceed fifty rupees (Rs. 50).[250] For estates previously owned by religious or charitable institutions, compensation is in the form of stock certificate bearing interest at the rate of two and one-half per cent (2½%) per annum. Like the bonds, they will be redeemed at the expiry of forty years after the date of vesting. To continue the trust, but now on the compensation money rather than on the land, the payment will be deposited in a banking or a financial institution as may be provided by the relevant rules.[251] In addition, rehabilitation grants equivalent to the net income of the estate taken are given to religious or charitable institutions in the form of a perpetual annuity.[252]

Since the determination of compensation could be made only after some lapse of time from the moment of vesting in the state of the zamindars' estate, the zamindars are allowed interim compensation. This lessens the grievance of landowners caused by the delay in settling accounts. If after nine months, compensation is not fixed, the intermediary could claim for interim compensation as a matter of right.[253] In certain cases, advance payment by way of partial compensation could be ar-

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[245]India IV, Agricultural legislation, Appendix III, xxxiii.
[246]Suriya Pal Singh v. U.P. State, 1951 A.L.J. 365.
[247]U.P. Act I of 1951, sec. 68.
[248]U.P. Zamindari Abolition and Land Reform Rules, hereafter cited as U.P. Rules, Rule 64; Srivastava, *op. cit.*, at 886.
[249]1952 A.L.J. 52.
[250]U.P. Rules, Rule 75.
[251]*Id.*, Rules 66-A, 66-B.
[252]*Id.*, Rules 91, 92. India Planning Commission, *Reports*, at 19.
[253]U.P. Act, I, sec. 29 (1).

ranged. But both the interim and advance payments are of course deducted from the final compensation.[254]

What makes the fixing of compensation tedious is the process of drafting the "assessment roll." For every zamindar or landowner, a roll will have to be prepared to reflect the assets or income of his estate. At this time of drafting, disputed claims could arise to further delay the determination of the amount payable.[255] Since the factors taken into account for compensation under land reform differ from those considered to determine market value under previous land acquisition acts, the assessment or appraisal has little precedents to facilitate the assessor's task.

To these problems of assessment must be added the problem raised by the sheer size of the area covered by the land reform acts in India. It is estimated that India has a total area of eight hundred eleven million acres, forty per cent (40%) of which was held under zamindari tenure and therefore affectd by the zamindari abolition acts.[256] Twenty million tenants of the zamindars were brought into direct relationship with the state, in the sense that upon abolition of the zamindari the tenants would pay rents directly to, or would purchase the land from, the state.[257] Fifteen years after the adoption of land reform as a part of India's first five-year plan, state governments were still engaged in assessment of compensation and issuing compensatory bonds.[258]

Considering the magnitude of the zamindari abolition, the compensation requirements would have had a staggering impact on the public exchequer of India. Two devices, however, were adopted to cushion this impact: the use of deferred payment in the form of bonds or installment plan, and the formation of the zamindari abolition fund.[259] The fund would have been entirely contributed by the tenants themselves who were to pay ten times their annual rental by way of advances for the land to be resold by the state to them. Unfortunately, the fund fell short of estimates.[260] The bulk of the cash compensation for the land taken still came from appropriations of the state governments.

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[254]*Id.*, sec. 30.
[255]*Id.*, secs. 35, 36.
[256]India Planning Commission Panel on Land Reforms, *Reports.*
[257]India, Ministry of Law, *IV Agricultural Legislation.*
[258]India Planning Commission, *Third Five-Year Plan Summary.*
[259]India Planning Commission Panel on Land Reforms, *Reports.*
[260]Singh and Misra, *A Study of Land Reforms in Uttar Pradesh.*

II. JUSTICIABILITY OF COMPENSATION AND RELATED ISSUES

If the court's opinion in *Marbury v. Madison*[1] evokes controversy until today, it is because of the assertion of judicial power to review and invalidate an act of Congress. Marshall C.J., it may be noted, set a two-pronged principle of judicial review: (1) If two laws conflict with each other, the courts must decide on the operation of each; and (2) If a legislative act be in opposition to a constitutional provision, then the courts must determine which of the two governs. "This," said Marshall C.J., "is the very esssence of judicial duty."[2]

The power of review has been applied to the issue of compensation in the taking of private property for public use. The oft-quoted authority is the case of *Monongahela Navigation Co. v. U.S.*,[3] which stated: "The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry." The legislature may determine what private property is needed for public purposes, conceded the court, for that is a question of a political and legislative character. But it does not rest with the legislature representing the public as taker, added the court, to say what compensation shall be paid or even what shall be the rule of compensation.[4] The court can therefore declare null a statute authorizing condemnation if it does not provide for payment satisfactory to the court's idea of just compensation.[5]

In striking contrast to this ruling in *Monongahela* is the series of holding by the Supreme Court of India in land reform cases. For instance, in *Gajapati Narayan Deo v. the State of Orissa*,[6] the court agreed with the zamindars that there was no doubt the Orissa Estates Abolition Act did not give "anything like a fair market price of the properties acquired under the Act." The compensation allowed the zamindars might indeed be "inadequate and improper."[7] But the issue of the adequacy of compensation, ruled the court, was barred from being raised in a judicial action. For as Mahajan J. explained in an earlier case,[8] the court in land reform compensation cases in India plays but a limited role, thus:

> "(T)he law under challenge is highly unjust or inequitable to certain persons and in certain matters, and compensation in some cases is purely illu-

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[1]1 Cranch 137, 2 L. Ed. 60. (1803)
[2]*Id.*, the C.J. would uphold the Constitution.
[3]148 U.S. 312, 37 L. Ed. 463. (1893).
[4]148 U.S. at 327, 37 L. Ed. at 468. (1893)
[5]See 3 Nichols, sec. 8-9 and cases cited therein.
[6]1954 S. C. R. 1.
[7]*Id.*, at 7.
[8]Bihar v. Kameshwar Singh, S.C.R. 889 (1952)

> sory. Be that as it may, the Constitution in express terms prohibits an inquiry in a court of law into those matters. The same Constituttent (sic) Assembly that provided the guarantees in Article 31 (2) in respect of payment of compensation and provided for the remedy in article 32 for enforcing the guaranteed right, took away that remedy . . ."[9]

Here, then, are two contrasting approaches to the justiciability of the compensation issue. The American case of *Monongahela Navigation Co.* involved a lock and dam franchise owned by a private company. The Indian cases involved landed estates owned by zamindars. But in all these instances, the authority of legislature to set the amount of compensation as well as the power of the judiciary to pass upon compensation was in dispute.[10]

The American holding that the compensation issue is justiciable has long been entrenched[11] but recently it has been challenged.[12] Like the related issue of public purpose,[13] just compensation in general has been asserted to be exclusively a legislative question.[14] In contrast, the Indian holding that land reform compensation is non-justiciable has been put up for reconsideration several times,[15] the last having been in 1967. That year in *Golaknath v. Punjab State,*[16] a divided bench of eleven justices produced five opinions that cast doubt whether compensation in cases of compulsory acquisition would remain beyond judicial review.[17]

This portion of the study, then, will be devoted mainly to the concept of justiciability of compensation as it has been developed in America, applied in the Philippines and Puerto Rico, and rejected in India. Because of its close relation to compensation, public purpose is also discussed here.

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[9]*Id.*, at 936.

[10]Id., at 894, 897; 37 L. Ed., at 466-467 (1893).

[11]Kohl et. al. v. U.S., 91 U.S. 367 was decided in 1875, as the first case involving eminent domain by condemnation and *Monongahela,* establishing that just compensation equals market value, was decided in 1893. See William I. Greenwald, *Compensation Principles for Direct and Indirect Takings,* 39 N.Y. State Bar J. (2) 113.

[12]U.S. v. Cors. 337 U.S. 325, 93 L. Ed. 1392, 69 S. Ct. 1086; U.S. v. Commodities Trading Corp., 339 U.S. 121, 94 L. Ed. 7073, 70 S. Ct. 547 (1950).

[13]Berman v. Parker, 348 U.S. 26 (1954), 99 L. Ed. 27 (1954), 75 S. Ct. 98 (1954).

[14]U.S. v. Cors, 93 L. Ed., at 1394. (Argument of U.S. Counsel): "The Constitution protects the fundamental right to be free of confiscation; it does not prescribe any particular measure, amount, or standard of compensation, but authorizes the Congress within the bounds of reasonableness to make those choices." Citing Lynch v. U.S., 292 U.S. 571 (1934), 78 L. Ed., 1434 (1934), 54 S. Ct. 840 (1934); U.S. v. Miller, 317 U.S. 369 (1943), 87 L. Ed., 336 (1943), 63 S. Ct. 276 (1943). Albrecht v. U.S., 329 U.S. 599, 91 L. Ed. 532, 67 S. Ct. 606 (1947).

[15]Sankari Prasad v. Union of India (1952) S.C.R. 89; Sajjan Singh v. Rajasthan State, 1 S.C.R. 933 (1965).

[16]2 S.C.R. 762 (1967).

[17]The vote was 5-1-5. Please see discussion *post,* in section F. of this chapter.

A. THE ADOPTION OF JUSTICIABILITY IN AMERICA

Mutual fear between federalists and state-rights men, according to Hadley,[18] united them in a policy that would prevent the legislature or the executive, either of the nation or the state, from taking property without judicial inquiry into the public necessity involved and making full compensation even if that necessity is shown. The state right men feared that military need would force the federal government to pursue confiscation while the federalists were afraid that sectional jealousy might lead to arbitrary taking.[19] Thus it was ordained that no private property shall be taken for public use without just compensation.

Still, regardless of the framers' motives, the concluding clause of the Fifth Amendment[20] was recognized as but an affirmance of a common-law doctrine inculcated by Blackstone[21] in colonial America. It was laid down by jurists, wrote Story,[22] as a principle of universal law. In one case,[23] the judge admonished, "It should be remembered that of the three fundamental principles which underlie government, and for which government exists, the protection of life, liberty, and property, the chief of these is property." This order of priority in favor of property, on questions involving due process and compensation, prompted criticism of the court.[24]

It was observed for instance that with notions of "the higher law" coupled with judicial review, property was protected even against state supervision.[25] Reading literally the Fifth Amendment, a critic asserted, turned social legislation into "deprivations"; and courts appeared as "the overlord of legislature" in the control of economic order.[26]

But, it must be recalled that the assertion of judicial power in compensation cases is essentially to make effective a limitation imposed by the Constitution on the power of the state in its dealings with citizens.[27] The court takes a hand in such cases to curb the power of legislature in fixing rules of damages that could be detrimental to the

[18]Arthur T. Hadley, *The Constitutional Position of the Property Owner,* II Selected Essays in Constitutional Law. (Chicago: Foundation Press, Inc., 1938).

[19]*Id.*, at 5.

[20]U.S. CONST. amend. V: "...nor shall private property be taken for public use without just compensation."

[21]1 Black. Comm. 138-39.

[22]Joseph Story, *Commentaries on the Constitution of the U.S.*, at 596. (Boston: Little, Brown & Co., 1858).

[23]Van Orsdel, Judge, in Children's Hospital v. Adkins, 284 Fed. 613, 622.

[24]Haines, *The Revival of Natural Law Concepts,* at 319. (New York: Russel and Russell, 1965).

[25]Cf. J.A.C. Grant, *The Higher Law Background of the Law of Eminent Domain,* II Selected Essays, 912; Walton H. Hamilton, *Property According to Locke,* II Selected Essays, at 130.

[26]Hamilton, *op. cit.*, 128.

[27]U.S. v. Lee, 106 U.S. 196 (1882), 27 L. Ed., 171 (1882), 1 S. Ct, 240 (1882).

rights of the property owner.[28] And the protection of the citizen is not merely against legislative encroachment but also against executive abuse; thus, though the President is given the power to fix prices, the extent of compensation for property remains a judicial question.[29] The final determination as to what constitutes just compensation is for the judiciary, and not the legislature, although the legislature may determine what private property is needed and whether the taking is expedient.[30]

What is within the court's power is to award just compensation.[31] Since the determination of just compensation is judicial, it is for the court to fix the rate of interest it will allow.[32] The duty of the court is to see that the owner gets the equivalent of his property.[33] But the federal legislature may leave to the state court the ascertainment of damages for property taken,[34] although as far as the state court is concerned what constitutes property and what is just compensation in federal condemnation is a question not of state but federal law.[35]

The board statement may be made that just determining compensation is as a rule exclusively a judicial function.[36] And the determination of just compensation by the legislature or the executive is not final but is justiciable.[37] However, in relation to acts of foreign governments, since the Fifth Amendment is not a recognized restriction,[38] constitutional guarantees against confiscation furnishes no ground for judicial interference.[39]

The *Monongahela* case gives the underlying philosophy for the assertion of justiciability by citing two opinions it approves.[40] The first, that of the Mississippi court,[41] holds that "the right of the legislature of the state, by law, to apply the property of the citizen to public use and then constitute itself as the judge in its own case to determine what is 'just compensation' cannot be tolerated under the constitution on the ground that it violates natural justice." The second is that of Justice McClean in *Charles River Bridge* case[42] where a provision of statute

[28]Searl v. School District, 133 U.S. 553, 33 L. Ed. 740, 10 S. Ct. 374 (1890).
[29]U.S. v. McFarland, 15 F. (2d) 823.
[30]Baltimore & Ohio R.R. Co. v. U.S., 298 U.S. 349 (1936), 80 L. Ed. 1209, 56 S. Ct. 797 (1936). Cf. Monongahela v. U.S., 148 U.S. 312, 37 L. Ed. 463 (1893).
[31]U.S. v. 26.3765 Acres of Land, 62 F. Supp. 910.
[32]Arkansas Valley Ry. v. U.S., 68 F. Supp. 727.
[33]Neither more nor less. Olson v. U.S. 292 U.S. 246.
[34]U.S. v. Jones 513, 27 L. Ed. 1015, 3 S. Ct. 36 (1883).
[35]Nebraska v. U.S., 164 F (2d) 866. affg. 70 F. Supp. 10.
[36]Walker v. U.S., 164 F. Supp. 135.
[37]U.S. v. New River Colleries Co., 262 U.S. 341, 67 L. Ed. 1014, 43 S. Ct., 565 (1923); U.S. ex. rel. T.V.A. v. Indian Creek Marble Co., 40 F. Supp. 811.
[38]U.S. v. Belmont 301 U.S. 324, 81 L. Ed. 1134, 57 S. Ct. 758 (1937).
[39]Iraq v. F.N.C.B., 353 F (2d) 47, aff'g. 24 F. Supp. 567.
[40]148 U.S. 312, 37 L. Ed. 463, 468 (1893)
[41]Isom v. Miss. Central R. Co., 36 Miss. 300, 315.
[42]Charles River Bridge Prop. v. U.S., 36 U.S. 11.

setting payment of a specific sum was held invalid because "it appears the legislature has undertaken to do what a jury of the country only could do: assess the amount of compensation."[43] As has been noted, the *Monongahela* ruling has been directly attacked, but in *U.S. v. Cors*,[44] the Supreme Court chose not to meet the challenge head-on.

B. Justiciabilty Rejected in India

Despite notice by the Indian court that the framers of the Indian constitution had before them the American model,[45] the court at least until 1967[46] chose to veer away from the moorings of American precepts of justiciability. Although Article 13 (2) of the Indian constitution guarantees that "no law can be passed by the state depriving citizens of their fundamental rights,"[47] and by Article 32 the right to move the court by appropriate proceedings for the enforcement of those rights was also guaranteed,[48] the court in *Sankari Prasad v. Union of India*[49] refused to invalidate the first amendment act[50] which purposely took away from the court the power to declare agrarian reform acts void. The amendment, in fact, retrospectively validated those acts voided by the courts previously.[51] Dubbed as "saving of laws providing for acquisition of estates," the amendment in Article 31A, declared that, "no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by this Part (III)," so long as such law was reserved for consideration by the President and received his assent.[52]

The court itself recognized that this was a taking away of a class of cases from judicial review,[53] the power to declare acquisition laws void having been left to a nominal executive, the President,[54] in the process of making his assent. But in *Sankari Prasad*, the court did not yet see a threat to basic rights that sixteen years later some members

[43]See Tucker Act, 28 U.S. C. sec. 1346. Declaration of Taking Act, 40 U.S.C. sec. 258.

[44]337 U.S. 325, 93 L. Ed. 1392.

[45]Dunham, *op. cit.*, at 91.

[46]Durgas Das Basu, I *Commentary on the Constitution of India* (4th ed.), at 4. (Calcutta: Sarkar & Sons, Ltd., 1961), hereinafter cited as Basu, I Commentary.

[47]Golaknath v. Punjab State 2 S.C.R. 762 (1967).

[48]India Const. art. 13 (2): "The State shall not make any law which takes away or abridges the rights conferred by this Part and any Law made in contravention of this clause shall, to the extent of the contravention, be void."

[49]India Const. art. 32 (1).

[50]S.C.R. 89 (1952).

[51]Monikanniah, *op. cit.*, 225.

[52]India Const. amend. 1, sec. 4, June 18, 1951.

[53]*Id.*, art. 31 A (1).

[54]See Suriya Pal v. Uttar Pradesh, S.C.R. 1056, 1071 (1952).

would see in this amendment. So in 1951, to the argument that the amendment deprived the state high courts and the Supreme Court of India of their powers, in violation of specific constitutional guarantees,[55] the Supreme Court replied:

> "It is not correct to say that the powers of the High Court under article 226 to issue writs for the enforcement of any rights conferred by Part III or of this Court under articles 132 and 136 to entertain appeals from orders issuing or refusing such writs are in any way affected. They remain just the same as they were before: only a certain class of case (sic) has been excluded from the purview of Part III and the courts could no longer interfere, not because their power were curtailed in any way or to any extent; but because there would be no occasion to exercise it."[56]

Here the court distinguished between a constitutional amendment from "law," the former said to have been passed by the exercise of constituent powers while the latter passed by the exercise of ordinary legislative power, although in either case the operative body of men is the same, Parliament.[57] Such reasoning was to haunt the court, first in *Sajjan Singh v. Rajasthan*[58] which produced a two-three split decision, and then in *Golaknath v. Punjab*[59] which sundered the court, sitting in an extraordinary bench of eleven members, three ways: five-one-five, with no court opinion. The *Sankari Prasad* ruling, however, was reversed by a vote of six justices;[60] although, rather remarkably, for different reasons the amendment and the affected land reforms acts thereunder were saved as valid.[61] This makes difficult any inference that, on the basis of *Sajjan Singh* and *Golaknath* cases, there might be a return to the American teaching of justiciability followed before 1951 by India's own jurists.[62]

C. JUSTICIABILITY APPLIED IN THE PHILIPPINES AND IN PUERTO RICO

The ambiguity found in the Indian constitution[63] as to whether "law" includes a constitutional amendment for the purpose of deciding questions involving abridgment of fundamental rights is avoided by the Puerto Rican constitution, by expressly providing that no amendment can be passed to impair the bill of rights.[64] Further, although Puerto Rico is

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[55]INDIA CONST. art. 31 (4).
[56]Guarantees in India Const. art. 13, 19, 31, 32, 132, and 136.
[57]S.C.R. 89, 108 (1952).
[58]The Constituent Assembly that passed the Indian Constitution continued in existence as the Provisional Parliament. India Const. art. 379, omitted by amend. 7. See also 1952 S.C.R. 89, 94-95.
[59]1 S.C.R. 933 (1965).
[60]2 S.C.R. 762 (1967).
[61]Subba Roa, C.J., Shah, Sikri, Shelat, Vaidialingam and Hidayatullah, JJ.
[62]2 S.C.R. 762 (1967), at 815, 902.
[63]Cf. Douglas, op. cit 225; West Bengal v. Bela Banerjee S.C.R. 558 (1954).
[64]INDIA CONST. art. 13 (a).

not a state of the union, the due process requirements of the Fourteenth Amendment has been extended to that island.[65] Pending resolution of Puerto Rico's final status, there is no dispute that the American doctrine of justiciability of taking and just compensation would be applied by the insular courts.[66] However, a different question involving the interpretation of "law" had been presented in the course of legal actions against corporate latifundia.[67]

In the leading case of *Rubert Hermanos Inc.*,[68] the jurisdiction of the Puerto Rican Supreme Court was challenged on the ground that it could not enforce a U.S. federal law and policy, the five-hundred-acre law, even if that same policy was embodied, with sanctions, in insular statutes.[69] *Rubert Hermanos* questioned the power of the local legislature to attach a penalty for the violation of the 500-acre ceiling, and the validity of conferring exclusive original jurisdiction on the Puerto Rican Supreme Court to take cognizance of quo warranto proceedings against the guilty corporations.[70] Rebuffed by the Puerto Rican court,[71] Rubert appealed to the Circuit Court of Appeals which sustained his objections[72] only to be reversed in turn by the U.S. Supreme Court.[73]

Conceding the Puerto Rican legislature's power to graft penalties to violations of federal land policy,[74] the court through Frankfurter J. took notice that this policy was born of the special needs of a congested population dependent upon land for its livelihood;[75] the absence of a specific remedy in the federal act should not be an implied bar against local enforcement.[76] Within the framework set by the federal Congress, Puerto Rico could avail itself of legislative powers under its Organic Act to vest insular courts with jurisdiction over forfeiture cases.[77] For purposes of the federal Judicial Code,[78] the 500-acre law was deemed not a "law of the U.S." within the jurisdiction of federal courts solely.

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[65]PUERTO RICO CONST. art. VII.

[66]People v. Eastern Sugar Assoc., 156 F. 2d 316 cert. den. 329 U.S. 772, 91 L. Ed. 664, 67 S. Ct. 190 (1947). Victor Gutierrez Franqui and Henry Wells, *The Commonwealth Constitution*. 285 Annals 36.

[67]American R.R. Co. v. Quinones, 15 P.R.R. 1.

[68]People v. Rubert Hermanos, Inc., 50 P.R.R. 157, 51 P.R.R. 867.

[69]309 U.S. 543. The position of the corporation is more elaborately stated by the lower court, 106 F (2d) 754, 758-759.

[70]Jt. Res. No. 23. 31 Stat. 716, 48 U.S.C.A. 752; Jones Act, 48 U.S.C.A. sec. 752 P.R. Act no. 33, July 22, 1935. L.P.R. sp.s. 1935, at 418; P.R. Act No. 47, Aug. 7, 1935, L.P.P.R. Sp. s. 1935, at 539.

[71]309 U.S. 543, 549.

[72]53 P.R.R. 741.

[73](C.C.A. 1) 106 F (2d) 754)

[74]307 U.S. 543.

[75]*Id.*, at 548.

[76]Puerto Rico had a population of 1,723,534 in 1935; its total tillable land area was found to be only 1,222, 284 acres, or a ratio of less than one acre per inhabitant.

[77]307 U.S. 543, 548.

[78]Reversing 106 F (2d) 754, 758.

The 500-acre law, reasoned the Court, was "peculiarly concerned with local policy calling for local enforcement from which local courts should not be excluded by a statutory provision plainly designed for the protection of policies having general application throughout the United States."[79] The Frankfurter opinion ended four decades of doubt as to the role of Puerto Rican courts in enforcing this law, which served as the nucleus of Puerto Rico's land reform.[80]

As in Puerto Rico, the courts in the Philippines assume a positive duty in enforcing land reform.[81] Ascertainment of compensation under Puerto Rico's Land Law is the court's responsibility in the course of expropriation proceedings.[82] The Philippine courts have a two-fold duty. Under the Civil Code,[83] if the requirement of just compensation is not complied with, the court must restore the ousted owner his possession.[84] Under the Land Reform Code,[85] whether the process of taking is by voluntary purchase or forcible condemnation, the court must pass upon the fairness of compensation being made, for the tenant qualified to be the beneficiary when the land is redistributed may object to the valuation of the Land Authority as excessive.[86] Collusion between the landowner and the government agency is sought thereby to be avoided.[87]

The Philippine court has hewed very close to the American precedents on judicial review of compensation cases, and with regard to the public purpose aspect, may even be said as imposing a stricter criterion.[88] It has consistently held that the validity of a statute directing expropriation of property in land is a judicial question.[89] Payment of just compensation has been held to be in the nature of an added requirement to be taken into account by legislature in prescribing the method of expropiation which could pass the test of due process.[90]

Aside from the main question of compensability, the Philippine court has also passed upon the right to claim damages as part of the com-

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[79]28 U.S.C. sec. 371; Judicial Code sec. 256.

[80]307 U.S. 543, 550.

[81]Descartes, *op. cit.*, at 140-141. At about the time of the promulgation of the Rubert Hermanos decision the Land Law, April 12, 1941, No. 26, was passed.

[82]The whole of ch. IX of the Land Reform Code, Rep. Act No. 3844, sec. 141-159, is devoted to creating, functions and appropriation for a country-wide agrarian judicial system, distinct from the regular or civil courts. Decisions of agrarian courts are reviewable by the Court of Appeals on questions of fact or mixed fact and law, and by the Supreme Court on pure questions of law.

[83]28 L.P.R.A. sec. 271.

[84]Rep. Act No. 386, approved June 18, 1949.

[85]*Id.*, art. 435.

[86]Rep. Act No. 3844, approved Aug. 8, 1963.

[87]*Id.*, sec. 53.

[88]Santos and Macalino, *op. cit.*, at 74.

[89]Compare Berman v. Parker, 348 U.S. 26 with Guido v. Rural Progress Adm., 84 Phil. 847 (1949); and Manila v. Chinese Community, 40 Phil. 349. (1919).

[90]NARRA v. Francisco, G.R. No. 14111, Oct. 24, 1960.

pensation due,[91] the factors to be considered in determining the land price,[92] the evidence admissible to prove the land's market value,[93] and whether the right to claim compensation has prescribed.[94]

In the case of *Genuino v. Court of Agrarian Relations*,[95] the Philippine Supreme Court ruled on just compensation for injury that the landlord might sustain upon forcible termination of a share tenancy contract and institution of leasehold as provided by the Land Reform Code.[96] The injury here consisted in the decrease by five per cent (5%) in the owner's share of the harvest, because under the share tenancy contract he was entitled to thirty (30%) for the tenant's seventy (70%), but under leasehold he was entitled by force of law to only twenty-five (25%) for the tenant's seventy-five (75%).[97] It was argued that this was deprivation without due process and without just compensation. The court upheld the validity of this alleged "deprivation," under the police power theory.[98] But it must be noted that the case did not involve the Code's expropriation provisions, only those on leasehold.[99]

A unique problem in the Philippines is the conflict of jurisdiction between the agrarian courts[100] and the ordinary civil courts.[101] Since the court of eminent domain of Puerto Rico has been abolished,[102] that conflict perhaps would not now arise there. But in the Philippines such a conflict continues because for a time there was considerable doubt as to the agrarian court's proper classification, i.e. was it an administrative agency or a part of the judicial system in which judicial power is constitutionally vested?[103] The problem arose because the agrarian court operated not under the rules of court but under the principle of "substantial evidence" followed in administrative procedure.[104] Under the present code,[105] the position of agrarian court is still not

[91]Visayan Ref. Co. v. Camus, 40 Phil. 550 (1919).

[92]Republic v. Baylosis, G.R. No. 13582, Sept. 30, 1960, 60 O.G. No. 20 May 18, 1964.

[93]Republic v. Nable-Jose, G.R. No. 18001, July 30, 1965. 22 Decision L.J. (6) 430.

[94]Republic v. Venturanza, G.R. No. 20417, May 30, 1966; C.A.R. J. (2) 158.

[95]Jaen v. Agregado. G.R. No. 7921, Sept. 28, 1955.

[96]G.R. No. 25035, Feb. 26, 1968; 1968 A Phil. Dec. 646.

[97]Rep. Act No. 3844, sec. 4.

[98]Rep. Act No. 3844 sec. 34.

[99]1968 A Phil. Dec. 646, 649.

[100]Leasehold is under Ch. I, while expropriation is Ch. III of Rep. Act No. 3844.

[101]Rep. Act No. 3844, sec. 141, sec. 154.

[102]Particularly the courts of first instance and municipal courts. See New Rules of Court of the Philippines, effective Jan. 1, 1964 for their jurisdiction.

[103]The Court of Eminent Domain was created by Act of May 15, 1948, No. 223 and repealed by implication by the Judiciary Act of July 24, 1952, No. 11. See 32 L.P.R.A. sec. 2914, at 407, 411.

[104]PHIL. CONST. art. VII; Infante v. Justice of the Peace, promulgated Sept. 28, 1949. Guillermo S. Santos, *The Court of Agrarian Relations*, 31 Phil. L.J. 485 (1956).

[105]Rep. Act No. 1267, approved June 14, 1955.

clear for while it has "powers and prerogatives inherent in" the court of first instance, it is still not "bound strictly by the technical rules of evidence and procedure, except in expropriation cases."[106] But although the agrarian court started as a division of the justice department falling under the executive at its inception,[107] it has evolved under several statutes from such agency — the Court of Industrial Relations—[108] to an autonomous though specialized organ exercising judicial functions, spelled out by the Land Reform Code.[109] While it has undoubted jurisdiction over tenancy, leasehold and agrarian labor disputes, its jurisdiction has been attacked in cases involving ownership disputes.[110] Remarkably, in one case[111] where there was a direct clash between the regular court and agrarian court on the issue of constitutionality of statutory provision, the Supreme Court sustained the position of the agrarian court over the regular court's claim of prior jurisdiction.[112].

D. THE RELATED ISSUE OF PUBLIC PURPOSE

If the justiciability of *compensation* in land reform cases has been left in doubt by the Indian court,[113] in contrast the American court has cast uncertainty over its power to review legislative declaration of *public purpose* generally.[114] The historic assertion that taking A's property to be given to B constitutes no public purpose has been negated in *Berman v. Parker*[115] and earlier, *U.S. ex rel. T.V.A. v. Welch*.[116] The question in the United States now appears fairly to be: When is taking that accrues to private benefit a public purpose? In the Philippines, the inquiry is: How big should the taking be and how many private parties should benefit so that in cases of land reform or housing projects, the taking should be deemed of public benefit too?[117] The old question used to be: Is land redistribution or even tenancy regulation a fit public

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[106]Agricultural Land Reform Code, Rep. Act No. 3844.

[107]*Id.*, sec. 155.

[108]Act No. 4054, approved Feb. 27, 1933; see Ms. Deogracias Lerma, *Solving Phil. Tenancy Problems* (at Wason Collection, Olin Library, Cornell).

[109]Com. Act No. 103, approved Oct. 29, 1936.

[110]Rep. Act No. 3044, sec. 154.

[111]Torres v. Trinidad, C.A. 34041, June 21, 1965. 10 C.A.R. J. (2) 151; Arejola v. Cam. Sur Regional Agric. School, G.R. Nos. 157-158, Dec. 29, 1960; Tomacruz v. C.A.R., G.R. Nos. 16542-43, May 31, 1961.

[112]Magtibay v. Alikpala, G.R. No. 17590, Nov. 29, 1962, 60 O.G. 65 9, No. 5, Feb. 3, 1964, Juliano v. C.A.R., G.R. No. 17627, jointly decided Nov. 29, 1962. 7 C.A.R. J. (4), 246.

[113]7 C.A.R. J. (4) 246, at 250.

[114]Golaknath v. Punjab State, 2 S.C.R. 762 (1967). See discussion, *post*, on how justiciability stands in India.

[115]See Banerjee, *op. cit.*, at 374. But compare Dunham, *op. cit.*, at 66: "...a death blow has been dealt to tests once widely used."

[116]348 U.S. 26.

[117]327 U.S. 546.

purpose to justify legislative interference with property rights?[118] Who should decide what purpose is public?

After determining whether a purpose is public, must one further inquire whether that purpose justifies regulation without compensation, or merely taking with compensation?[119]

Berman appears to suggest that while slum clearance is a public purpose under police power, beyond review, the taking of land and buildings fall under eminent domain for which the court could grant relief if compensation provided is not just.[120] But it has been noted that neither Black J. in *Welch* nor Douglas J. in *Berman* limited judicial review to the matter of compensation.[121] There is a dictum in *Berman* that the role of the judiciary in determining whether legislative power is being exercised for a public purpose could be "an extremely narrow one"[122] which implies judicial intervention is not entirely ousted. And in *Welch* there were three justices claiming that whether a taking is or is not a public purpose is a judicial question.[123] The hedge, *subject to specific constitutional limitations,* blunts *Berman's* radical thrusts. Justiciability of whether a purpose is public indeed has been left in doubt.[124]

Concerning tenancy legislation, before the great depression lifted the veil over rural poverty in the United States,[125] the Texas court invalidated a state law providing for ceiling on the rentals to be paid by a tenant to the landowner.[126] Nothing in the ownership, cultivation or renting of agricultural land for raising cotton or grain is affected with public interest, said the court in *Rumbo v. Winterwood.*[127] Yet the court had conceded because they are unwise, imprudent, oppressive, and that the

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[118]Rep. v. Baylosis, 51 O.G. 722; Republic v. Reyes, G.R. No. 4708, Oct. 8, 1953.

[119]Guido v. Rural Progress Adm., 84 Phil. 847, 852-953 (1949).

[120]It was almost axiomatic that taking required compensation while regulation required none, but note Dunham, *op. cit.*, at 105: "*Berman v. Parker* has eliminated any reason that a legislature might have to try to regulate without compensation, other than a desire to save taxpayers' money or a belief that it is fair to destroy an economic expectation. . . ."

[121]348 U.S. 26, 33.

[122]Dunham, *op. cit.*, at 66.

[123]348 U.S. 26. 32; citing also Old Dominion Co. v. U.S. 269 U.S. 55, 66.

[124]Frankfurter J. and Read J., with whom the C.J. joined.

[125]Compare Dunham. at 66: "Both of the statements [of Justice Black and Justice Douglas] assume there may be situations where the private owner can refuse the compensation offered and obtain judicial intervention to prevent the government from taking his property." It is remarkable that a year after he penned the *Berman* decision, Douglas J. would cite the same case after this statement in his Tagore lecture at 222: "In India as in America, the question whether the taking is for a public purpose is a justiciable question."

[126]Report of the President's Committee on Farm Tenancy, Feb. 1937; H.R. Doc. 149, 75 Cong. 1st Session (1937). See also 4 LAW & CONTEMP. PROB., Oct., 1937 issue devoted to tenancy.

[127]Rev. St. 1911, art. 5475 as amended in 1915, Acts 34th Leg. C. 38. The amendment also provided that the tenant could recover twice the amount paid in excess of the rental ceiling.

legislature was "omnipotent" except if it went against the limitations set by the constitution.[128] One limitation violated was the absence of public purpose in the tenancy laws. However, now that Southern tenancy problems have surfaced,[129] it might be fair to speculate whether the Texas court would reach the same conclusions it did in the 1920's.

It has been pointed out that since the Philippine constitution expressly provides for the expropriation of *lands* for subdivision and resale to tenants, then this is a sufficient declaration of public purpose to justify taking.[130] But the court, conceding it could be sufficient, took the provision to refer only to "big-landed estates" and thus held in several cases[131] it could decide whether there was a public purpose if doubtful sizes are taken. It invalidated expropriations of estates not meeting its criteria,[132] including one case[133] where the legislative act pinpointed the property involved.

The outright declaration of the legislature that a specific purpose is public has been contested in Puerto Rico and in India as invalid.

Under the Puerto Rican Code of Civil Procedure,[134] a hearing is required before the Governor or the agency concerned makes a "declaration of public utility" as a condition of taking.[135] The Land Law,[136] however, made such hearing superfluous by providing that real and personal property "are hereby declared of public utility" if needed for the purposes of the Land Authority,[137] and may be condemned without the prior declaration[138] as required in the procedure code. Refraining from passing upon the legislative declaration, the Puerto Rican court averred that the only inquiry it could make was whether there was an element of public benefit sought by the Land Authority; "it was not the function of the court" to pass upon the wisdom of legislation.[139] More recently, the court also refused to intervene in the exercise of discretion by an administrative agency on questions of choice of land to be expropriated, the area thereof, or its adequacy for the agency's needs; in the

[128]228 S.W. 258.
[129]*Id.*, at 260.
[130]Howard A. Turner, 4 LAW & CONTEMP. PROB. 424.
[131]Vicente G. Sinco, *The Constitutional Policy on Land Tenure*, 28 PHIL. L.J. 837. at 839-40 (1953).
[132]Republic v. Manotok Realty, G.R. No. 20204, July 31, 1964; 9 C.A.R. J. (3) 227; Bulacan v. San Diego, G.R. No. 15946, Feb. 28, 1964; 9 C.A.R. J. (1) 39.
[133]Guido v. Rural Progress Adm., 84 Phil. 847; (1949) Urban Estates v. Montesa, 88 Phil. 348 (1951); Caloocan v. Chuan Huat & Co., 50 O.G. 5309; Phil. Realtor Inc., v. Santos, 10 C.A.R. J. (1) 1.
[134]32 L.P.R.A. sec. 2901 et seq. on condemnation.
[135]32 L.P.R.A. sec. 2902.
[136]Act of April 12, 1941, No. 26, 28 L.P.R.A. sec. 241 et seq.
[137]28 L.P.R.A. sec. 264.
[138]*Id.*, sec. 265.
[139]People v. Saldana, 69 P.R.R. 663.

court's view, incidents of taking other than compensation and purpose are political questions.[140] A wide latitude for legislative action is thereby accorded by the court.[141] The procedure code now embodies an explicit statement statement that "private property may be taken or destroyed to carry out and develop any general plan of economic reconstruction," "especially for the redistribution or division of lands concentrated in large estates,"[142] which according to the Land Law created a state of emergency.[143]

Faced with an analogous legislative finding of public purpose, the Indian court ruled in the *Bela Banerjee case*[144] that such finding must be made "objectively," e.g. by judicial action. Involved in this case was the provision of the West Bengal act[145] making the government declaration that land was needed for public purpose "conclusive" as to the public nature of that purpose. That purpose here was the resettlement of immigrants from East to West Bengal due to communal disorder. Despite the emergency that homeless refugees created, the court held that the provision on conclusiveness of declaration as to purpose made the act *ultra vires* the constitution.[146]

Indian precedents abound with holdings that the existence of public purpose was a condition precedent to compulsory acquisition,[147] and that the question accordingly was justiciable.[148] Taking property of refugees for the benefit of other refugees[149] was held *prima facie* not a public purpose because that was taking a person's property to be given to another for no apparent public advantage. When it is found out that there was no public purpose for the acquisition, the court is bound to declare the law unconstitutional.[150] The court's task in relation to land reform compensation was to examine not parts but the whole statute to determine if there is a public purpose.[151] Nothing could be a public purpose which

[140]Mercado e. Hijo v. Superior Court, 85 P.R.R. 354.

[141]Once the Legislature Assembly declared the use as public, the presumption is it is so. Commonwealth v. Fajardo Sugar Co., 79 P.R.R. 303.

[142]32 L.P.R.A. sec. 2904.

[143]28 L.P.R.A. sec. 267.

[144]S.C.R. 558 (1954).

[145]West Bengal Dev. & Planning Act, 1948. (West Bengal Act XXI 1948, amended by Act XXIX, 1951).

[146]By the Fourth Amendment (1955), the voided act was saved. See INDIA CONST. art. 31B, Ninth Schedule, no. 20.

[147]Barkya v. Bombay. 1 S.C.R. 1203 (1961); Bombay v. Bhanji, 1 S.C.R. 777 (1955); Sen. *op. cit.*, at 368.

[148]2 Basu, Commentary at 220; (5th ed.,) Banerjee, *op. cit.*, at 373.

[149]Bombay v. Khusaldas, S.C.R. 621 (1950). But see Bombay v. Nanji, S.C.R. 18 (1956), where premises were requisitioned to house homeless refugees.

[150]Bihar v. Kameshwar Singh, S.C.R. 889 (1952); West Bengal v. Bela Banerjee S.C.R. 558, 565.

[151]Visweshwar Roa v. Madhya Pradesh, S.C.R. 252 (1952).

is unlawful,[152] the unlawfulness being the court's prerogative to declare. Acquisition in the name of land reform but in reality for raising revenue is not a public purpose, even if that revenue would be used to pay the expropriated owner; what may be done by taxation should not be done by eminent domain.[153] This last ruling, in the *Kameshwar Singh* case,[154] led to the first Indian constitutional amendment.[155]

E. THREE INDIAN AMENDMENTS AFFECTING JUSTICIABILITY

Feeling that the land reform program was imperilled by judicial action, Nehru[156] remarked in Parliament that, "Somehow we have found that this magnificent Constitution that we have formed was later kidnapped (sic) and purloined by the lawyer."[157] Forthwith, he proposed the first amendment. What had instigated this amendment was, however, not only the *Kameshwar Singh*[158] decision but also the host of petitions that zamindars filed in court on the allegation that the zamindari abolition acts in several states contravened their fundamental rights under the constitution.[159]

Significantly, the Constitution of India unamended, already contained this clause:

> "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 shall not be called in question *in any court* on the ground that it contravenes the provisions of clause (2)."[160]

The clause (2) mentioned was that of Article 31 which prohibited acquisition except for public purpose and upon compensation.[161] This did not forestall resort to the court to invalidate land reform acquisition on grounds other than contravention of this clause.[162] In fact, as in the *Kameshwar Singh* case, the issue of compensation could be raised if it

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[152]Jagwant v. Bombay, 54 Bom. L.R. 678 (1952).

[153]Bihar v. Kameshwar Singh, S.C.R. 889.

[154]*Id.*, but it must be noted only two provisions in the Bihar Land Reform Act were voided, not the whole act. The severability clause was applied.

[155]Passed June 18, 1951. Munikanniah, *op. cit.*, at 226-31.

[156]Jawaharlal Nehru, then Prime Minister of India, was originally opposed to payment of any compensation at all.

[157]Banerjee, *op. cit.*, at 391.

[158]1952 S.C.R. 889.

[159]See opinion of Sastri S.J., *id.*, at 894.

[160]INDIA CONST. art. 31 (2). The Constitution was adopted Nov. 26, 1949, but by art. 394, the "commencement" of the Constitution was set January 6, 1950.

[161]INDIA CONST. art. 31 (2), set out *ante*.

[162]See opinion of Mahajan setting out the seven grounds of attack in the Patna court. S.C.R. 889, 917 (1952). Munikanniah, *op. cit.*, 225.

is alleged to be "illusory" and in "fraud of the constitution."[163] This was one of the loopholes the first amendment was designed to plug.

What the first amendment did was to insert two new articles, 31A — "saving of laws for acquisition of estates, etc."[164] and 31B — "validation of certain acts and regulations" — which specified that reform acts in the list appended "shall not be deemed void, "or ever to have become void" notwithstanding any judgment, decree or order of any court or tribunal; on the contrary, they were to continue in force subject only to repeal by a competent legislature. Thirteen land reform laws,[165] first of which was the Bihar act,[166] were thus listed as beyond judicial scrutiny even if any of their provisions was alleged to take away or abridge constitutional rights.[167]

In time the list of non-reviewable statutes grew to sixty-four (64) reform acts,[168] prompting one Indian Justice[169] to remark that "in some cases it is not even known whether the statutes in question stand in need of such aid," i.e. the protection afforded by the constitutional amendment. "The intent," observed the Indian Justice, "is to silence the courts and not to amend the constitution."[170]

The zamindars did not let pass the first amendment without a fight, but in *Sankari Prasad v. Union of India*,[171] their arguments against the amendment's constitutionality on procedural and substantial grounds were refuted by the court.[172] In several leading decisions the court utilized the amendments as one of the reasons for dismissing appeals on questions involving the power of legislature to pass land reform measures. In *Suriya Pal v. Uttar Pradesh State*,[173] Mahajan J. admitted that the compensation principles stated in the state's equivalent or *quid pro quo* for property acquired and provided for payment of what is euphemistically described as "equitable" compensation." But, voting with the majority, he declared that the sole judge of deciding whether a state law on the acquisition of estates under compulsory powers had or had not complied with the provisions of the Constitution under Article 31

[163]S.C.R. 889, 919 (1952).

[164]INDIA CONST. amend. 1, sec. 4, in Munikanniah, *op. cit.*, 227. India Const. amend. 1, sec. 5. Munikanniah, *op cit.*, 228.

[165]Six in Bombay, 2 in Madras, 2 in Hyderabad, one each in Madhya Pradesh, Uttar Pradesh, and Bihar.

[166]Bihar Act XXX of 1950. IV Agricultural Legislation, at 25.

[167]INDIA CONST. art. 31B.

[168]INDIA CONST. art. 31B, Ninth Schedule.

[169]Hidayatullah.

[170]Golaknath v. Punjab, 2 S.C.R. 762 900 (1967).

[171]S.C.R. 89 (1952).

[172]The arguments are summarized in C.J. Sastri's opinion, S.C.R. 89, 96-97 (1952).

[173]S.C.R. 1055 (1952).

(2) was not the judiciary but the President.[174] "The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable," he concluded.[175]

Acquisition, however, could be distinguished from regulation of property.[176] Patanjali Sastri, C.J. recalled Justice Holmes' dictum in the *Penn. Coal*[177] case that "while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as taking." Since in *West Bengal v. Subodh Gopal Bose*[178] issue presented was not acquisition but only regulation of under-tenures, the Indian court took cognizance thereof. Das J., concurring, offered this view: "Our constitution has not thought fit to leave the responsibility of depriving a person of his property whether it be in the exercise of the power of eminent domain or of police power to the will or caprice of the *executive* but has left it to that of the legislature."[179] Then in *Dwarkadas Shrinvas v. The Sholapur,*[180] involving corporate property, the court recognized its duty and power "to look behind the names, forms and appearance to discover the true character and nature of the legislation" concerning acquisition. And in *West Bengal v. Bela Banerjee,*[181] while the court conceded that legislature should have a free hand to determine principles governing compensation, it added: "Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court."[182] What was even more significant in this case was the statement of Patanjali Sastri C.J. that, "While it is true the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property expropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of."[183]

Parliament's response to this series of decisions involving not only land acquisition but also the taking over of certain businesses by the state[184] was a reappraisal of the judiciary's role under the constitution.

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[174]*Id.*, at 1069.
[175]*Id.*, See INDIA CONST. art. 31 (4), (6); and 31 (B).
[176]Sen, *op. cit.*, 31. Kochumi v. Madras & Kerala, AIR (1960) S.C. 1080.
[177]260 U.S. 393.
[178]S. Ct. J. 127 (1954).
[179]*Id.*, at 164.
[180]S. Ct. J. 175 (1954).
[181]S.C.R. 558 (1954).
[182]*Id.*, 563-564.
[183]*Id.*, 563.
[184]Chiranjit Lal v. Union of India, A.I.R. (1951) S.C. 41. Dwarkadas v. The Sholapur S. & W. Co., S.C.R. 674 (1954).

Nehru made clear his stand that, "the ultimate authority to lay down what political or social or economic law we should have is Parliament and Parliament alone; it is not the function of the judiciary to do that."[185] He proposed another constitutional amendment. Politely but unmistakably asserting that the court had misread the constitution, he urged the legislature to rewrite the relevant articles, not to change the meaning which the original framers intended but to make that meaning "in precise language perfectly clear, so that the decisions of this Parliament might not be challenged.... in the court of law."[186] Taking issue with the court's understanding of compensation as full equivalent, he revealed his reason for limiting the court's authority in cases of large-scale land acquisition:

> "The object is not to expropriate, the object is not to injure anybody, the object is a positive object, to bring about a social change for the benefit of the largest number of people doing the least injury to any group or class. Now, in the matter of this kind, therefore, where you have to consider all these factors, political, social, economic, I submit the judiciary is not the competent authority."[187]

One line of his argument, however, was to provide the court much later with ammunition. This was his contention, that in case of contradiction between fundamental rights and principles of state policy, the Parliament must "remove the contradiction and make the fundamental rights subserve the Directive Principles of State Policy."[188]

Parliament acting as a constituent body passed in 1955 the fourth amendment,[189] marking out anew the boundaries of court action. It unequivocally stated that in case of compulsory acquisition of estates, where the law fixes the amount of compensation or specifies the principles to determine that amount, "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate."[190] Further, no law providing for the acquisition of an state or the taking over of the management over property by the state for a limited period, shall be deemed "void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31" on fundamental rights.[191] The list of land reform acts withdrawn from judicial review increased to twenty.[192]

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[185]Lok Sabba Debates, March 14, 1955; in Banerjee, *op. cit.*, 317.
[186]*Id.*, at 318.
[187]*Id.*, at 319.
[188]*Id.*, at 320.
[189]Passed April 27, 1955. Munikanniah, 234.
[190]INDIA CONST. art. 31 (2) INDIA CONST. amend. IV, sec. 2.
[191]INDIA CONST. art. 31A (1); INDIA CONST. amend. IV, sec. 3.
[192]INDIA CONST. art. 31B, Ninth Schedule, Nos. 13-20.

Thus, at about the same time that the American court in *Berman v. Parker*[193] narrowed down the justiciability of public purpose, the Indian court was losing its power to pass upon compensation questions. Moreover, the broad concept of taking in the American sense was negated by the Indian amendment.[194] It provided that the law shall not be deemed as providing for compulsory acquisition or requisition, notwithstanding it deprives any person of his property, if there is no transfer to the state or state corporation.[195] Thus in those cases of regulation or of indirect takings,[196] the court could not entertain the issue of compensability.[197]

The fourth amendment helped quicken the pace of land reform, even as critics[198] lamented the drift from American concepts of property to that of socialism as having eaten into the vitals of constitutional guarantees. However, to the pessimistic prognosis that the spectre of confiscation had entered India,[199] it was contended that the amendment did nothing more than return from the American doctrine of judicial review to the English doctrine of Parliamentary supremacy.[200] Moreover, the amendment did not bar all instances of resort to the court.[201] When the ceilings on holding, after the abolition of zamindari, became part of land reform legislation an avenue of renewed attack on land reform laws was found in the distinction between "estate" and ryotwari."[202] In the leading case of *Karimbil Kunhikoman vs. Kerala State,*[203] the court voided the compensation provisions of the Kerala Acts which, the court found, were not shielded by constitutional amendments because the land involved was a "ryot" and not an "estate" as constitutionally defined.[204] In 1964 the *Karimbil* ruling was relied on to invalidate the Madras land reform act of 1961.[205]

To save the Kerala and Madras measures and those in equally vulnerable position, Parliament again resorted to constitutional amendment, the seventeenth.[206] This time forty-four land reform laws were

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[193]348 U.S. 26 (1954).

[194]INDIA CONST. amend. IV, sec. 2.

[195]INDIA CONST. art. 31 (2A).

[196]In West Bengal v. Subodh Goapl, XVII S. Ct. J. 127, 144, Sastri C.J. took acquisition to mean "withheld" physically.

[197]2 Basu, Commentary 239-240 (5th Ed.).

[198]Banerjee, *op. cit.*, 2 Basu, Commentary; Munikanniah, *op. cit.*

[199]Douglas, *op. cit.*, 225.

[200]Sajjan Singh v. Rajasthan, 1 S.C.R. 932 (1965). In re the Delhi Laws Act (1951) S.C.R. 747, 883-84; 2 Basu, Commentary, 230.

[201]Basu, *op. cit.*, 231-32.

[202]Karimbil Kundhikoman v. Kerala, 1 S.C.R. 829 Supp. 1 (1962), P. Nambudiri v. Kerala, 1 supp. S.C.R. 753 (1962).

[203]Supp. 1 S.C.R. 829 (962).

[204]INDIA CONST. art. 31A (2) (a) refers the meaning of "estate" to local usage.

[205]Krishnaswami Naidu v. Madras, 7 S.C.R. 83 (1964).

[206]Passed June 20, 1964.

removed from court review.[207] The term estate now included *ryotwari* settlement,[208] specific grants,[209] and "any land held or let for purpose of agriculture or for purposes ancillary thereto." More important,[210] it made possible the acquisition by the state of any land "held by a person under his personal cultivation" "within the ceiling applicable to him under any law for the time being in force" so long as the acquisition law provides for compensation at "not less than the market value thereof."[211] It is fair to say that the target of legislative attack has fanned out to include not only the zamindars but also small-holders.[212]

The constitutionality of the seventeenth amendment was challenged in *Sajjan Singh v. Rajasthan State*[213] on the ground that the power to amend does not include the power to take away the fundamental rights, including the right to challenge the validity of acts listed as exempt from challenge in court.[214] Petitioners contended that the effect of the amendment was a "very serious and substantial inroad on the powers of the High Courts."[215] Gajenkadkar, C.J., writing for the majority of three, found the amendment valid, for the reason among others that the effect on the powers of the court was indirect, incidental and otherwise insignificant.[216] The "pith and substance"[217] of the amendment was the removal of possible obstacles "to the fulfillment of the socio-economic policy in which the party in power believes."[218] If petitioners prevailed in having the amendment invalidated, and the ruling in *Sankari Prasad* reversed,[219] past amendments "would be rendered invalid and a large number of decisions dealing with the validity" of land reform acts listed by those amendments "would also be exposed to serious jeopardy."[220]

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[207]INDIA CONST. amend. seventeenth, sec. 3.

[208]INDIA CONST. art. 31A (2) (a) (ii); amend. seventeenth sec. 2 (ii) (a).

[209]Jagir, inam, muafi or similar grants. INDIA CONST., art. 31A (2) (a) (i); amend, seventeenth, sec. 2 (ii) (a) (i).

[210]INDIA CONST. art. 31A (2) (a) (iii); amend seventeenth, sec. (ii) (a) (iii).

[211]INDIA CONST. art. 31A (I), amend. seventeenth, sec. 2 (i).

[212]Cf. Munikanniah, *op. cit.*, at 214.

[213]1 S.C.R. 932 (1965).

[214]The Rajasthan Tenancy Act (Act III of 1955), and the Rajasthan Zamindari Abolition Act (Act VIII of 1959) were listed as nos. 55 and 56, in the Ninth Schedule, art. 31B.

[215]1 S.C.R. 932, 941 (1965).

[216]*Id.*, at 944.

[217]According to the "pith and substance" test, the court must ascertain the true nature and character of the act and not the form alone of the statute. Citing Atty. Gen. for Ontario v. Reciprocal Insurers (1924 A.C. 328).

[218]1 S.C.R. 932, 941 (1965). But see 2 Basu, Commentary at 218 (5th ed.), "Implementation of a Directive Principle of State policy is a public purpose but not a mere policy of the party in power."

[219]1 S.C.R. 932, 949 (1965).

[220]The same argument was offered in Golaknath v. Punjab, 2 S.C.R. 762 (1967), but *Sankari Prasad* was nevertheless reversed, although Subbao Rao's opinion sought to avoid this jeopardy by the doctrine of prospective overruling.

There were two separate opinions concurring in the result[221] (dismissal of petitions) that nevertheless aired doubts about the validity of the seventeenth amendment. The Indian legislature, argued Mudholkar J., is not "a sovereign Parliament on the British model" and like other state organs could function only within the limits of powers conferred by the constitution; whether an amendment must comply with the requirements of the constitution,"[222] and it is both the duty and power of the court to examine the challenge that an amendment was not validly made.[223] Hidayatullah J. remarked that he would require stronger reasons than those given in *Sankari Prasad*[224] to accept "the view that Fundamental Rights were not really fundamental but were intended to be within the powers of amendment in common with other parts of the constitution and without concurrence of the States."[225]

These expressions of doubt crystallized into a contrary opinion in *Golaknath v. Punjab State*.[226] Herein questioned were the validity of the Punjab Security of Tenures Act[227] and the Mysore Land Reforms Act,[228] both of which were listed in the seventeenth amendment that shielded them from court action. The fact situation involved the estate of Golaknath on whose death several hundred acres of land were declared surplus, *viz*, above the ceiling imposed by the Punjab Act, and therefore had to be distributed to the tenants.[229] Golaknath's children as heirs claimed the Act infringed their right to property.[230] The Mysore Act, which also fixed a ceiling on holdings and conferred ownership of the surplus on tenants, was contested by the landowners who claimed that the Act amounted to a denial of equal protection, an impairment of their right to property and a deprivation of property without authority of law and without compensation.[231] Since both acts were listed in the seventeenth amendment, the validity of that amendment was put at issue as the threshold question.[232] But at the bottom of the conflict was the question

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[221]Hidayatullah and Mudholkar's.

[222]1 S.C.R. 932, 965 (1965).

[223]Id., at 964. At 968, Mudholkar refers to three modes of amending the Constitution under art. 368.

[224]S.C.R. 89 (1952).

[225]1 S.C.R. 932, 961 (1965).

[226]2 S.C.R. 762 (1967).

[227]Punjab, Act X of 1953.

[228]Mysore, Act X of 1962.

[229]The excess found was 418 standard acres and 9¼ units. 2 S.C.R. 762, 780 (1967).

[230]*Id.*, 780-82. The rights allegedly injured are the rights of property, equal protection of the law, and the guarantee of access to the courts. India Const. art. 19, 14, and 32.

[231]*Id.*, 781.

[232]The seventeenth amendment intended to override the court's decision in Karimbal Kunhikoman v. Kerala, Supp., 1 S.C.R. 829 (1962), that "ryotwari" holding can be taken in the process of land reform. See Subba Rao opinion, 2 S.C.R. 762, 802-07 (1967).

of whether Parliament had the power to pass an amendment (to the constitution) alleged to contravene fundamental rights, including the right to move the court for enforcement of those constitutional guarantees.[233]

Divided as the special bench of eleven Justices were, five-one-five, no court opinion could be written.[234] However, Hidayatullah voted with the five Justices led by Subba Rao C.J. who, in his opinion, reached the following result:

> "(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitition so as to take away or abridge the fundamental rights enshrined therein."[235]

The other five Justices dissented in three separate opinions but all refused to circumscribe the powers of the legislature.[236] Wanchoo J., writing for three members, stated that they had no doubt that Article 368 does confer power on Parliament subject to the procedure provided therein for amendment of *any provision* of the Constitution.[237] Rasmawani J. found it "difficult to accept... that fundamental rights enshrined in Part III are immutably settled and determined once and for all and these rights are beyond the ambit of future amendment."[238] If the power of amending "this Constitution" means "any provision thereof", then it was not intended, Bachawat argued, "that defects in Part III could not be cured or that possible errors in judicial interpretations of Part III could not be rectified by constitutional amendment."[239] If basic features of the Constitution could not be amended, Wanchoo declared, and only the court could define what was basic, "every amendment would provide a harvest of legal wrangles so much so that Parliament may never know what provisions can be amended and what cannot."[240]

Holding the decisive vote on the seventeenth amendment's validity, Hidayatullah J.[241] found that (1) "the sum total of this amendment is

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[233]*Id.*, at 781-82. The validity of the first and fourth amendments were also put in issue.

[234]There are thirteen members of the India Supreme Court. India Ministry of Law, *The Constitution*, at 65 n.1.

[235]2 S.C.R. 762, 815, (1967).

[236]The dissenters were Wanchoo, Bachawat, Ramaswari, Bhargava and Mitter, JJ.

[237]2 S.C.R. 762, 836 (1967).

[238]*Id.*, at 937.

[239]*Id.*, at 913.

[240]*Id.*, at 836.

[241]Hidayatullah J. concurred in the result in Sajjan Singh v. Rajasthan, but had reserved his opinion on the relation of art. 13 (2), India Const., and the power of amendment. 1 S.C.R. 930, 959 (1965).

that except for land within the ceiling, all other land can be acquired or extinguished or modified without compensation[242] and no challenge to the law can be made under Articles 14, 19, or 31 of the Constitution;"[243] (2) "deprivation of private property of any person is not to be regarded as acquisition or requisition unless the benefit of the transfer or ownership goes to the state or state-owned or controlled corporation;[244] (3) the ceiling on holding, applicable for the time being, may be lowered by legislation; and the state "may leave the person an owner in name and acquire all his other rights."[245] All these he considered inroads on fundamental rights; but he would sustain the constitutional amendment because the "amendment is a law and Article 31 (1) permits the deprivation of property by authority of law."[246]

However, concerning the third part of the amendment, which added forty-four state statutes concerning land reform to the list saving them from judicial decision of nullity, past or future, Hidayatullah J. found one aspect gravely wrong: the list or Schedule "is being used to give *advance* protection to legislation which is known or apprehended to derogate from Fundamental Rights."[247] Because this holding tilted the balance, it is worthwhile quoting:

> "The power under Article 368, whatever it may be, was given to amend the Constitution. Giving protection to statutes of State Legislatures which offend the Constitution in its most fundamental part, can hardly merit the description amendment of the Constitution. . . . If these Acts were not included in the Schedule they would have to face the Fundamental Rights and rely on Articles 31 and 31-A to save them. By this device protection far in excess of these articles is afforded to them. This in my judgment is not a matter of amendment at all . . . Ours is the only Constitution in the world which carries a long list of ordinary laws which it protects against itself. In the result I declare s. 3 to be *ultra vires* the amending process."[248]

Hidayatullah J. was therefore of the opinion "that an attempt to abridge or take away Fundamental Rights by a constituted Parliament even though by an amendment of the Constitution can be declared void." The Court, according to him, had the power and jurisdiction to make that declaration.[249]

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[242] 2 S.C.R. 762, 896 (1967).

[243] *Id.*, 897.

[244] See India Const. art. 31 (2A).

[245] 2 S.C.R. 762, 898 (1967).

[246] *Id.*, at 899.

[247] *Id.*, 899-900.

[248] *Id.*, India Const. amend. seventeen, sec. 3 carried 44 laws related to tenancy, land taxes, and village offices, but its main purpose was to save state laws on ceilings of holdings as part of the land reform program.

[249] 2 S.C.R. 762, at 902 (1967).

F. How Justiciability Stands in India

A historical review of the first, fourth and seventeenth amendments would show that they were passed by Parliament to override judicial decisions whose impact it feared would derail India's land reform program.[250] The first amendment was adopted in the wake of the decision in *Kameshwar Singh*[251] which held the Bihar compensation scheme and the taking of arrears void. The fourth amendment was passed because in *Bela Banerjee*[252] the court had held that the West Bengal law, setting a particular date of valuation and making the declaration of public purpose conclusive, was unconstitutional. The seventeenth amendment was intended to save ceiling provisions after the court in *Karimbil Kunhikoman*[253] and in *Krishnaswami Naidu*[254] had invalidated the Kerala and the Madras acts because the ryotwaris were not deemed "estates" and the scaled-down compensation scheme was adjudged discriminatory. The effect of these amendments, as the court realized, was the expansion of legislative power to pass laws on acquisition of estates while the court's power to review those laws diminished; a growing number of statutes were being shielded expressly from judicial inquiry by those amendments[255] From *Shankari Prasad*[256] to *Sajjan Singh*,[257] however, the court had upheld these amendments. Thus, in the *Golaknath* case,[258] Subba Rao C.J. observed:

> "From the history of these amendments, two things appear namely, constitutional laws were made and they were protected by the amendment of the constitution or the amendments were made to protect future laws which would be void but for the amendments. But the fact remains that this court held as early as in 1951 that *Parliament had power to amend fundamental rights.*"[259]

Having denied in the *Golaknath* case the existence of that power, Subba Rao had to consider the landowners' contention that the court follow the logic of its position: all agrarian laws, which infringed fundamental rights, must be declared void.[260] This, the Subba Rao opinion refused to follow. The opinion sought a way out of a dilemma. On

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[250]2 S.C.R. 762, 818-21 (1967); Sankari Prasad v. Union of India, S.C.R. 89, 95 (1952), 2 Basu, Commentary, 252-55 (5th ed.).

[251]A.I.R. 1951 Pat. 91 (decision of State High Court), aff'd. 1952 S.C.R. 889.

[252]S.C.R. 558 (1954).

[253]1 S.C.R. 829 Supp. (1962).

[254]7 S.C.R. 83 (1964).

[255]While the amendments exempted from judicial review sixty-four acts, there have been proposals in Parliament to exempt no less than one-hundred forty-four acts. Munikanniah, *op cit.*, 292-302.

[256]S.C.R. 89 (1952).

[257]1 S.C.R. 933 (1965).

[258]2 S.C.R. 762 (1967).

[259]*Id.*, at 807.

[260]*Id.*

one hand, the court would not allow Parliament unlimited power (as the respondent state had argued it could do away with fundamental rights) for the court feared a time might come when imperceptibly totalitarian rule would ensue. But, on the other hand, the court would not want its decision to introduce chaos and unsettle the country by undoing land reform legislation which all over India had already effected transfers of millions of acres from zamindars to peasants.[261] A way out, Subba Rao found, was to adopt the American technique in the *Sunburst*[262] case of prospective overruling — "a reasonable principle to meet this extraordinary situation."[263]

However, it must be noted that Subba Rao C.J. spoke for only five of eleven members present,[264] sitting as special bench. The Indian court has a total membership of thirteen.[265] Of those present, five[266] dissented and would declare that Parliament had power to amend even provisions on fundamental rights and all the amendments were therefore valid. The eleventh member present, Hidayatullah J., would have no use for the doctrine of prospective overruling and would rather use the principle of acquiescence to sustain the amendments,[267] except for the seventeenth amendment's third section (adding forty-four unreviewable acts) which he declared *ultra vires* the amending power.[268] Thus, to the fact that Subba Rao's group of five plus Hidayatullah J. constituted but a slender majority of those sitting, must be added for prudent reckoning the other fact that the six reached a very narrow area of agreement among themselves.[269]

Basing on the results and conclusions as helpfully summarized in the Subba Rao and Hidayatullah opinions, as well as those of the dissenting opinions, a point-by-point comparison (I) may be helpful.

Another way of showing how the court stood is to place in juxtaposition (II) the *results* reached by Subba Rao C.J. speaking for five members and Hidayatullah J. speaking for himself, since together they formed the majority.

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[261]*Id.*, at 851.

[262]Great Northern Railway v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932).

[263]2 S.C.R. 762, 808 (1967).

[264]While three justices could dispose of a case ordinarily, the presence of eleven indicates the gravity of the issues on hand.

[265]Shah, Sikri, Shelat and Vaidialingam JJ. joined the C.J.

[266]Act 17, (1960).

[267]2 S.C.R. 762, 893 (1967).

[268]*Id.*, 900.

[269]The C.J. and Hidayatullah J., however, agreed that American precedents on the amending power could not be relied upon since they are conflicting. *Id.*, at 804, 871. The better reason might be that the amending process in the U.S.A. is distinct from that in India, for in the U.S.A., state ratification is a requisite. Compare U.S. Const. art. V, and India Const. art. 368.

I. VOTING COMPARISON

	SUBBA RAO[270] (Opinion of 5) C.J.	WANCHOO[271] J., et al. (5 Dissenting)	LAH J.[272] (concurring)
(1) Can the amending power be used to take away fundamental rights?	*No*	*Yes*	*No*
(2) Is the Seventeenth Amendment valid? (Section 2 allows states to acquire by law any land under personal cultivation provided there is compensation at market value; Section 3 added 44 acts in Ninth Schedule of non-justiciable laws.)	*Valid** Basis: earlier decisions; by the doctrine of prospective overruling, remains valid.	*Valid* Basis: Stare decisis	*Qualified* Sec. 2 is Valid; acquisition is by "law" Sec. 3 is void; ultra vires the amending power[273]
(3) Are the First & Fourth Amendments valid? (First Amendment saved laws on acquisition of estates from being voided as *contra* fundamental rights; exempted 12 acts from court attack. Fourth Amendment increased the list to 20 acts adequacy of compensation made non-justiciable.)	*Valid* Basis: (same as above)	*Valid*	*Valid* Basis: Acquiescence
(4) Are the Punjab & Mysore land reform acts in question valid?	*Valid* (Shielded by 17th Amendment)	*Valid*	*Valid* (Shielded by President's assent.)[274]

* Subba Rao makes a contrary statement at page 805, (1967) 2 S.C.R., of his opinion; to wit, the Amendment is void because it "takes away or abridges" fundamental rights.

[270] 2 S.C.R. 762, 780-817 (1967).

[271] Id., 817-855. See also opinions of Bachawata 903, and Ramaswami, 926.

[272] *Id.*, 855-903.

[273] *Id.*, 899-900.

[274] *Id.*, 902

II. RESULT REACHED BY "MAJORITY"

SUBBA RAO[275] (opinion of 5)	HIDAYATULLAH[276] (alone)
(1) "(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein."	(1) "(iv) that this Court having now laid down that Fundamental Rights cannot be abridged or taken away by the exercise of amendatory process in Article 368, any further inroad into these rights as they exist today will be illegal and unconstitutional unless it complies with Part III in general and Article 13 (2) in particular."
(2) "(2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void."	(2) "(i) that the Fundamental Rights are outside the amendatory process if the amendment seeks to *abridge* or *take away* any of the right;"
(3) "(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment Act), 1955, and the Constitution (Seventeenth Amendment) Act, 1964, *abridge the scope of fundamental rights*. But, on the basis of earlier decisions of this court, they were valid. "(4) On the application of the doctrine of 'prospective over-ruling', as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid."	(3) "(iii) that the First, Fourth and Seventh Amendment being part of the Constitution by acquiescence for a long time, cannot now be challenged and they contain authority for the Seventeenth Amendment;"
(4) "(6) As the Constitution (Seventeenth Amendment) Act holds the field, the validity of the two impugned Acts, namely, the Punjab Security of Land Tenures Act X of 1953, and the Mysore Land Reforms Act X of 1962, as amended by Act XIV of 1965, cannot be questioned on the *ground* that they offend Articles 13, 14, or 31 of the Constitution."	(4) "that the two impugned Acts, namely, the Punjab Security of Land Tenures Act, 1953 (X of 1953) and the Mysore Land Reforms Acts, 1961, (X of 1962) as amended by Act XIV of 1965 are valid under the Constitution not because they are included in Schedule 9 of the Constitution but *because* they are protected by Article 31-A and the President's assent." ("The State Acts Nos. 21-64 in the Ninth Schedule will have to be tested under Part III with such protection as Articles 31 and 31-A give to them.")[277]

[275] *Id.*, 815.
[276] *Id.*, 902.
[277] *Id.*, 903.

(5) "(1) The power of *Parliament* to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure. Amendment is a legislative process."	(5) "(v) that for abridging or taking away Fundamental Rights, a *Constituent* body will have to be convoked." "(ii) that *Sankari Prasad's* case (and *Sajjan Singh's* case which followed it) conceded the amendment over Part III of the Constitution on an erroneous view of Articles 13 (2) and 368."

From this breakdown and comparison of opinions, the majority view appears to yield no generous generalization, except that it reveals the majority's adamance to legislative encroachment on fundamental rights.[278] The court's posture is one of caution; it would not want to open itself to suits based on past decisions now recognized as erroneous;[279] but it gives notice of prospective action it would take involving situations similar to those put before it in past cases.[280] The result reached in the *Golaknath* case is surely startling: despite the finding that they impair fundamental rights, the amendments stand valid and remain operative.[281]

However, even if the amendments continue to be a valid bar and the sixty-four land reform acts, listed in the Indian Constitution's Ninth Schedule, remain unasailable on the basis of contravening specific fundamental rights, still several questions appear open for action in court. A narrow reading[282] would allow at least the review of: (a) whether the acquisition is contrary to the governing act, in excess of the authority therein or without the formalities prescribed;[283] (b) whether the compensation provided by the act is illusory, or the determining principles adopted is nugatory, or no compensation at all is contemplated, as distinguished from merely inadequate compensation;[284] (c) in cases of small-holdings under personal cultivation, whether the compensation allowed is less than the market value;[285] and (d) whether provisions of the Constitution other than fundamental rights specified in the amendments are violated,[286] and whether agrarian laws other than those

[278]*Id.*, at 815 (Subba Rao opinion): "We have not said that provisions of the Constitution cannot be amended but what we have said is that they could not be amended so as to take away or abridge the fundamental rights."

[279]*Id.*, at 816-17.

[280]Subba Rao C.J., however, declared that the doctrine of prospective over-ruling could be applied only by the Supreme Court in matters arising under the Constitution. 2 S.C.R. 762, 814 (1967).

[281]Note that all eleven members of the court found the first, fourth, and seventeenth amendments valid, except for qualification of Hidayatullah J. that sec. 3 of amend. seventeenth is ultra vires.

[282]Compare 2 Basu, Commentary, 231 (5th ed.).

[283]Vinendra v. Uttar Pradesh, 1 S.C.R. 415 (1955).

[284]Vajravelu Mudaliar v. Special Deputy Collector, 1 S.C.R. 614 (1955).

[285]India Const. art. 31A (1), second proviso, Justice Hidayatullah believes this could be an illusory protection. 2 S.C.R. 762, 898 (1967). Compare 2 Basu, Commentary, at 254 (5th ed.).

[286]Basu, 232.

shielded by the amendments would be applicable.[287] On the other hand, if the court's attitude could be taken to indicate a return to the moorings of American judicial review,[288] then the compensation questions must be considered in the light of controlling U.S. precedents, as well as the emerging trends.

G. 'STRAWS IN THE WIND'?

In the recent case of *Flast v. Cohen*,[289] the U.S. court described justiciability as a "term of art" which by itself is "a concept of uncertain meaning and scope" involving a "blend of constitutional requirements and policy considerations."[290] While making a subtle distinction between an allegation of a general infringement and that of a specific violation of a particular constitutional provision, the court in effect cast out the old rule in *Frothingham v. Mellon*[291] and granted a taxpayer *locus standi* to challenge federal appropriations for allegedly unconstitutional purposes. This appears to relax the assertion[292] that a taxpayer had no say on whether tax money was spent to pay excessive compensation for property taken. In the Philippines, the Land Reform Code provides that the tenant-beneficiary could intervene in court if the valuation of the land taken is excessive.[293] In one American case,[294] there is an *obiter dictum* that compensation must be just not only to the owner but also to the public who must pay for it. The purpose of the Philippine provision is to prevent corrupt collusion between a government agency and the owner.[295] In one U.S. case,[296] an alleged collusion between highway authorities and private interests justified a U.S. district court in assuming jurisdiction to restrain taking of land for non-public purposes. It seems fair to speculate whether in view of the new test for standing in *Flast v. Cohen*,[297] a taxpayer who alleges deprivation of his property interest in the tax money might now be able to bring a justiciable suit to contest an alleged unconstitutional taking, e.g. on the ground of non-public purpose, or unjust because of excessive compensation.

A comparative writer[298] states that an expanding conception of "taking" for which compensation is due and the equality growing application

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[287]Vajravelu Mudaliar v. Sp. Deputy collector, 1 S.C.R. 614 (1965).

[288]This seems a fair corollary of the amendment of the doctrine of Parliamentary supremacy. Cf. 2 S.C.R. 762, 814 (1967).

[289]No. 416, Oct. Term, 1967, Promulgated June 10, 1968.

[290]*Id.*, at 11.

[291]262 U.S. 447 (1923).

[292]Dunham, *op. cit.*, 91.

[293]Dep. Act No. 3844, sec. 53.

[294]U.S. v. Commodities Trading Corps., 339. U.S. 121, 94 L. Ed. 707, 712 (1950).

[295]Santos & Macalino, *op. cit.*, at 74.

[296]Weaver v. Penn.-Ohio Power & Light Co., 10 F (2d) 759.

[297]No. 416, Prom. June 10, 1968.

[298]Sidar Sen, *A Comparative Study of the Indian Constitution* (Bombay: Orient Longman's Ltd., 1966).

of police power "regulation" for which no compensation is recoverable presage an inevitable collision.[299] How would the court resolve such a conflict situation? Would the court allow the legislature to define the purpose as well as set the compensation?

Counsel for the government in *U.S. v. Cors*[300] had asked the American court to discard the rule of justiciability in *Monongahela Nav. Co.*,[301] because the "concrete application" of just compensation calls for "weighing of interacting policies, the evaluation of past experience, and the provision of a complex of specific rules — the usual work of legislatures," implying what Nehru said expressly: the court is incompetent for this task.[302] The Constitution, counsel added, guarantees freedom from confiscation; it does not prescribe any particular standard of compensation.[303] Congress, he concluded, could validly establish the measures of compensation. However, the court did not reach this question of the legislative power to do so because it was claimed by the court that in this case of taking a steam tug, judicial and legislative standards were "co-terminous."[304]

In another case, *U.S. v. Commodities Trading Corporation*,[305] the Act had provided for judicial review of price regulations, but the court did not disturb the ceiling price[306] of pepper. "We think," wrote Black for the majority, "the Congressional purpose and the necessities of a wartime economy require that ceiling prices be accepted as the measure of just compensation, so far as they can be done consistently with the Fifth Amendment."[307]

These two cases were viewed by commentators as a "direct assault"[308] and as having "undermined"[309] the doctrine that only the court determines what constitutes just compensation. It must be noted however that, these cases contained an *emergency* element, a war situation. Their relevance to other forms of taking, like that of land reform, would be enhanced if a reform situation is, as declared in Puerto Rico, one giving rise to a state of emergency,[310] or as claimed in the Philippines,

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[299] *Id.*, at 377.

[300] 337 U.S. 325, 93 L. Ed. 1394 (1949).

[301] 148 U.S. 312, 37 L. Ed. 463, 13 S. Ct. 622 (1893).

[302] 337 U.S. 325, 93 L. Ed. 1392, 1394 (1949) (argument of U.S. Counsel).

[303] U.S. Counsel argued similarly in Monongahela, 148 U.S. 312, 37 L. Ed. 463, 466-67 (1893).

[304] 337 U.S. 325, 93 L. Ed. 1392 (1949).

[305] 339 U.S. 121, 94 L. Ed. 707 (1950).

[306] The ceiling price was 6.63 cents a pound; the corp, claimed 22 cents, while the Court of Claims granted 15¢.

[307] 339 U.S. 121, 94 L. Ed. 707, 712 (1950).

[308] Robert Braucher, *Requisition at Ceiling Price*, 64 HARV. L. REV. 1103.

[309] Note, 64 HARV. L. REV. 139.

[310] 28 L.P.R.A. sec. 268.

one in response to threats against the national security,[311] where nevertheless the emergency is temporary.

The tug-of-war in India between the court and Parliament concerning the use of amending powers to curb judicial decisions on land reform finds a counterpart in the prevailing tense relations between the U.S. Congress and the U.S. Supreme Court on an entirely different subject, civil rights and the rights of the accused.[312] The U.S. court like the Indian court had to limit the operative impact of its decisions to avoid unsettling past decisions and clogging the courts with appeals thereon.[313] More on the point of compensation though involving foreign expropriation, the U.S. Congress has resorted as did the Indian legislature to the use of the amending power to counteract and override a court decision, *viz.* the Hickenlooper amendment[314] intended to overturn the holding in the *Sabbatino* case.[315] How far the Indian court could approximate the American court in asserting judicial independence remains to be seen. It is worth recalling, however, that once when the U.S. court faced a liberal-minded Congress[316] as well as a progressive President,[317] the court did turn its back on its conservative precedents[318] to finally uphold measures embodying economic policies of the New Deal, including the Agricultural Adjustment Act.[319]

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[311]Lavina v. De Guzman, 10 C.A.R. J. (2) 139.

[312]Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602; Escobedo v. Illinois 378 U.S. 478, 12 L.Ed. 2d 977, 84 S. Ct. 1758.

[313]Johnson v. New Jersey, 384 U.S. 719, 16 L. Ed. 2d 882, 86 S. Ct. 1772; Tehan v. U.S. ex rel. Shott, 382 U.S. 406, 15 L. Ed. 2d 453, 86 S. Ct. 459; Linkletter v. Walker, 381 U.S. 618, 14 L. Ed. 2d 601, 85 S. Ct. 1731.

[314]22 U.S.C. sec. 2370 (e) (i).

[315]Banco Nacional v. Sabbatino, 376 U.S. 348; 11 L. Ed. 2d 804, 84 S. Ct. 923.

[316]Stern, *The Commerce Clause and The National Economy*, 59 HARV. L. REV. 6645.

[317]Franklin D. Roosevelt. For a study of his time, see Arthur M. Schlesinger, *The Coming of the New Deal*, (Boston: Houghton Mifflin, 1959).

[318]*e.g.*, U.S. v. Bultler, 297 U.S. 1, 80 L. Ed. 477, 56 S. Ct. 312 (1936).

[319]Wickard v. Filburn, 317 U.S. 111, 87 L. Ed. 122, 63 S. Ct. 82 (1942).

III. CHALLENGES TO THE VALIDITY OF REFORM LAWS AND THE COMPENSATION PROVISIONS

Except for its perennial imbalance, the improverished state of Asian farm economies today could be compared fairly with that of the American farm economy during the Depression. James Agee's description[1] in 1936 of Alabama cotton tenant farmers, deeply in debt, sick and living on hand-out from landlords, could fit aptly the Asian peasants today as it does also the peons of Latin America. Today land reform may no longer be urgent in America,[2] but in the 1930's there were men like Rexford Tugwell of the Resettlement Administration who conceived of land reform in America involving purchases of millions of acres and resettlement of thousands of dislocated farm families.[3] It is, therefore, of interest to compare the fate in the courtroom of the first U.S. Agricultural Adjustment Act (1933),[4] and the first India land reform act (that of Bihar, 1950)[5] whose provisions were declared unconstitutional.

The first Agricultural Adjustment Act, 1933, met fatal opposition in the U.S. court when in *U.S. v. Butler*[6] a cotton processer contested the power of the federal government to collect a processing tax intended to raise funds for enforcing its acreage and production reduction program. The court agreed with the processer that this Act invaded the reserved power of the states. "Congress has no power," wrote Roberts J. for the majority, "to enforce its commands on the farmers to the ends sought" by the Act. "It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance."[7]

A similar indirect approach, an assault on what the court found as a tax provision, was responsible for the nullification of two provisions[8] in Bihar Land Reforms Act. The court termed as "taxation" a provision which stated that arrears of rent due the owner of the expropriated estate also vested in the government as expropriator, though fifty per cent (50%) of those arrears should be computed in favor of the owner in determining his compensation for the estate taken while the other fifty per cent (50) would be forfeited to the government.[9] This, according to the

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[1]James Agee and Walker Evans, *Three Tenant Families, Let Us Now Praise Famous Men*, at 108. (New York: Ballantine Books, 1966 ed.).

[2]Floyd L. Corty, *Are We Headed for Land Reform in the U.S.?* 38 Land Eco. (3) 270, 273.

[3]Sidney Baldwin, *Poverty and Politics*. The Rise and Decline of the Farm Security Administration, at 105. (Chapel Hill, Univ. of North Carolina Press, 1968).

[4]The Agricultural Adjustment Act of 1933. 48 Stat 31, c. 25, May 12, 1933.

[5]Bihar Act XXX, 1950, IV Agric. Legislation 25.

[6]297 U.S. 1, 80 L. Ed. 477, 56 S. Ct. 312 (1936).

[7]*Id.*

[8]Bihar Act, sec. 23 (f) and sec. 4 (b) in relation to sec. 24.

[9]*Id.*, sec. 4 (b), sec. 24.

majority, was an indirect way of raising revenue, unconnected with land reform and amounting to a confiscatory act. By the forfeit provision, a device is adopted to deprive the owner of his money, which ordinarily is not subject of acquisition.[10] The majority sustained the lower court's decision.[11] It is well settled, the majority of the Indian Supreme Court declared, that Parliament with limited powers could not do indirectly what it could not do directly.[12]

Although the *Butler* case is distinguishable from the *Bihar* case on significant points,[13] they may be compared if only to show how a legislative act dealing on agricultural land policy can be thwarted in court. The Bihar decision delayed Indian land reform implementation at least three years.[14] In the U.S., the second Agricultural Adjustment Act was passed in 1938,[15] two years after the *Butler* decision and four years before *Wickard v. Filburn*[16] which put to rest a similar dispute, this time in favor of federal competence. In both cases, however, there were strong dissents which showed appreciation of legislative policy. In *Butler*, Justice Stone (joined by Brandeis and Cardozo JJ.) found that the "depressed state of agriculture is nationwide in its extent and effects" to justify an exercise of federal power of levying taxes to provide for the general welfare.[17] In *Bihar*, Justice Das argued that the arrears had to be taken otherwise the peasants would have to sell the redistributed land if only to pay the zamindars those arrears in rent, making the Act nugatory.[18]

Considering the importance of judicial opinion to the orderly implementation of a land reform program,[19] challenges against reform legislation whether direct or indirect deserve very serious attention. If the judiciary is to interfere with social and economic policies set by legislature, it must disclose its reasons for doing so. For even where the court's power to invalidate legislative acts found contrary to the constitution is conceded, still the court can do so only on persuasive grounds. The rules of statutory construction have long held, and require no further elaboration, that in case of doubt the constitutionality of a legislative act should be upheld.[20]

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[10]Bihar v. Kameshwar Singh, S.C.R. 889, 860-61 (1952).

[11]*Id.*, at 945.

[12]*Id.*, at 948.

[13]Butler did no involve condemnation or acquisition of private property directly. Also, it involved the issue of encroachment on the reserved power of the state by the federal government which is not the case in *Bihar*, the Bihar Act being a state and not a federal (union) act.

[14]Vesting was suspended until the Supreme Court resolved the issues raised by the zamindars. Bihar v. Kameshwar Singh, S.C.R. 889 (1952).

[15]Agric. Adj. Act of 1938, 52 Stat. 32, 7 U.S.C.A. sec. 1281.

[16]317 U.S. 111 (1942).

[17]297 U.S. 1, 80 L. Ed. 477, 56 S. Ct. 312 (1936).

[18]S.C.R. 889, 1000 (1952).

[19]See Banerjee, *op. cit.*, at 395. Indian officials were definitely concerned lest the courts disrupt social legislation.

[20]See Ram Krishna v. Tendolkar, S.C.R. 279 (1959).

This part of the study, then, will focus on the court's consideration of challenges to the validity of land reform laws as a whole and of the compensation provisions in particular. It must be noted, however, that one court opinion may involve several petitions joined by the court and decided together.[21] Or one petition itself may raise several points. Thus, certain cases are discussed under separate headings where each point raised in the case might logically fall. Those challenges against the law as a whole include the procedural validity of the law, the legitimacy of its purpose, and relation of the taking under a particular law to land reform. The challenges against the compensation provisions have been classified into questions of whether the compensation has been provided in the first place, whether the compensation if provided is discriminatory, and finally, whether it is inadequate or illusory. The more specific challenges involving payment and valuation problems, however, will be discussed in detail separately.[22]

A. Attacks on the Entire Law

1. *Is there a valid law?*

Prefacing the challenge to compensation provisions, the entire land reform act is sometimes challenged on the ground that it is not a "law" either because the legislature did not have the power to pass it or, rarely, the prescribed procedures for enactment were violated. Only three cases[23] all concerning Indian land reform acts put at issue the question of whether a bill did not become, technically, a law.

In *Rao v. Madhya Pradesh*,[24] the first objection raised against the enforcement of the Proprietary Rights Abolition Act was that the legislative journal contained no note that this Act was ever passed by the legislature according to the governing parliamentary rules. However, the journal carried the minutes of the debate on the bill, and there was no indication from members present that they opposed the passage of the bill. What happened, the court found, was an omission or an oversight in not recording in the House journal the motion putting the bill to a vote.[25] However, the bill as sent for the President's assent contained the Certificate of the Speaker that the bill was properly passed. The court overruled the petitioner's objection, saying, "There are no grounds whatever for doubting the correctness of his certificate."[26]

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[21]For example in Visweshwar Rao v. Madhya Pradesh, S.C.R. 1020 (1952), there were twenty petitions joined in one decision.

[22]See discussion in part IV, *post*.

[23]Indian cases reported up to 1967, 2 S.C.R. 952 (August, 1967), were on hand for this study.

[24]S.C.R. 1020 (1952).

[25]*Id.*, at 1032.

[26]*Id.*, at 1033.

A more complex situation is presented by the case of *Nambudiri v. Kerala State*.[27] Here the Kerala Agricultural Relations Act [28] aroused the landowner's opposition because after it was passed the Assembly was dissolved before the President could act on it.[29] The landowner contended the bill had lapsed and should have been re-introduced in the newly elected Assembly, instead of merely being amended as a condition of the President's assent. Refusing to follow this contention, the court ruled that under Article 196[30] of the Indian Constitution, a bill pending in the legislature of the state does not lapse by reason of the prorogation of that house.

The zamindar in *Suriya Pal v. Uttar Pradesh*[31] also asserted that no valid law had been enacted because the Uttar Pradesh Zamindari Abolition Act was not "law" in legal contemplation as it did not provide compensation for certain types of property in the sense of money equivalent. But the court, conceding the compensation provisions might not provide that equivalent, sustained the act because those provisions would not "result in non-payment of compensation."[32]

2. *Has the Law a legitimate purpose?*

Beyond the mere existence of a properly passed statute, the next inquiry concerns the presence of a legitimate statutory purpose. Where such question is not barred by a constitutional or legislative declaration previously discussed under justiciability,[33] the challenge based on purpose may consist of a denial that land reform is a valid public purpose; or, if that is conceded, then the contest is whether a specific taking would advance a reform objective.[34] In either case, expropriation might be challenged even if coupled with full compensation.[35]

Destruction of a class of citizens, the zamindars,[36] was set up as an obstacle to Indian land reform act. But in the *Suriya Pal* case[37] the court held that "legislation which aims at elevating the status of tenants by conferring upon them the bhumidari rights to which status the big zamindars have also been levelled down cannot be said as wanting

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[27]1 S.C.R. 753 Supp. (1962).
[28]Kerala Act IV of 1961.
[29]1 S.C.R. 753, 772 Supp. (1962).
[30]India Const. art. 196 (3).
[31]S.C.R. 1056 (1952).
[32]*Id.*, at 1065, 1069.
[33]See discussion in part II, *ante*.
[34]Kameshwar v. Singh as to taking of arrears, S.C.R. 889 (1952).
[35]2 Cooley, Constitutional Limitations, 113.
[36]Zamindar refers to the landlord in the zamindari system, the person possessing the proprietory rights in land the one responsible to the state for the payment of land revenue.
[37]S.C.R. 1056 (1952).

in public purpose in a democratic state." In *Kameshwar Singh*,[38] the court found that "the concentration of big blocks of land in the hands of a few individuals is contrary to the principles on which the Constitution of India is based," and "prevention of concentration of wealth" pursuant to the Constitution's directive principle of state policy is a public purpose.[39] Conferring a higher status on occupancy tenants and the vesting of land management on village councils were deemed by the court in *Rao v. Madhya Pradesh*[40] as valid purposes.

In contrast, the protection of tenants as a class[41] was held in three Texas cases[42] as constituting no valid purpose. The altruistic desire to help farm tenants is not a sufficient basis upon which to defend the constitutionality of a program to improve tenancy conditions but which cut down on the existing rights of landlords.[43] Thus, in *Culberston v. Ashford*,[44] a Texas law limiting the rate of farm rentals payable by tenants and penalizing the violation thereof, was held by the Texas court as unconstitutional. In another case[45] such a protective statute was viewed by the court as making a tenant fall into a class of wards of the state because it takes his fundamental right to contract freely and to exercise judgment on a subject vital to him. In these cases, however, there were strong suggestions that if public interest could be shown in the regulation of tenant-landlord relations, as in the urban rent regulations during emergency situations,[46] a different result might have been reached.[47] Moreover the court did not find any land monopoly existing in Texas; on the contrary it believed the opposite was true, that land was distributed widely.[48]

Several Philippine cases[49] before the adoption of the land reform code showed disfavor of expropriations to benefit tenants as individuals. In *Republic v. Baylosis*,[50] the majority ruled that "just to enable tenants of a piece of land to own portions of it, even if they and their ancestors had cleared the land and cultivated it for years, is no valid reason to deprive the owner or landlord of his property by means of expropriation."

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[38]S.C.R. 889 (1952).
[39]*Id.*, at 897, 941.
[40]S.C.R. 1020 (1952).
[41]As distingulished from *individuals*.
[42]Miller v. Branch, 233 S.W. 1032, Culberston v. Ashford, 118 Tex. 491, Rumbo v. Winterwood, 228 S.W. 258.
[43]Albert H. Cotton. *Regulation of Farm-Landlord-Tenant Relationships*, 4 LAW & CONTEMP. PROB. 508, 509.
[44]118 Tex. 491.
[45]Rumbo v. Winterwood. 228 S.W. 258, 262.
[46]Block v. Hirsch, 255 U.S.
People v. La Fetre, 230 N.Y. 429, 130 N.E. 601.
[47]228 S.W. 258.
[48]*Id.*, at 262.
[49]Guido v. Rural Progress Adm., 84 Phil. 847 (1949); City of Manila v. de Borja 85 Phil. 51 (1949); City of Manila v. Arellano, 85 Phil. 663 (1950); Urban Estates v. Montesa 88 Phil. 348 (1951); Caloocan v. Manotok Realty, G.R. No. 6161, May 14, 1954.
[50]96 Phil. 461 (1955).

Tenancy trouble alone, whether the fault of the landlord or of the tenant, would not justify expropriation; for otherwise, the court reasoned, all the tenant had to do was violate the law, refuse to give the landlord his share, deny the owner's title and create other tenancy problems so the government could resort to expropriation of the land tenanted. Two dissenting opinions,[51] however, weakened the authority of the *Baylosis* decision; in one, Paras C.J. pointed out that in this case the basis of expropriation was not eminent domain alone but specific constitutional authority to redistribute lands to individuals;[52] J.B.L. Reyes, in another dissent, urged the court to refrain from judging the worth of socio-economic policies of the constitutions and blocking their realization.[53] The majority holding, however, has been reiterated in two recent cases.[54] In these and several other decisions, it may be noted, there were other considerations like the size of the estate which also influenced the majority opinion.[55] Moreover, as may be distinguished from isolated tenancy trouble, *agrarian unrest* has been provided by law[56] and recognized by the court as a possible justification for expropriation.[57]

Where no direct expropriation is involved, the purpose of benefiting tenants as a class through regulation of sharing between farm tenants and landowners has been consistently[58] recognized by the Philippine court as valid. These laws progressively increased the share ratio[59] in favor of

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[51]Following Rural Progress Adm. v. Reyes, G.R. No. 4703, Oct. 8, 1953.

[52]Const. art XIII, sec. 4.

[53]96 Phil. 461, 504 (1955).

[54]Bulacan v. San Diego Inc., G.R. No. 15946, Feb. 28, 1964, 9 C.A.R. J. (1) 39; Phil. Realtors Inc. v. Santos, 10 C.A.R. J. (1)1.

[55]In Republic v. Manotok Realty Co., G.R. No. 20204, July 31, 1964, 9 CAR J. (3) 225, 229, the court held that seven hectares which formed part of a hacienda previously was not an estate. In Rizal v. San Diego Inc., G.R. No. 10802, Jan 23. 1959, a parcel of sixty-six hectares, formally a part of a 200-hectare hacienda, was declared not an estate.

[56]Rep. Act No. 1400 (Land Reform Act of 1955), sec. 6 (2)

[57]Republic v. Crisanto de los Reyes, C.A.-G.R. No. 29365-R, July 30, 1960, 11 C.A.R. J. (3) 336.

[58]Ramos v. C.A.R., G.R. No. 19555, May 29, 1964. Macasaet v C.A.R. G.R. No. 19750, July 17, 1964. Uichangco v. Guttierrez, G.R. No. 20575, May 31, 1965. Gamboa v. Pallarca, G.R. No. 20407, March 31, 1966, Cuison v. Ortiz, G.R. No. 20905, April 30, 1966.

[59]Sharing varied depending on whether the tenant or the landlord furnished the implements, the work animal and the production expenses. See Act No. 4054 and Rep. Act No. 34: If tenant furnished farm implement while landlord provided the work animal, all expenses of planting and cultivation being divided equally, the share ratio was 50-50. If the tenant furnished both work animal and implements, the share ratio was (a) 55-45 in favor of the tenant if expenses are shared, and (b) 70-30 if expenses are borne solely by the tenant.

Under the Agricultural Tenancy Act (Rep. Act No. 1199, as amended by Rep. Act No. 2263, the sharing was based on the factors of production, land being entitled to 30% share in the produce, and labor also 30%, the remaining 40% being distributed at 5% each to implements, animals and harrowing process, and 25% to transplanting, if the land is first class; if the land is second class, lands get 25% while labor gets 35%.

Under the Land Reform Code, the lease rental is uniformly not to exceed 25% of the annual produce, averaged on the basis of the preceeding three years. Rep. Act No. 3844, sec. 34.

tenants and to the extent that the landlord's share diminished might be said to prejudice the landlord class.[60] But the court has upheld these regulatory laws as a "remedial legislation promulgated pursuant to the social justice precepts of the constitution," and the specific constitutional mandate that the state regulate the relations between landlord and tenant in agriculture.[61]

Taking of property without public purpose has also been frowned upon by the Puerto Rican court. Financial gain to the government is held not enough to justify condemnation. But the purpose of the condemnation of farms being the elimination of slums, in one case,[62] the taking was held as of public character.

The historic statement of the U.S. doctrine on purpose postulates generally that a private purpose will vitiate the taking[63] by the state and that a private benefit will not suffice to compel an owner to assent to the taking even though accompanied by just compensation.[64] Thus, in an early case,[65] the court held that a state law could not require a railroad company to grant private citizens, as the company had previously granted others, the right to build a grain elevator on company property. But this rule has been eroded by recognized exceptions, particularly where the private purpose is intimately connected with public necessity and welfare that there results at least a quasi-public benefit.[66] Of this type is taking for redevelopment or slum clearance where property is taken by the government which later will be sold to private interests.[67] In a recent case,[68] the U.S. court declared that the promotion of agriculture is a valid public purpose under the general welfare clause of the federal Constitution[69] and public expenditures on federal reclamation and irrigation projects are justified. What it subsidizes, however, the federal Congress could validly regulate.[70]

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[60]Lavina v. de Guzman, 10 C.A.R. (2) 139. Pingol v. C.I.R., G.R. No. 5565, Sept. 30, 1952.

[61]Primero v. C.A.R., G.R. No. 10594, May 29, 1957. Genuino v. C.A.R., G.R. No. 25035, Feb. 26, 1968. 1968 A Phild. 646; Macasaet v. C.A.R., G.R. No. 19750, July 17, 1964; Ramos v. C.A.R., G.R. No. 19555, May 29, 1964.

[62]Housing Authority v. Sagastivelza, 72 PRR. 262; People of Puerto Rico v. Eastern Sugar Association. 156 F 2d 316.

[63]Thompson v. Consolidated Gas Co., 300 U.S. 55, 81 L. Ed. 510, 57, S. Ct. 364 (1937).

[64]2 Willoughby, Constitutional Law, 795 (2d ed): "... no offers of compensation, however extravagant can compel or require any man to part with an inch of his estate."

[65]Missouri Pacific Railway v. Nebraska, 164 U.S. 430, 41 L. Ed. 489, 17 S. Ct., 130 (1896).

[66]Powers v. Komposh, 275 U.S. 504, 72 L. Ed. 396, 48 S. Ct. 156 (1927).

[67]Berman v. Parker, 348 U.S. 26; 99 L. Ed. 27; 75 S. Ct. 98 (1954). People v. Chicago, 121 N.E. 2d 791.

[68]Ivanhoe Irrig. Dis. v. McCracken, 357 U.S. 275, 2 L. Ed. 2d 1313 (1958).

[69]American Const. art. III, sec. 8 (1).

[70]Id., 2 L. Ed. 2d 1313, 1328. Wichard v. Filburn, 317 U.S. 111, 87 L. Ed. 122, 63 S. Ct. 82 (1942).

An aspect of the dispute on purpose used to involve the question of whether it could be equated with direct public use as well as consequential public benefit, however intangible that may be. Railroad companies were given in their franchises the powers of expropriation because rail travel was essential to the country's expansion and development.[71] A similar rationalization could be applied concerning condemnation for airport uses; the public finds jets not unlike shuttle buses and trains; and air transport is essential to security and defense even in peacetime.[72] While taking of private land for an irrigation right of way needed by a private individual may not be justified in one state,[73] in another area where water is scarce the use of expropriatary powers may be acceptable,[74] particularly where agriculture is a prime source of private income as well as public revenue. Thus, the court has refrained in certain cases from defining public purpose, leaving the task for legislative determination, but without foreclosing entirely resort to judicial action.[75]

In connection with the statutory declaration of purpose, the Indian cases raised the issue of good faith. Where it entertained this point, the Indian court was quick to distinguish motive from power, and considered motive as irrelevant.[76] In one case,[77] the zamindars argued that the real purpose of legislature in abolishing zamindari rights and taking over their estates was to "make money by trading in land," for the government would pay an amount less than the price the land would fetch when resold to tenants. In another case[78] the zamindars contended the effect of the land reform act was to transform the state government into a super-landlord, depriving the intermediaries of their means of livelihood and without any benefit accruing to the tenants, although the act was passed merely to implement the nationalization policy of the party in power and devoid of public purpose. In a third case,[79] the zamindars showed that after 1946, when the party in power resolved to pursue a land reform program, the state legislature proceeded to enact laws intended to defeat, by reducing the gross income of zamindars while increasing their taxes, the constitutional guarantees of compensation. In all these cases, the court brushed aside the attack on the good faith of legislature, after finding that it was competent to enact the reform statutes.[80]

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[71]Sena v. Manila Railroad, 42 Phil. 102 (1921).

[72]Griggs v. Allegheny, 369 U.S. 84, 82 S. Ct., 531, 7 L. Ed. 2d 585, 591-92 (Black opinion).

[73]Vetter v. Broadhurst, 160 NW 109.

[74]Alcorn v. Reading, 243 Pac. 922.

[75]Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27, 75 S. Ct. 98 (1954).

[76]Gajapati Narayan v. Orissa State, S.C.R. 1, 11 (1954).

[77]Suriya Pal v. Uttar Pradesh, S.C.R. 1056, 1073 (1952).

[78]Kameshwar Singh v. Bihar, S.C.R. 889, 897 (1952).

[79]Rao v. Madhya Pradesh, S.C.R. 1020, 1040 (1952).

[80]Kameshwar Singh v. Bihar, S.C.R. 889, 894 (1952) (Sastri C.J. upheld in one opinion the land reform acts of Bihar, Madhya Pradesh and Uttar Pradesh in this case).

Applied to particular proceedings, however, good faith or motive might be decisive. The Appeals court in a Puerto Rican case[81] held that the insular government should not be permitted to forfeit land of the corporations for past violations which the government had "winked at"; for ten years, the government not only failed to enforce the five-hundred acre limitation but also collected taxes on surplus land. In the Philippines, the court has held that where the government had contracted to purchase private property, it would not be allowed to resort to expropriation later as a way of evading compliance with its contractual obligations, including the payment of the stipulated price.[82] This case, however, is distinct from those involving alleged impairment of the freedom of contract where the contracting parties are both private persons, and the impairment by the state consists of a regulatory measure.[83] Moreover, in Puerto Rico as in the Philippines there is a codal authority that mere non-user of a statute, without express or implied repeal, does not render a statute unenforceable.[84]

3. *Is the law on taking of an estate related to land reform?*

While the American court steers away from fine distinctions involving "estates" and "interests not estate,"[85] the Philippine and Indian courts had to lay down what an "estate" is for purposes of land reform legislation. Thus, in the leading case of *Guido v. Rural Progress Administration*[86] the Philippine court construed the constitutional mandate that "lands" be expropriated, subdivided, and sold at cost to individuals as referring only to "big landed estates."[87] Comparatively, the Indian court limited the applicability of the constitutional definition[88] of "estate" to those of zamindars, not the "ryotwaris."[89]

Following the *Guido* case, the Philippine court voided the taking of varying sizes[90] which it considered not sufficiently large to be an "estate",

[81]People v. Rubert Hermanos, Inc., 106 F (2d) 754, 762, reversed 309 U.S. 543.

[82]Noble v. City of Manila, 67 Phil. 1, (1938)

[83]Ramos v. C.A.R., G.R. No. 19555, May 29, 1964; 4 C.A.R. J. (22) 142.

[84]People v. Rubert Hermanos, 53 P.R.R. 741, 759. Civil Code of the Philippines, Rep. Act. No. 386, art. 7.

[85]Helvering v. Halleck, 309 U.S. 106; R. Kratovil & F. Harrison, *Eminent Domain, Policy & Concept*, 42 Col. L. R. 596, 626.

[86]84 Phil. 857 (1949).

[87]*Id.*, at 850. The purpose of art. XIII, sec. 4 of he Philippine Constitution according to the court is two-fold: to prohibit ownership of large estates and to break up existing large estates.

[88]art. 31A (1).

[89]Karimbil Kunhikoman v. Kerala, Supp. 1 S.C.R. 829, 846 (1962).

[90]Republic v. Baylosis, 96 Phil. 461 (1955), 67-77 hectares; Phil. Realtors Inc. v. Santos, 10 C.A.R. J. (1) 1, 2.5 hectares, NARRA v. De Francisco, G.R. No. 14111, Oct. 24, 1960, 6 C.A.R. J. (3) 171, 85 hectares. These cases are also authority for the proposition that once a landed estate (hacienda) has been broken up, it is no longer subject to expropriation.

for the benefit of only "ten, twenty or fifty persons."[91] While it has not indicated precisely how big an area or how many beneficiaries would be acceptable to the court, it has set its own working criterion:

> "In a broad sense, expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city, bears direct relation to public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by condemnation clothes the expropriation with public interest and public use. The expropriation in such cases tends to abolish economic slavery, feudalistic practices, endless conflicts between landlord and tenant, and other evils inimical to community prosperity and contentment and public peace and order."[92]

In two later cases,[93] the court added that the Constitution contemplates large scale purchases or condemnations with a view to agrarian reforms or relieving acute housing shortage. The court ruled out taking of private lands in a make-shift or piecemeal fashion to accommodate a few tenants or squatters, which the court equated with depriving one property owner for the convenience of another without perceptible benefit to the public, along lines of "an ideology alien to the institution of property."[94] Nevertheless, the court recognized that agrarian conflicts and acute housing shortage reflected "vast social problems with which the nation is vitally concerned and the solution of which would redound to the common weal. Large-scale condemnation, though sacrificing rights and interest of one or a few are for the good of many and carries connotation of public use."[95]

To extricate the government from doubt as to the size and purpose of taking that would be acceptable to the court, the Philippine Congress declared by statute[96] that only private agricultural lands in excess of three hundred hectares if individually owned or in excess of six hundred hectares if corporate property could be expropriated, provided that where "justified agrarian unrest" exists, that land may be expropriated regardless of its area.[97] In the case of *Republic vs. de los Reyes*,[98] the Appeals court took this proviso to mean that "justified agrarian unrest" could

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[91]84 Phil. 847, 855 (1949). In Republic v. Manotok Realty, the court also stated that the number of tenants of a parcel of land does not necessarily determine an "estate". G.R. No. 20204, July 31, 1964, 9 C.A.R. J. (3) 225.

[92]84 Phil. 847, 852-53 (1949).

[93]Urban Estates Inc. v. Montesa, 88 Phil. 348 (1951); Republic v. Baylosis, 96 Phil. 461 (1955).

[94]Urban Estates Inc. v. Montesa, 88 Phil. 348 (1951), 26 Phil. L.J. 480, 481 (1951).

[95]This reasoning is criticized, for it is argued in rebuttal that the court is precluded from considering this point by the constitutional mandate that "land" be subdivided for sale to tenants. See Sinco, Constitutional Policy on Land Tenure, 28 Phil. L.J. 837 (1953).

[96]Rep. Act No. 1400 (Land Reform Act of 1955)

[97]*Id.*, sec. 6 (2).

[98]Republic v. De Los Reyes, C.A.—G.R. No. 29365-R, 11 C.A.R. J. (3) 336.

be the sole basis of expropriation if the land involved is not a big-landed estate; it is not an additional element to be added to "public use" for doing so would make it harder to expropriate private agricultural land; rather, the settling of agrarian unrest is intended by Congress to substitute for "public use."[99] In effect, where there is agrarian unrest the court need not inquire as to whether there is purpose or whether the land taken is an "estate." The present land reform code,[100] however, has set seventy-five hectares of privately owned land as exempt from expropriation.

The difficulty encountered by the Indian court concerning an expropriable "estate" stems from the constitutional provision that, "the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area."[101] Faced with a perplexing diversity of tenures in different parts of India, the court had to examine in each case the applicable local usage, particularly in the settlement acts and revenue codes. In *Nambudiri v. Kerala*,[102] the court found that an "estate" could mean any area (a) for which separate record of rights has been made; (b) which was separately or could have been separately assessed as to land revenue; and (c) which the government declared to be an estate for general regulation or special order.[103]

But in *Karimbil v. Kerala*,[104] the court concluded that *ryotwari* holdings were not estates, for the local Estates Land Act[105] in force had not classified the *ryotwari* together with, but is distinguished from, (a) the zamindari, whether permanently or temporarily settled; (b) any portion of the foregoing separately registered in the Collectors office; and (c) British-confirmed or recognized *inam* village or (d) unsettled jagir. In *Yavatmal v. Bombay*,[106] however, although there was no definition of estate, the court found a local equivalent.

The significance of the court's finding of whether the land involved is an "estate" or not, it may be recalled, is related to the problem of justiciability; for if the property in question was not an estate as defined in the constitution, then it was previously outside

[99] *Id.*, 342.
[100] Rep. Act No. 3844, sec. 51. Note that there is a priority: idle lands and lands exceeding 1,024 hectares will be expropriated first, followed by 500-1024, 144-500, and finally above 75 to 144 hectares.
[101] India Const., art. 31A (2).
[102] 1 S.C.R. 753 Supp. (1962).
[103] *Id.*, at 787.
[104] 1 S.C.R. 829 Supp. (1952).
[105] Madras, No. 1 of 1908.
[106] Yavatmal v. Bombay, 1 S.C.R. 733 (1962).

the shield of constitutional amendments. The last amendment,[107] however, enlarged the meaning of "estate" to include *ryotwari* and "any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans."[108] The expression "rights" in relation to an estate is also given a comprehensive definition to include not only those of *raiyat* but also "any rights or privileges in respect of land revenue."[109] To the local usage, then, must be added this broad definition of "estate" and "rights in estate."

Land held by princes and merged by treaty with an Indian state present peculiar problems to the Indian court because of the princes' assertion of sovereign rights. They deny that interests in *malguzari* land[110] covering entire villages could be classed as an "estate." But in *Rao v. Madhya Pradesh*,[111] the court held that a former raja or ruler was in no better position than other private owners vis-a-vis the state's power of expropriation. When a prince's property is taken by compulsory acquisition, his title to the property is not denied nor his constitutionally guaranteed rights and privileges as a former ruler violated; the offer of compensation is made upon the assumption that the property taken is not public but private; however, neither constitutional provisions[112] nor treaty agreements guarantee the perpetual existence of a former ruler's property or prohibit state acquisition of such property. Moreover, if the claim of guarantee against expropriation is founded on a treaty, then such a claim amounts to a dispute expressly placed by the Constitution beyond the court's jurisdiction.[113] In *Singh v. Orissa*,[114] the court upheld the acquisition of the estates owned by petitioners who pleaded sovereign rights. While in the remote past, said the court, their ancestors were sovereign chiefs, they lost their sovereign rights by recognizing the rule of another, the Raja of Gangpur, whose laws and administrative control they recognized. Having lost their rights, they held land just like other zamindars whose estates could be acquired compulsorily.

In relation to the taking of an "estate," peculiar problems have been presented in court. In India, what was involved were proper-

[107]India Const. amend. seventeen, passed June 20, 1964.
[108]India Const. art. 31 A (2) (a) (iii).
[109]*Id.*, art. 31A (2) (b).
[110]A *malguzar* is a person holding a village (Mahal) in proprietary rights and made responsible for paying the land revenue thereof. The system of tenure in this instance is called *malguzari*.
[111]S.C.R. 1020 (1952).
[112]India Const. art. 362, 291.
[113]India Const. art. 363.
[114]2 S.C.R. 362 Supp. (1963).

ty owned by religious institutions or land constituted as charitable trusts.[115] In Puerto Rico, the unique problem concerned the registration of land above the legal ceiling allowed to corporations.[116]

Religious groups in India objected to the vesting in the state of land they owned for religious or charitable purposes. Their practical objection was that their religious functions would be hampered if they had no land. The legal basis on which they sought to bar expropriation was that a property devoted to a public purpose like charity would no longer be taken. The Indian court, in the case of *Suriya Pal v. Uttar Pradesh*,[117] held that an estate devoted to charity was not immune from the sovereign's power to acquire property for public purposes. There was no substance, added the court, to the contention that once property was already devoted to public purpose it could not be acquired for other public purposes.[118] The religious groups would still be able to discharge their functions with the funds they would get as compensation for their property. In effect what they owned merely changed in form, from realty to cash.[119] Since the basis of the compensation would be the net income of the property taken, they would suffer no loss nor would their religious activities be prejudiced. It may be noted, however, that trusts or endowments ostensibly for charitable or religious purposes but whose profits were intended to support the founder, his family or descendants, were not recognized by the zamindari abolition act as eligible for compensation in the form of rehabilitation grants.[120]

In Puerto Rico, the problem of registration arose because the sugar corporations argued that the 500-acre limitation would not apply to those engaged in the manufacture of sugar as an industry aside from the planting of cane.[121] The corporations therefore sought to register their holdings beyond five hundred acres. In *Azucarera de Toa v. Registrar*,[122] for example, the registrar was compelled to record a single transfer to the company of some seven hundred acres, a patent violation of the legal limitation. The court, noted in another case,[123] that while the problem on the surface was a technical one, that of registration, the suit against the registrar constituted a devious attack on the Puerto Rican law. The registrar's refusal to register

[115]Muslim trusts are called *waqfs*.
[116]The ceiling is set by the 500-Acre Law, 28 L. P. R. A. sec. 401.
[117]S.C.R. 10 (1952).
[118]*Id.*, at 1079.
[119]*Id.*, at 1090.
[120]Under the Uttar Pradesh Act I, 1950, sec. 76, Explanation I. Srivastava, *op. cit.*, at 357-58.
[121]People v. The Fajardo Sugar Co., 51 P.R.R. 851, 50 P.R.R. 150.
[122]19 P.R.R. 724.
[123]Azucarera de Carolina v. Registrar, 13 P. R. R. 143.

land in these cases was found unjustified, for the court held that the matter of registration was ministerial as a duty. The registrar must fulfill the duty, according to the court in a third case,[124] without the necessity of previous inquiry into whether the corporation had complied with local laws governing foreign corporations doing business in Puerto Rico. These decisions were reached despite the statutory provision that, "registrars shall determine under their responsibility the *legality* of documents by virtue of which the record is requested and the capacity of the parties interested by what appears from said documents."[125] The court took this provision to mean that the registrar was inhibited from going beyond an examination of the documents, *viz.* their formal validity.[126] Thus the court denied one means of enforcing the Puerto Rican limitation on corporate landholding and the breaking up of latifundia by administrative action of the registrar.

B. CHALLENGES TO COMPENSATION PROVISIONS

1. *Is compensation provided for?*

Granted the jurisdiction of the court, the justiciability of the issues, and a law otherwise valid, the challenge then turns to the compensation provisions. One case may take as many as half a dozen lines of attack and then concentrate on the constitutionality of payment. Although there may be a severability clause, the entire land reform act may fall if the compensation scheme fails to withstand this frontal assault.

In Indian court, construing the constitution, has made it clear that the law in question itself must provide for a just equivalent of the property taken or lay down the principles which would lead to the same result,[127] otherwise the law would be invalid. Thus, in *Lal Jaini v. Uttar Pradesh*,[129] the state's regulation of transfers act,[129] a companion measure of the zamindari abolition,[130] was successfully challenged for failing to provide for any compensation for the loss of the lessee's right in his leasehold. The court found the prohibition of transfer or registration of a lease in land granted

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[124]Porto Rican Leaf Tobacco Co. v. Registrar, 24 P.R.R. 245.

[125]Law of March 9, 1911.

[126]Isabella Grove Inc., v. Registrar, 24 P.R.R. 240.

[127]Union of India v. Metal Corp. of India Ltd., 1 S.C.R. 255 (1967). This case involved the Acquisition of Undertaking Act, No. XLIV, of 1965, directed against the corporation. The court attempted to separate the issue of "compensation" from "jurisdiction": (a) "The law to justify has to provide for the payment of a 'just equivalent' to the land acquired or lay down principles which will lead to that result." (b) "If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law." *Id.*, at 264-65.

[128]1 S.C.R. 912 Supp. (1963).

[129]U.P. Land Tenure (Reg. of Transfers Act) Act, (1952.)

[130]U.P. Act (1950).

after May 21, 1951, repugnant to fundamental rights. For, as the lessee had argued, it deprived him of his property in the leasehold without compensation. The Indian court brushed aside the contention that the transfer act, like other land reform acts, was saved by the remedial constitutional amendments, holding that the act was "stillborn" and could not be revived.[131]

While in the foregoing case, there was no provision for payment at all, other cases show that even if there is a compensation provision for certain types of property taken, and not for other types, the attack may still focus on those not provided for. In *Suriya Pal Singh v. Uttar Pradesh State*,[132] however, the attack on the zamindari abolition act failed, although it was asserted that there was no compensation provided for the following: (a) rent-free buildings and undeveloped mines; (b) one-half the value of other non-income bearing properties;[133] (c) the value of 85,000 trees, several hundred miles of canal constructed as irrigation works, and abadi sites; and (c) the loss of status of the zamindars.[134] The court found that since the basis of computing the compensation payable to the zamindars was the net income of the entire estate, and that basis was not unreasonable, those non-income bearing properties were duly accounted for in the valuation of the entire estate and should not be valued separately.[135]

In contrast, the attack in *Raghubir Singh v. Court of Wards*[136] succeeded, and a statute which deprived the appellant of his possession and management of his property for habitually infringing the rights of his tenants was held unconstitutional. The court held that provision negatived his right to hold property and, for an indefinite period, made his right of property dependent upon the pleasure of the government.[137]

The zamindars' contention in *Bihar State v. Kameshwar Singh*[138] was that the impugned act not only resulted in the taking away of their estates for nothing but also in their having to pay the government, the taker, *something*, thus:

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[131]The court discussed the so-called doctrine of eclipse, which holds that a pre-constitution law could be cured of its repugnance to the constitution by constitutional amendment, but this same effect does not result in case of post-constitution laws. Compare India Const. art. 13 (1) and (2). 1 S.C.R. 912, 914, 931-37 Supp. (1963).

[132]S.C.R. 1056 (1952).

[133]*Id.*, at 1066.

[134]*Id.*, at 1086.

[135]*Id.*, at 1970.

[136]A.I.R. (1953) S.C. 373, S.C.R. 1049 (1953).

[137]This was before the fourth amendment was passed on April 27, 1955, sec. 3 of which included a provision that the management of property of any state could be taken over by the state for a limited period to secure its proper management. India Const. art. 31A (1) (b).

[138]S.C.R. 889 (1952).

> "It was pointed out in the case of the Maharaja of Darbhanga that his zemindari would be acquired by the State government without paying anything but that the Maharaja would have to pay out of his own money six lakhs to the Government. In Case No. 339 of 1951 (Raja P.C. Lall), it was said that Government would get the zemindari free, while in Case No. 339 of 1951 the State will get the zemindari and two and a half lakhs out of the arrears . . ."[139]

The zamindar's extreme position was met by an equally extreme claim by the state attorney-general that legislature could lay down principles of compensation which might result in non-payment or no compensation at all,[140] in the same way that, as held in a prior case,[141] the legislative authority to provide for "collection of rents" was wide enough to permit the abolition of rents. The court found neither the zamindars or the state's position correct. On one hand, the constitutional requirement to lay down principles of compensation could not be taken to mean as allowing confiscation of property; no principles would be required for non-payment.[142] On the other hand, in Mahajan's opinion, "From the premises that the estates of half a dozen zamindars may be expropriated without payment of compensation, one cannot jump to the conclusion that the whole of the enactment is a fraud on the Constitution or that all the provisions as to payment of compensation are illusory."[143] The court, however, did strike down the Bihar act on two grounds: the taking of arrears amounted to impermissible taking of money,[144] and the deductions made from the compensation due were arbitrary.[145]

Because compensation is expressly provided for by the Puerto Rican Land Law[146] and the Philippine Land Reform Code,[147] neither the Puerto Rican nor the Philippine courts would have to face the question of statutory omission. Even in cases of forfeiture based on violation of the 500-acre law, the just value or reasonable price of the property "confiscated" must be fixed by the Puerto Rican court and then paid for by the Land Authority.[148] Under the Philippine Code, the court must fix the value of the land expropriated in accordance with the codal formula,[149] or approve the valuation agreed

[139] *Id.*, at 945.
[140] *Id.*, at 945.
[141] 1940 F.C.R. 110, 135.
[142] S.C.R. 889, 950 (1952).
[143] *Id.*, 947-48.
[144] *Id.*, 942-44.
[145] *Id.*, 951-952.
[146] 28 L.P.R.A. sec. 271.
[147] Rep. Act No. 3844, sec. 56.
[148] 28 L.P.R.A. sec. 402.
[149] The annual lease rental income authorized by law capitalized at six *per centum per annum*. Rep. Act No. 3844, sec. 56.

upon by the landowner and the Land Authority and embodied in a joint motion presented in court.[150]

As part of the land reform program, the regulation of tenancy that results in material loss to the landowner presents to the court the issue of whether compensation should be provided for that loss. This question reflects in one sense the conflict between the U.S. doctrines of police power and eminent domain.[151] Comparatively, the Indian Constitution is more explicit than the American federal Constitution, for the Indian Constitution, while guaranteeing the right to "acquire, hold and dispose of property," also goes on to state expressly that nothing in that guarantee "shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, reasonable restriction" upon the exercise of that right, in the interest of the general public.[152]

Thus, there are two types of interferences with property rights possible under the Indian Constitution: (1) acquisition or requisition by the state for which compensation must be fixed or at least the principles of determining the compensation laid down;[153] and (2) regulation by the state, which may include deprivation "by authority of law."[154] The Philippine civil code[155] may be said to run on parallel lines: in one article, it provides that no person be deprived of his property except by competent authority, for public use, and upon payment of just compensation;[156] in the next article, it allows property to be condemned or seized by competent authority in the interest of health, safety or security, and "the owner shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified."[157] The task of the court then, in India, the Philippines and the U.S.A., has been to distinguish between regulatory cases where no compensation is due, and expropriation cases when compensation is required.[158]

In *West Bengal v Subodh Gopal Bose*,[159] the owner had acquired his estate in a revenue sale and was granted expressly the right to annul under-tenures and eject tenants. He had given notice of eviction

[150]*Id.*, sec. 53.
[151]Dunham, *op. cit.*, at 73.
[152]India Const. art. 19 (5).
[153]India Const. art. 31 (2).
[154]India Const. art. 31 (1).
[155]Rep. Act No. 386.
[156]*Id.*, art. 435.
[157]*Id.*, art. 436.
[158]Both India and the Philippines have adopted not only the concept of eminent domain but also of police power. India: Charangit Lal v. India, S.C.R. 869 (1950). Philippines: U.S. v. Toribio, 15 Phil. 85 (1910).
[159]27 S. Ct. J. 127 (1954).

to his tenants when, by an amendment to the impugned statute,[160] all pending evictions were declared abated. The court was asked by the owner to invalidate the amendment as an unjustified deprivation of property right. Feeling the case sufficiently important for the determination of constitutional protection extended to private property, Sastri C.J. wrote a comprehensive opinion where the following clarification emerged:

(1) The American court, with the use of the "expansive doctrine" of police power and equally "expansive concept" of due process has greater freedom of action than the Indian court, which recognizes that judicial review should not have an unduly hampering effect on legislation involving large measures of social control and regulation of property to promote the goals of a social welfare state.[161]

(2) Instead of the American concept of "taking,"[162] the Indian Constitution uses "taken possession of or acquired"[163] (later amended to read "acquired or requisitioned"),[164] which conveys the idea that property is *withheld* physically from the possession or enjoyment of the owner.[165] Das J., who concurred in the judgment, also explained that "acquisition" is a term of art, with a special meaning which "connotes a transfer of title, voluntary or involuntary"; if it is by negotiated agreement, then there is a regular conveyance of title from the owner to the state, and if by coercive process, there is vesting of property in the state, regardless of whether the ultimate transferee is the state or a third party.[166] In this sense, according to Das, the American concept of "taking" is rejected, and the English notion of "acquisition" is adopted by the Indian constitution.[167]

(3) Although the statutory amendment curtailed the owner's right to evict tenants, the owner was granted a countervailing advantage, to enhance the rent payable by the tenants.[168] This demonstrated that the amendment was not unreasonably one-sided.

Finding then that the prohibition imposed on the owner was in line with traditional tenancy legislation of affording relief to tenants when the tenancy law operated harshly due to change conditions, the court concluded that the owner's rights as purchaser at the revenue

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[160]West Bengal Act of March 15, 1950, sec. 7.
[161]27 S. Ct. J. 127, 143 (1954).
[162]This includes indirect as well as direct taking. U.S. v. Causby, 328 U.S. 256.
[163]India Const. art. 31 (2) unamended, in Munikanniah *op. cit.*, at 103.
[164]India Const. amend. four, sec. 2, India Const. art 31 (2).
[165]27 S. Ct. J. 127, 144 (1954).
[166]*Id.*, at 165-66.
[167]*Id.*, 165.
[168]*Id.*, at 144.

sale were not so substantially abridged as to result in a deprivation of property without lawful authority or compensation.[169]

Philippine tenancy decisions, particularly on the validity of statutory provisions reducing the landlord's share, have been consistent in their result[170] although not in their reasoning. The landlords' challenges to such provisions have also varied, but the reductions which through the years meant the fall from one half to one-fourth of the harvest,[171] have been attacked as a deprivation or confiscation of property without compensation at least insofar as the difference in sharing resulted in the tenant's getting more and the landlord less than what was agreed upon by contract or provided by the previous law.[172] To this attack, the Philippine court replied with two reasons akin to those adduced by the Indian court: (1) the law also benefits the landlord as much as the tenants;[173] and (2) the act, even if resulting in deprivation of property, is justified as "an act of social justice enjoined in the Constitution" and "an exercise of police power of the state, which tries to improve the situation of a great percentage of the people and preserve the security of the state against possible internal upheavals that the tenant class might be forced to create to improve their lowly lot."[174]

In *Ramas v. C.A.R. and Ramos*,[175] Labrador J. explained how a landlord benefited from tenancy legislation by asserting that although in this case the landlord lost five (5%) per cent of the produce, his share having been reduced from 30% to 25%, he could expect his tenant to become more prepared financially to comply with his obligations under the lease.[176] Once the tenant's share increases, in Labrador's view he becomes more responsible — to the ultimate benefit of the landlord,[177] the consequent improvement of the lot of a big segment of the population (the tenants), and the fulfillment of the social justice directive of the constitution.[178]

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[169]*Id.*, at 148, 164, Das concurring set forth a more elaborate reasoning based on the standard of reasonableness to validate a police power regulation and the constitutional purpose avowedly to set up a welfare state.

[170]Favorable to tenancy legislation. Ongsiako v. Gamboa, 86 Phil. 50 (1950), Ramas v. C.A.R., G.R. No. 19555, May 29, 1964, Macasaet v. C.A.R., G.R. No. 19750, July 17, 1964.

[171]Uichangco v. Gutierrez, G.R. No. 20275, May 31, 1965.

[172]Rep. Act No. 1199, as amended by Rep. Act No. 2263.

[173]Ramas v. C.A.R., G.R. No. 19555, 4 C.A.R. J. (2) 142.

[174]Macasaet v. C.A.R., 9 C.A.R. J. (3) 221.

[175]G.R. No. 19555, 4 C.A.R. J. (2) 142.

[176]Under leasehold, the lessee gains rights of management. Rep. Act No. 3844, sec. 23. But he is also under specific obligations. *Id.*, sec. 26.

[177]Const. art. II, sec. 5; art. XIV sec. 6.

[178]Rep. Act No. 1199, sec. 14.

Less speculative than the foregoing reason was given by Bengzon C.J. in his concurring opinion,[179] focusing on the alleged impairment of contract: the tenancy relations having been entered when the Tenancy Law was already in force, the law should be read as part of their contract of tenancy.[180] In another case, *Uichangco v. Gutierrez*,[181] Bengzon C.J. used the same reason in writing the opinion for a unanimous court which upheld the tenant's right to change from share tenancy to leasehold even if thereby the landlord's share in the produce was diminished.[182] Thus, he did not reach the constitutional question of the law's validity on the ground of uncompensated taking of property. But in a recent case, *Genuino v. C.A.R. and Manabat*,[183] in an opinion written by Justice Bengzon,[184] the court held that the lowering of the landlord's share was done in the exercise of the state's police power, and would not require just compensation.[185]

The *Genuino* case is also significant for the court's rejection of the argument that tenancy legislation was an unreasonable exercise of police power because it did not concern health, morals and public safety.[186] "Police power is broad enough," the court held, "to be exercised on the basis of economic need for the public welfare. And, we do not see why public welfare when clashing with the individual right to property should not be made to prevail through the state's exercise of its police power." Worth noting, this case which dealt with the present land reform code, did not mention "state security" as it did in previous cases,[187] to justify interference with land ownership. It cited a U.S. court decision in *Veix v. Sixth Ward*[188] as authority for its "economic need" rationale, although the U.S. decision did not involve farm tenancy nor rural land.

The Indian court has reached a conclusion comparable to the opinion of the Philippine court, that the question of compensation would not arise in the act of tenancy regulation by the state.[189] In *Raja of Bobbili v. Madras State*,[190] it was held that reducing the tenant's rental rate, while adversely affecting the landlord, does not result in acquisition by the government. Standing alone, the element of the landlord's loss of a part

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[179]But Bengson C.J. appears to beg the question because the validity of sec. 14 is in fact disputed.
[180]G.R. No. 20275, May 31, 1965, 10 C.A.R. J. (2) June 10, 1965.
[181]From 50-50 share ratio, to 75-25, in favor of tenants.
[182]G.R. No. 25035, Feb. 26, 1968; 1968 A Phil. 646.
[183]*Id.*, Phild. 650.
[184]Jose Bengzon, J., not Cesar Bengzon C.J.
[185]*Id.*, Phild. 649.
[186]Cf. Ramas v. C.A.R., 4 C.A.R. J. (2) 142, 150-51.
[187]310 U.S. 32.
[188]Genuino v. C.A.R., 1968A Phild. 646.
[189]A.I.R. (1952) Mad. 203.
[190]Const. art. XIV, sec. 6. India Const. art. 246, List II (State) 18.

of the benefit derived from his property did not render the law confiscatory. As constitutionally defined, expropriation would not result without any transfer of possession or ownership to the state or its agency.

Both the Philippine and Indian constitutions, it may be noted, contain express reference to the regulation of tenancy as a fit subject of state concern.[191]

2. *Is the compensation scheme discriminatory?*

The doctrine of equal protection[192] is utilized frequently to challenge a reform act. The whole statute or its compensation scheme is often attacked as discriminating against one class in favor of another. The attack is mounted of course by the class which feel threatened or prejudiced by the legislation. Thus in Puerto Rico, the opposition came from the sugar companies;[193] in the Philippines, the landlords;[194] and in India, the zamindars and other intermediaries.[195]

Section 14 of the Philippine tenancy act,[196] now embodied in the Land Reform Code,[197] was challenged in *Reyes v. Santos*[198] as constituting class legislation. But the court summarily disposed of the case by pointing to half a dozen past decisions[199]upholding this provision as a reasonable exercise of police power. The decision did not tarry on the point of class distinctions.

The respondents in *People v. the Fajardo Sugar Co.*[200] brought up the arbitrary and capricious discrimination against corporations to the advantage of civil partnerships and other entities as a ground for annulling the five-hundred acre law.[201] But the Puerto Rican court pointed out that incorporation as a business instrumentality is a privilege and not an inherent right, granted by the state to a number of persons on condition that the corporation could possess only those rights and powers which may be provided by the statute that gives it legal existence. The defend-

[191]Const. art. III, sec. 1 (1): "...nor shall any person be denied the equal protection of the laws." Puerto Rico Const. art. II, sec. 7: "No. person in Puerto Rico shall be denied the equal protection of the laws." India Const. art. 14: "The State shall not deny to any person...the equal protection of the laws within the territory of India."

[192]Curtis, *Land Reform Democracy, and Economic Interests in Puerto Rico*, 43.

[193]Golay, *The Philippines*, at 277.

[194]Myrdal, *Asian Drama*, at 1309.

[195]Rep. Act No. 1199.

[196]Rep. Act. No. 3844, secs. 4. 5.

[197]G.R. No. 19961, Sept. 14, 1966.

[198]Ramas v. C.A.R., G.R. No. 19555, May 29, 1964; Macasaet v. C.A.R., G.R. No. 19750, July 17, 1964; Uichangco v. Gutierrez, G.R. No. 20575, May 31, 1965. Gamboa v. Pallarca, G.R. No. 20905, March 31, 1966. Cuizon v. Ortiz, G.R. No. 20905, April 30, 1966. Enriquez v. Cabangon, G.R. No. 21697, September 23, 1966.

[199]51 P.R.R. 851; 52 *Id.*, at 859-60.

[200]28 L.P.R.A. secs. 401-435.

[201]The Land Law, Act of April 12, 1941, No. 26.

ant corporations were estopped from rejecting the limitation on land ownership contained in their charters after they had benefited from the privileges thereunder. Even if their charters did not contain the limitation, still they were bound to observe it because the 500-acre ceiling is embodied in a statute in force.[202] The limitation, according to the court, has a reasonable purpose: to prevent a small island's population from being converted into mere serfs of one big sugar factory.[203] The 500-acre law is not capricious as it is prospective in operation; in any case, the constitution has reserved to the state the power to modify corporate franchises.[204] The corporations, with their limited liability and artificial personality, are distinct from partnerships and other entities.

In *Ram Krishna Dalmia v. S.R. Tendolkar,*[205] the Indian court marked the limits of the presumption of constitutionality of legislative classification. The court held that an act might relate only to one individual if for special reasons he might be treated as a class by himself and the discrimination adequately grounded; so long as the law on its face would bring to the court's notice the circumstances on which the classification might be reasonably regarded as based, the presumption of validity would be upheld. But the court would not carry that presumption to the extent of holding that some undisclosed or unknown reasons justified subjecting certain individuals or corporations to hostile or discriminatory legislation.

The court applied this reasoning again in *Karimbil Kunhikoman v. Kerala State.*[206] Here the impugned law provided for ceilings on landholding, but excepted plantations devoted to tea, coffee, rubber and cardamon. The reason for this exception was that the integrated nature of the plantations' operations, their specialized character, and the need for efficiency in management would not be served by breaking them up.[207] The practical effect was that these plantations, even if exceeding the ceiling of thirty acres, could not be acquired by the tenants. Petitioners who owned plantations devoted to other crops (pepper and areca) charged that the law discriminated against them. They argued that like tea, coffee or rubber, pepper and areca are not merely garden crops in Kerala but are raised in a plantation scale, requiring heavy and long-range investments, covering wide areas of the state and bringing in significant revenue.[208] Breaking up pepper and areca plantations would hamper their production and prove detrimental to the area's economy.

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[202]P.R.R. 851, 861.
[203]Puerto Rico Const. sec. 14.
[204]S.C.R. 279 (1959).
[205]1 S.C.R. 829 Supp. (1962).
[206]*Id.*, 853.
[207]*Id.*, 8557.
[208]Contrary to India Const. art. 14.

The court, finding no appreciable difference between the economics of tea, coffee and rubber plantations compared to pepper and areca farms, held the Kerala act discriminatory.[209]

But even more fatal to the act, for the court found it not severable from the other provisions, was the scheme to compensation for surplus land taken to be redistributed to tenants. The compensation provisions allowed full value for structures, wells and embankment of a permanent nature,[210] but only a percentage of market value for other improvements and the land itself. This payment scheme was adjudged discriminatory. For the majority of the court was of the opinion "that the manner in which progressive cuts have been imposed on the purchase price under section 52 and the market value under section 64 (of the Act) in order to determine the compensation payable to landowners or intermediaries in one case and to persons from whom excess land is taken in another results in discrimination and cannot be justified on any intelligible differentia which has any relation to the objects and purposes of the Act."[211]

What the Act provided in regard to *market value*[212] of the surplus land was a diminishing scheme, such that for the first Rs. 15,000 market value, sixty (60%) per cent would be accounted compansable. Then for succeeding slabs of Rs. 15,000, there would be a progressive dimunition by five (5%) per cent; thus, for the second Rs. 15,000 market value, only fifty-five (55%) per cent would be accounted for; for the third, only fifty (50%) and so on. Simultaneously, in regard to the *purchase price*[213] due the landowner, payment would also be diminished by five (5%) per cent. Thus, for the first Rs. 15,000 due, full payment would be made. Thereafter, by slabs of Rs. 10,000, the price would be cut by 5%; e.g. first, 5%; second, 10% and so on .

The court rejected the argument that this progression scheme, applicable in income taxation, could be applied to eminent domain. For there being no difference in property taken there was no justification why the compensation therefore should be at different rates. The fact that one owner is richer than another owner was not deemed a reason for giving the poor the whole price and giving the rich less than whole.[214]

Sarkar J. dissented on the point of the validity of the compensation scheme. In his opinion[215] the ability-to-pay principle in taxation is analo-

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[209]1 S.C.R. 829, 855-65 Supp. (1962).
[210]*Id.*, 869.
[211]Of land held by a cultivator or ryotwari, not the estate of the zamindar or zamindari.
[212]Landowners include zamindars in this instance.
[213]1 S.C.R. 829, 867 Supp. (1962).
[214]*Id.*, 870.
[215]7 S.C.R. 83 (1964).

gous to the principle of ability-to-bear the loss. The tax principle serves the object of collecting more revenue for the government; the compensation scheme here makes possible less expenditure of money required for acquiring land intended for redistribution. The tax principle augments government resources; the compensation scheme prevents their depletion. So it could not be said, according to Sarkar, that there was no "intelligible differentia" between large and small land owners in relation to the purpose of ceilings legislation.

In *Krishnaswami Naidu v. State of Madras*,[216] another state ceilings legislation was struck down because the compensation scheme was also found discriminatory. Although there was no cut in the market value or purchase price due the landowner as in the Kerala scheme, the Madras formula was found to have the same prejudicial effect. For here, the court noted:

> "In the present case, a converse method has been adapted and the provision is that first the net annual income is arrived at and thereafter compensation is provided for slabs of Rs. 5,000 each of net income. For the first slab of Rs. 5,000 the compensation is 12 times the net annual income, for the second slab of Rs. 5,000 it is 11 times, for the third slab of Rs. 5,000 it is 10 times, and thereafter it is 9 times."[217]

A comparison of this scheme with another using a uniform rate makes the prejudice clear:

MADRAS SCHEME	UNIFORM RATE (× 12)	CUT
A. Rs. 5,000* × 12 = Rs. 60,000†	A. Rs. 5,000* = Rs. 60,000†	0
B. Rs. 10,000 ..... 115,000 Following: (a) 5,000 × 12 = 60,000 (b) 5,000 × 11 = 55,000	B. Rs. 10,000 = 120,000	4%
C. Rs. 15,000 ..... 165,000 Following: (a) 5,000 × 12 = 60,000 (b) 5,000 × 11 = 55,000 (c) 5,000 × 10 = 50,000	C. Rs. 15,000 = 180,000	8%
D. Rs. 20,000 ..... 210,000 Following: (a) 5,000 × 12 = 60,000 (b) 5,000 × 11 = 55,000 (c) 5,000 × 10 = 50,000 (d) 5,000 × 9 = 45,000	D. Rs. 20,000 = 240,000	12%

* Net Income
† Compensation due

[216] *Id.*, 87.
[217] *Id.*, 88.

The court concluded[218] that there was no difference between the Madras and the Kerala schemes. When total net income went up there was a progressive cut in total compensation as was the case in Kerala. Since this scheme was pivotal, the whole land reform act was struck down.[219]

One more important point found by the court as discriminatory under both the Kerala and Madras acts related to the maximum acreage allowed a family.[220] The objection of the court rested on two points: (a) the family was given an artificial definition, founded on neither Hindu or matriarchal conception of a natural family as known to personal law;[221] (b) there was a double standard between married and unmarried adults.[222]

The Kerala law provided that a family of not more than five members would be entitled to a ceiling of fifteen acres, with an additional acre for each member in excess of five.[223] The Madras act set the ceiling at thirty acres for a family of five members, with additional five acres allowed for each member in excess of five.[224] Both laws allotted to an unmarried adult person one-half the ceiling allowed a family of five members.

A family was defined in both acts to include the husband, the wife and the unmarried minor children only, or such of them as exist.[225] This the court found artificial, for under Hindu law a family includes not only unmarried minors but all children regardless of age or status. On the other hand, in matriarchal families, the husband and the wife may not belong to the same family, for each may trace an original filial line.[226]

To show that discrimination would result from the application of the ceiling laws, the court set up an example[227] of a family composed of a father, two adult sons and two minor sons, the mother having died. Given a family estate of 300 acres, if there was personal division, each would have gotten sixty (60) acres. But under the Madras ceilings law, the father and the two minor sons would form one family and get the maximum allowed, which is thirty acres in all or ten (10) acres each person. The adult sons as unmarried adults would each get half the ceiling allowed a family, or fifteen (15) acres each. The rest would be declared surplus, which in effect meant the father and two minor sons were losing to the

[218]This holding precipitated the Indian Const. amend, seventeen, passed June 20, 1964 to save ceilings on holding legislation.

[219]Ceilings legislation in India and the Philippines stress the family-size farm, while in Puerto Rico the main program related to cooperative or proportional-profit farms.

[220]1 S.C.R. 829, 862 Supp. (1962), 7 S.C.R. 83, 86 (1964).

[221]Karimbil v. Kunkikoman, 1 S.C.R. 829, 863 Supp. (1962).

[222]Kerala Agricultural Relations Act (IV of 1961), sec. 58.

[223]Madras Land Reforms (Fixing of Ceiling on Land) Act, No. 58 of 1961, sec. 5.

[224]Kerala Act, sec. 2 (12); Madras Act, sec. 3 (14).

[225]1 S.C.R. 829, 862 Supp. (1962).

[226]7 S.C.R. 83, 84 Supp. (modified) (1964).

[227]1 S.C.R. 829, 863 Supp. (1962).

state fifty (50) acres each, while the two adult sons were losing forty-five (45) acres each of what would have been their personal shares. Declared the court, "If the ceiling had been fixed with respect to one standard whether it be of an individual person or of a natural family by which we mean a family recognized in personal law, the results may not have been discriminatory."[228]

On the issue of discrimination, the U.S. court in *Ivanhoe Irrigation District v. McCracken*[229] showed what might not be discriminatory. Involved was the reclamation act which provides that for land beyond 160 acres belonging to one owner, no water will be supplied.[230] In effect, the 160 acres constitute a ceiling. Those who owned land over that ceiling attacked the act as discriminatory for favoring those who owned less. But the court held it is *not land but people* who benefit from this act. It is a reasonable classification to limit the amount of water available to each individual in order that the benefits be distributed in accordance with the principle of "the greatest good for the greatest number." The limitation, far from being discriminatory, insures that the enormous expenditures of the government in the project will not go disproportionately to a few individuals with large landholdings.[231] It also prevents possible speculation on the use of a federal project. In this case, the court also rejected the landowners' contention that possible revenue from the excess acreage could be classified as property being taken without compensation.

3. *Is the compensation inadequate or illusory?*

Just compensation is usually taken to mean adequate and real compensation. There are U.S. holdings, however, to the effect that if by mistake of law committed by the court, the owner gets *less than what he ought*;[232] or where, having the right of appeal, he fails to make an appeal to contest damages as *inadequate*;[233] or, if after a fair hearing only *nominal* damages are awarded,[234] then in all these cases there is no violation of due process or just compensation requirement. By way of historical illustration, it has also been pointed out that executive practice has sanctioned less than full payment in the case of agrarian claims filed by Americans against Mexico. Thus, the claims worth $350 million were

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[228]357 U.S. 275, 2 L. Ed. 2d 1313.

[229]Reclamation Act of 1902, sec. 5, 44 Stat 649, 70 Stat 524, 43 U.S.C. sec. 423 (e).

[230]357 U.S. 275, 2 L. Ed. 2d 1313, 1329.

[231]McGovern v. N.Y., 229 U.S. 363, 57 L. Ed. 1228, 33 S. Ct. 876

[232]Evans v. Crisfield, 122 Md. 194, 89 A. 439

[233]Appleby v. Buffalo, 221 U.S. 524, 55 L. Ed. 838, 31 S. Ct. 699; Provo v. Tanner, 239 U.S. 323, 60 L. Ed. 307; 36 S. Ct., 101.

[234]F. Dawson & B. Weston, *"Prompt, Adequate & Effective": A Universal Standard of Compensation?*, 30 Ford. L.R. 727, 741.

settled by a bilateral agreement for only $40 million.[235] In the *Sabbatino* case, it was recognized that, concerning the Cuban expropriations of American property, the provision of payment in bonds might well be deemed *illusory*.[236] But, on the basis of the act-of-state doctrine, the court declined jurisdiction.[237]

In the Philippines, the challenge of illusory compensation has not yet been brought to court in connection with the expropriation provisions as distinct from the tenancy abolition part of the Land Reform Code. However, reform critics have focused on one provision to expose the possibility of unreal payment. This concerns bonds issued to the landowner instead of cash payment.[238] An inducement for taking this bond, among many features that could make up for the bond's lack of liquidity, is the right of the bondholder to purchase stocks of selected state-owned or controlled corporations.[239] It is this right that gives rise to criticism. For the selected corporations, except for one, are financially embarassed firms; two of them had sold out to private groups. Moreover, the bondholder could not exchange his bonds for stocks of those corporations, except to buy all or substantially all of their assets.[240] Viewed in relation to the objective of transforming the landowner into an industrial shareholder, the bonds might indeed be disillusioning. However, these bonds have other features, such as its utility in the purchase of public lands, that might sustain their propriety as a medium of compensation.[241]

The Indian court has developed a fine distinction between illusory and inadequate compensation. For while mere inadequacy has been removed from the court's cognizance by constitutional amendments,[242] illusory compensation could be alleged in court, often with the outraged averment that a "fraud on the constitution" has been committed.[243] This type of fraud has been taken to mean, in relation to the laying down of compensation principles by the legislature, that while the impugned law appeared to fix those principles, in reality those principles are negated by other provisions or by other laws.[244]

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[235]376 U.S. 388, 84, S. Ct. 923, 11 L. Ed. 2d 804, 809.

[236]*Id.*, 11 L. Ed. 2d. 804, 828. White J. dissented, at 842, on the ground that the reasons for non-review had lost force when the act of the foreign state was shown to be in violation of international law.

[237]Rep. Act No. 3844, sec. 80.

[238]*Id.*, sec. 85; The National Development Co., the National Shipyards & Steel Corp., the Manila Gas Corp., and the Manila Hotel Co.

[239]Id., sec. 85; Sulpicio Guevara, *A Second Look at the Land Reform Code*, 38 Phil. L. J. 537, 548.

[240]*Id.*, sec. 71.

[241]India Const. amendment four. 1955; amendment seventeen, 1964.

[242]Bihar v. Kameshwar Singh, 889, 917-19 (1952).

[243]Id., at 944. Gajapati Narayan v. Orissa (1954) S.C.R. 1, Visweshwar Dao v. Madhya Pradesh, S.C.R. 1020, 1035 (1952).

[244]A.I.R. (1955) S.C. 504.

In *Amar Singh v. State of Rajasthan*,[245] the impugned act provided that compensation for the land taken be equal to the net income of the estate for seven years, instead of providing that the compensation be on the basis of market value. The court agreed that this resulted in inadequate compensation but not in illusory compensation. Because of constitutional protection, the Act was deemed beyond challenge in court. Before the contested Act could be struck down, it must be shown, suggested the court, that the true intention of the law was to take property without making any payment, that the provisions relating to compensation were merely veils concealing the intention, and that the compensation payable was no illusory as to be no compensation at all.[246]

While the theoretical distinction between what is inadequate and what is illusory appears to be clear, in actual cases the showing of when compensation provisions produced illusory results is difficult. The decisions show that the court is quite reluctant to find that compensation provided is illusory. Instead, the Indian Court would tend to decide readily that the compensation provided is grossly inadequate and then dismiss the zamindar's complaints because inadequacy has been constitutionally declared injusticiable.[247] The court does not reckon the possibility that gross inadequacy could mean illusory payment. Thus, in *Suriya Pal v. Uttar Pradesh*,[248] an estate of Balrampur Raj was purchased by the zamindar from the Court of Wards for Rs. 2,409,705, but it was to be taken under the zamindari abolition act for only Rs. 208,000. The government had valued properties in the same locality under the Encumbered States Act at 37 to 20 times the net income, but in this case the estate in question was being valued at only 4 times the net income under the zamindari abolition act.[249] The zamindar argued that the compensation was illusory because (1) it was not based on actual income, but on arbitrarily determined income; (2) the determination of time and manner of payment was left entirely to the discretion of the government; and (3) the source of payment would not be the community as a whole (sic) but the expropriated zamindar's own property.[250] The court found the case merely one of inadequacy, beyond its power of review.

A similar result was reached in *Visweshwar Rao v. Madhya Pradesh*.[251] It was clearly shown that the compensation provision would result in less than adequate payment. For example, the market value of the zamindar's property was Rs. 25 lakhs or Rs.2,500,000, and its yearly income was

[245] *Id.*, Sen, *op. cit.*, at 418.
[246] Gajapati Narayan v. Orissa, S.C.R. 1, 27.
[247] S.C.R. 1056 (1952.)
[248] *Id.*, at 1070.
[249] *Id.*, at 1086.
[250] S.C.R. 1020 (1952).
[251] *Id.*, at 1030-31.

Rs.565,000. The state government would pay for it upon acquisition only Rs.65,000.[252] While the court agreed this compensation was inadequate, still it was held a valid payment as determined under the principles set by legislature. The amount of payment, however disproportionate to the estate's value, was deemed not illusory, for in the language of Mahajan J.: "It cannot at any rate be held that legislation which provides for the payment of a sum of Rs.65,000 provides for no compensation."[253]

How much then would be deemed as illusory compensation? In the old case of *Maharaja Luchmeswar Singh v. Chairman of Darbhanga*,[254] which was not a land reform case, the court held that the offer and acceptance of one (1) rupee was a "colourable attempt" to obtain title under the Land Acquisition Act without paying for the land taken. In case of *Kameshwar Singh*,[255] the zamindars complained that aside from their their estates, their money in the form of arrears in rent due them were being taken by the government so the government could pay for the estates being acquired. The High Court of Patna,[256] agreed with them that the legislative intention was to take over the great estates in the province, paying no compensation or the most inadequate compensation, so that out of the considerable profits that were likely to be derived from them, the government could take over the remaining smaller estates. "In other words, a comparatively small minority belonging to this particular class [of zamindars] are to be expropriated without compensation or with the most inadequate compensation," explained Shearer J., "in order that, when the great majority are expropriated they will receive compensation which will not be inadequate and may, quite possibly in many cases, be more than adequate."[257] On this point — the wrongful taking of arrears which could raise the state revenue for possible payment to the zamindars — the Supreme Court agreed with the Patna High Court. The majority of the Supreme Court used the reason, however, that taking of arrears was unrelated to land reform. This portion of the Bihar act was struck down on the ground that it had no public purpose, not that it provided illusory compensation.[258] Thus, while a token compensation

[252] *Id.*, at 1036. But even if the petitioner's own assessment of the value of his property is biased, the disproportion between Rs. 65,000 paid and Rs. 2,500,000 claimed is patent.

[253] 17 I.A. 90.

[254] S.C.R. 889 (1951).

[255] Decision of March 12, 1951.

[256] S.C.R. 889, 945 (1952).

[257] *Id.*, at 942.

[258] 1 S.C.R. (Part III) 691 (1955). The Act impugned, Bombay Act LXII of 1949, *IV Agric. Legislation* 62, provides in sec. 7 that for culturable waste or uncultivated land, compensation shall be three times the assessment; for property over which the public has acquired a right of way, then the compensation shall not exceed the annual assessment. Trees and structures are to be paid at market value. Items not covered shall be governed by secs. 11, 23 and 24 of the Land Acquisition Act, 1894.

of one rupee is undoubtedly illusory, the cases reviewed in this study did not show the extent of inadequacy that could categorize a proferred amount into a token, illusory compensation.

The withdrawal from the court's jurisdiction of the question of the adequacy of compensation has been extended to protect laws even before the adoption of the Indian Constitution. Thus, in *Devisingh Gohil v. Bombay,*[259] the *taluqdars* challenged the compensation provided for in the Bombay Taluqdari Tenure Abolition Act as illusory. The court found that the compensation provided therein, as in other land reform acts, were inadequate but not illusory. Since the Constitution prevents the court from passing upon the issue of adequacy, it refused to consider the challenge against the compensaion provision. It was argued, however, that the Constitution could not shield the act from court action because the Act was passed in 1949, ahead of the Constitution. Rejecting this argument, the court held that the Constitutional provisions that shield the land reform acts from challenge in court on the basis of abridgement of fundamental rights should be interpreted to include those fundamental rights recognized prior to the Constitution as well as new rights created by the Constitution. In this case, the fundamental right to just compensation was already recognized in the Government of India Act[260] and was merely lifted to formal category by the Constitution. The strange result then was that, (1) the right to compensation was adjudged as existing even before the Constitution, (2) but since the Constitution has provided that land reform acts could not be questioned in court for abridging fundamental rights, (3) the challenge of the zamindars against the unfairness of the compensation provisions of the Taluqdari Abolition Act was brushed aside.

In the case of the *Zamindar of Ettayapuram v. State of Madras,*[261] the court declared that the "unreality of compensation" would occur if compensation was based on something unrelated to the facts of the case. Unreality could be alleged in court. In such a case the court would not be concerned with the justice of the propriety of the principles upon which compensation should be determined nor the form and manner in which it was to be given. The court would be inquiring whether the impugned legislation rested upon some principle of giving compensation, and not of *denying* or withholding it. For a law could not be supported by something (sic) which is non-existent, or so unrelated to the facts of the case so as not to have a bearing on the principles of compensation.[262] This generalization should be read in relation to the later decision in

[259]Govt. of India Act, sec. 299 (1935).
[260]A.I.R. (1954) S.C. 257.
[261]This was so, because the basis here was not actual but *future* income.
[262]A.I.R. (1961) S.C. 954.

Burrakur Coal Co. v. Union of India.[263] Here, the legislature had expressly laid down that underground rights should not be valued for purposes of compensation. There was therefore provision for denying the payment of the value of minerals underlying the surface. The underground minerals claimed by the company, however, was not separate from other company property whose payment was provided for. The court found that this resulted only in the inadequacy of payment for the whole enterprise, which could not be reviewed in court. Similarly, in land reform cases where certain type of property are excluded intentionally or because they could not be accounted for under the net-income basis, the court is prone to decide that compensation is not absent or illusory but only inadequate. Thus, in one case,[264] even if "culturable waste" or idle land forming part of the estate was taken without payment separate from the value of the entire estate (and although it was shown the government in other instances had acquired similar culturable waste land at Rs.300 per acre), the court found the taking valid and the compensation not illusory.[265]

Another scheme resulting in inadequate but not illusory compensation was up held by the court in *Karimbil Kunhikoman v. Kerala State.*[266] Here the government took land in excess of the ceilings provided by the Kerala act[267] at twenty-five (25%) per cent the market value of the land. Then the government resold the same land to the landless or those owning less than the ceiling at the price of fifty-five (55%) per cent of the market value. This procedure was attacked by the excess landowners as a device of taking their money, analogous to the voided scheme under the Bihar act.[268] But the court ruled that even if the government paid to the excess landowners an amount less than what the tenant would pay to the government for the same piece of land, this would not amount to a taking of money. After the property was acquired from the excess landowners and vested in the state, the previous owners had no more interest in the property. The tenant acquired the property in an entirely separate transaction. Moreover, the tenant was not compelled to buy at all since he could remain as tenant, this time of the government. If an excess landowner received much less than the market value of his land, that was merely a question of inadequate compensation which would not void the acquisition.

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[263]Suriya Pal v. Uttar Pradesh, S.C.R. 1056 (1952).
[264]*Id.*, at 1085.
[265]1 S.C.R. 829 Supp. (1962), but note discussion on discriminatory compensation, *ante.*
[266]Kerala Agric. Relations Act, 1961 (IV of 1961).
[267]1 S.C.R. 829, 839 Supp. (1962).
[268]S.C.R. 889, 897 (1952).

The attitute of the court on the question of whether the compensation was illusory or merely inadequate is perhaps exemplified best in the cast of *Bihar State v. Kameshwar Singh.*[269] Here the zamindars protested that by various shifts and contrivances the compensation for their estates had been "reduced to an illusory figure as compared with the market value of the properties acquired," and that the "principles laid down for the computation of compensation operated in reality as 'principles of confiscation," in the sense that each principle was an "expedient for taking of private properties (sic) without payment of compensation in violation of the Constitution." To this protest, Mahajan J. replied:

"However, repugnant the impugned law may be to our sense of justice, it is not possible for us to examine its contents on the question of the quantum of compensation. It is for the appropriate legislature to see if it can revise some of its unjust provisions which are repugnant to all notions of justice and are of an illusory nature.[270]

[269]S.C.R. 889, 897 (1952).
[270]*Id.*, at 937.

IV. PROBLEMS OF VALUATION AND PAYMENT

A more specific formulation of the compensation issue often assumes a dollar-and-cent perspective. Here the question is no longer whether there is a valid exercise of eminent domain or of police power. Nor is it whether there is an injury to private property that should be treated as a compensable taking by the state, even if no formal condemnation or acquisition occurred. But the inquiry here is simply, how many dollars (rupees or pesos) must be paid when the property is admittedly being taken?[1] Essentially, this is a question of valuation.

This portion of the study, then, will deal with valuation as a technical problem but only insofar as it is raised in court, first in cases of ordinary expropriation and then by way of contrast, in land reform cases. The focus of discussion will be on the factors of valuation considered by the court,[2] and the items of inclusions and exclusions that go into the fixing of payment.[3]

A significant problem also discussed here refers to the mode of payment, particularly the use of bonds. Whether compensation need not be in money is a widely debated land reform question, but it is only in India where it has been brought to court and then only in an indirect way.[4] Bonds, if seen as a form of deferred payment, also brings to the fore the query of how prompt the payment should be.[5]

Valuation presupposes that there are objective standards of value. It also assumes that those standards could be applied by those trained to do it reliably. It therefore requires expertise, which the court recognizes when it appoints commissioners or hears expert witnesses.[6] Oftentimes, therefore, valuation is thought to be but a matter of evidence. But, as a critic notes,[7] in the last analysis a standard of value is by itself a value. At bottom it is really fair to ask whether the ultimate determination of value should be a court function or a legislative prerogative. And this is no speculative inquiry but a pragmatic one. For, as the discussion will show, land reform statutes usually adopt a formula contrary to what the courts have set.[8]

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[1]F. Michelman, *Comments on the Ethical Foundations of "Just Compensation" Law*, 80 Harv. L.R. 1165, 1167 (1967).

[2]Republic v. Nable-Jose, G.R. No. 18001, July 30, 1965; 22 Decision L.J. (6) 430.

[3]Dunham, *op. cit*, at 91.

[4]Suriya Pal v. Uttar Pradesh, S.C.R. 1956, 1076 (1952).

[5]Some protection is undoubtedly required by the landowner against undue delay in payment. U.S. v. Rogers, 255 U.S. 1963.

[6]But judgement of the court is necessary to give effect to the valuation of experts and commissioners. 3 Moran, *op. cit.*, 228.

[7]John R. Reid, *A Theory of Value*, at 261. (N.Y.: Scribner's Sons, 1938).

[8]2 Basu, Commentary, at 254, suggests an extreme view: despite the clear constitutional provision that in India no land held within the ceiling provided by law

In eminent domain, says Orgel, the real principles of valuation cannot be found by resort merely to the formal definitions or the expositions on the nature of value which the count gives in its written opinion..[9] But what the court says is indicative of the judicial usage. For like "just," value is a chameleon word.[10] Many courts hold today that just compensation means the amount of money equal to "the value of property at the time of taking." One, however, must note that the courts fill in the meaning of value.

A. MARKET VALUE APPLIED, MODIFIED, AND REJECTED

Early American cases set up market value as the equivalent of just compensation constitutionally required.[11] Citing a long line of authority, Orgel[12] notes that there seems to be a uniform agreement that "market value," with or without some verbal qualification, is the proper measure of compensation, at least in the usual run of cases.[13] But in *U.S. v. Cors,*[14] the American court made it clear that market value is only one of the practical standards it has adopted in an endeavor to find working rules that would do substantial justice. It has refused to make a "fetish" of even market value, since in some cases, it may not be the best measure of value,[15] e.g. in a speculative market. Thus, in *U.S. v. Miller,*[16] the court stated: "Where, for any reason, property has *no market* resort must be had to other data to ascertain its value; and, even in the ordinary case, assessment of market value involves the use of assumptions, which make it unlikely that the appraisal will reflect the true value...."[17] The practical difficulty in the use of market value is the presence of a legal fiction, the *as if* situation[18] posed by compulsory taking or acquisition. For in attempts to describe market value, a two-faced concept recurs: the presence of a willing buyer and a willing seller; or, conversely, the absence of compulsion on either.[19] However, a realistic view of land reform taking indi-

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could be acquired unless that market value is paid, "the validity of the legislation could not be challenged on the ground that compensation provided by it is less than the market value of the land." His reason is that art. 31 (2) makes adequacy of compensation no longer justiciable.

[9] Orgel, at 71 (2d ed. 1953).

[10] Value of course has uses other than in eminent domain, e.g. in taxation and and in fixing utility rates.

[11] Monongahela Nav. Co. v. U.S., 148 U.S. 412, 37 L. Ed. 463, 13 S. Ct. 622 1893; U.S. v. New River Collieries Co., 262 U.S. 341, 67 L. Ed. 1014, 43 S. Ct. 565 (1923); Lassen v. Arizona, 385 U.S. 458, 17 L. Ed. 2d 515.

[12] Lewis Orgel, *Valuation under the Law of Eminent* Domain, 2nd ed. (Charlottesville: The Michie Co., 1953).

[13] *Id.*, sec. 17, at 79.

[14] 337 U.S. 325, 69 S. Ct. 1086, 93 L. Ed. 1392 (1949.

[15] *Id.*, 93 L. Ed. 1392, 1399 (1949).

[16] 317 U.S. 369, 63 S. Ct., 276, 87 L. Ed. 336 (943).

[17] *Id.*, at 374.

[18] Mendes Hershman, *Compensation — Just and Unjust,* 21 Bus. Law 285, 202.

[19] I Orgel, sec. 20, at 90-95.

cates that unless the coercive powers of the state are applied on unwilling owners, no redistribution of land could take place.[20] And, even with such coercion, taking of land is still a drawn-out combative process.

A worthwhile inquiry, then, is whether the Indian, Puerto Rican and Philippine courts would recognize market value as a measure of compensation in land reform cases.

The 17th amendment of the Indian Constitution[21] recognizes market value as a fit standard but only in relation to land under personal cultivation. It prohibits the acquisition by the state of land within the "ceiling limit applicable" to a cultivator under the law in force for the time being, unless the law relating to such acquisition "provides for compensation at a rate which shall not be less than the market value thereof."[22] But this recognition of market value is not only limited but also belated. For over a decade, in widespread acquisitions involving the zamindars' estates, the land reform acts set definite measures of compensation, usually based on multiples of the annual net income of the estate.[23] And while these schemes were mostly accepted by the Indian courts, the judicial opinions carry forthright statements that they did not provide payment approaching the equivalent of the estates' market value.[24] In brief, the zamindari abolition acts rejected market value as a rule of compensation in general, and the only exception is the recent one contained in the seventeenth amendment.

The Philippine Land Reform Code lays down this principle: "In determining the just compensation of the land to be expropriated pursuant to this Chapter, the Court, in land under leasehold, shall 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 centum per annum*"[25] The use of rental income as the basis of determining compensation is significant departure from rules on valuation set by the Supreme Court in the Rules of Court and in past decisions, for the Philippine court ordinarily applies market value[26] as the measure of just compensation. It must be noted, however, that the court is not entirely prohibited from considering factors other than rental value. Since

[20]Tuma, Twenty-six Centuries of Agrarian Reform, at 239, concludes that "all the reforms that aimed at preventing revolution have failed, even though they may have delayed it." Reforms take place only if the ruling elite changes, or an entirely new regime takes over and directs state powers to achieve reforms.

[21]India Const, amend. seventeen, sec. 2. (1).

[22]India Const. art. 31A.

[23]India Planning Commission, *Reports*, at 18.

[24]Gajapati Narayan v. Orissa, 1964 S.C.R. 1.

[25]Rep. Act No. 3844, sec. 56.

[26]Rules of Court, Rule 67, sec. 6. III Moran, at 222, 224. "Neither can the value of property be properly fixed by its actual rental value...." Manila v. Corrales, 32 Phil. 85 (1915).

the rental income is expressly mentioned, the court would require a persuasive reason why it should not be utilized. While the application of this principle is limited only to land under leasehold, it must be remembered that the aim of the Land Reform Code is to transform all lands now under share tenancy into leasehold preparatory to expropriation, and this transformation could be achieved by petition of the tenants as well as by government proclamation.[27] In effect, rental income would be the primary principle of determining compensation. What the Land Reform Code has done then, is firstly to reduce the rental due the landlord by 5% upon establishment of leasehold when share tenancy is abolished;[28] and secondly to use the reduced rental as the basis for compensation when the time for expropriation comes.[29] This scheme obviously negates the use of fair market value, although the Code leaves the court some freedom to adopt or reject, in turn, the Code's formula based on rental income.

In contrast to the express provisions in both the Indian and Philippine laws, the Land Law of Puerto Rico is silent on the basis of compensation for land taken by the Land Authority.[30] The Land Law leaves the court free to apply its own rules and reference must therefore be made to the Puerto Rican code of civil procedure.[31] Under this code, the "reasonable value in the market" is recognized as the basis of compensation for property taken by purchase or condemnation for purposes of public utility or social benefit.[32] But the legislature, in anticipation of a boom in land prices that its program of social reconstruction would generate, adopted a defensive policy of expressly excluding certain items from market value.[33] Thus, the following are excluded: (a) any increase in value due to a well-founded and reasonable expectation that some property in the locality might be required or needed by the Commonwealth or any of its agencies for some public purpose; and (b) any new increase in the value of the property by reason of public improvements or expenditures in the locality by the Commonwealth or its executive agencies.[34] These exclusions are significant in land reform because part of the Puerto Rican scheme included resettlement of *agregados*[35] as well as the formation of proportional-profit farms,[36] neither of which could be undertaken swiftly. Without these statutory exclusions, the later acquisi-

[27]Rep. Act No. 3844, sec. 4 (1963).
[28]*Id.*, sec. 34.
[29]*Id.*, sec. 56.
[30]28 L. P.R.A. sec. 268.
[31]32 L.P.R.A. sec. 2915.
[32]32 L.P.R.A. sec. 2915.
[33]Act of April 26, 1946, No. 479.
[34]32 L.P.R.A. sec. 1915.
[35]28 L.P.R.A. sec. 551. Every agregado was entitled to hold at least one-fourth of *cuerda* of land.
[36]28 L.P.R.A. sec. 461-491.

tions could prove much costlier than the early ones, as in the meantime land price manipulation by the owners would not be ruled out. It is fair to say, that with its defensive policy, Puerto Rico while recognizing market value as a basis of compensation has also modified it. And, as in India and the Philippines, the effect of that modification is the reduction of what the owner would get for his land in an open market.

It is possible that under land reform acts, the owner would get less than what he would under ordinary rules of expropriation. For instance, under the Land Acquisition Act of India, a statutory allowance is awarded to the landowner in consideration of the compulsory nature of the acquisition.[37] This allowance is set by law at fifteen (15%) per cent of the market value of the land taken. Thus, aside from the proved value of his land, the owner gets an additional sum. The reason for such a bonus is uncertain, but it is asserted that perhaps it is intended to cover the loss arising from the necessity of reinvesting the money paid for the land, as well to assuage any sentimental grievance on the part of the expropriated owner.[38] No such allowance is given under the zamindari abolition acts.[39]

The American and the Philippine courts did have also moments of insight into the need for additional compensation above the market value of the land taken. Ultimately, asked the U.S. court in one case:[40] ought the owner by compensated especially because his property is specially suitable to be used for "public purpose"? Philippine opinion[41] speculated whether a more liberal interpretation of just compensation should be adopted in favor of the owner who is compelled to part with his private property "for the exclusive benefit of the few," the tenants. Considering, however, that land monopoly in the form of *latifundia* or *hacienda* or *zamindari* is declared contrary to public policy in Peurto Rico, the Philippines and India, the point of rewarding the landowner for his "sacrifice" has undoubtedly lost weight. On the contrary, as in U.S. cases of business monopoly or anti-trust violations, land monopoly is now subject to criminal sanctions.[42]

But the concept of market value remains useful. At least in acquisitions of small holdings or land under personal cultivation, it is still

[37]Act I of 1894, sec. 23 (2).

[38]Singhal, *Law of Acquisition & Compensation*, at 611.

[39]Note, however, that generally land reform acts provide for "rehabilitation grants," India Planning Commission, Reports, at 71.

[40]Mississippi and Num River Boom Co. v. Patterson, 98 U.S. 403 (1879), 25 L. Ed. 206.

[41]Republic v. Gonzales, 94 Phil. 956 (1954).

[42]Rep. Act No. 3844, sec. 167 (Penal provisions), Puerto Rico; 28 L.P.R.A. sec. 432 (penalty against persons, sec. 434) (penalty for misrepresentation). India; e.g. U.P. Act I, 1951, sec. 83 (penalty for false statement).

the measure of compensation in India.[43] In Puerto Rico the reasonable market value is applied, with provisions on exclusions.[44] In the Philippines, there are still pending cases under the Land Reform Act of 1955 (superseded by the Land Reform Code), which expressly provided that real value in the market be used.[45] If only for these uses, a brief review of the concept of market value as applied by the courts may be justified. In addition, this review will be useful as a basis for comparison between the court holdings in ordinary expropriation and in land reform cases — in India, Puerto Rico and the Philippines.

1. *Market value in India*

Nowhere in any Indian judicial decision, according to Singhal, could the exact meaning of the term "market value" be found.[46] In India, the question of market value is not a question of law but a question of fact to be determined in various places and circumstances, by adopting such method of valuation as in the particular case would seem to be correct. Yet, this does not mean haphazard valuation, for in a mass of cases, the court has laid down certain guidelines for the determination of market value.[47]

Concerning agricultural land, for example, the Supreme Court of India observed that valuation may be based on: (a) the opinion of experts; (b) the price paid within a reasonable time in *bona fide* transactions involving the purchase of lands possessing similar advantages as that in question; and (c) the price for the purchase of profits, actual or immediately prospective, of the lands to be acquired.[48] A state court has also approved certain methods of determining market value; thus, the value of agricultural land may be based on (a) a comparison with recent sales of neighboring lands, (b) capitalization of net profits; and (c) capitalization of land revenue.[49]

It is further asserted that the best evidence to prove what a willing purchaser would pay for the land under acquisition, would be the genuine sales of land, effected about the time of the acquisition, in respect of the land under acquisition or any portion thereof or of

[43]India Const. art. 31A (1). Also in Bombay, Taluqdari Tenure Abolition Act, LXII of 1949, sec. 7.

[44]32 L.P.R.A. sec. 2915; 28 L.P.R.A. sec. 402 uses the expressions "proper compensation" in condemnation proceedings, and "fair value" in case of purchase from receivers.

[45]Rep. Act No. 1400, sec. 12 (2).

[46]Singhal, *op. cit.*, 442.

[47]Velayudam v. Taksildar, 1 Madras L.J. 348 (1959).

[48]Special Land Acquisition Officer v. Adinarayan, 1959 S.C.J. 431. Singhal, *op. cit.* 456-57.

[49]Firman v. Secretary of State, 63 Punj. R. 1907.

the sale of the lands precisely in parallel circumstances to the land involved. However, the object of introducing this type of evidence is not to prove a general result, but the price of land in each particular transaction so that the court by itself could determine the reasonable price of land on the basis of the prices put in evidence.[50]

Sales price, however, may not coincide with market value, as in cases of sale by a limited owner, or sale in time of need, or sale without publicity. The buyer may have been misinformed; the seller, negligent. Circumstances might have changed appreciably between a past transaction and the present; thus, a boom might have passed, or depression intervened to cause abnormal prices. The purchase might have been done by way of speculation, or the sale formed part of a bigger bargain.[51]

In one case, a Bombay court attempted a description of market value reminiscent of one made by the Philippine court.[52] The expression *market value,* according to the Bombay court, means the value which a parcel of the land would realize if sold in the market. The seller must be a willing seller, for a forced sale affords no criterion of market value. The purchaser must be a prudent person; one who makes necessary inquiries or one who knows the value of land in the locality. The essential feature of market value is that it is the value which could be realized in a sale in the open market, noting whether the market be dull or brisk.[53]

2. *Market value in the Philippines*

The accepted meaning of market value in the Philippines follows an American authority,[54] which holds that market value equals the price which the property would bring when offered for sale by one who desires but is not obliged to sell and is bought by one who wants to but is not under a necessity of buying it.[55] But, while concededly logical, the test of market value has been found difficult in application.[56] Thus, market value as a measure of just compensation in the Philippines has been amplified. First, just compensation has been defined to include consequential damages while excluding consequential benefits derived by the owner from the taking.[57] The flaw

[50]Governor-General v. Ghias-ud-din, 50 P.L.R. 212. Collector v. Chaturbhuj. A.I.R. (1964) M.P. 196.
[51]Singhal, *op. cit.*, 469.
[52]Bombay v. Merwanji Mancherji; 10 Bom. L.R. 907.
[53]Singhal, *op. cit.*, 479.
[54]Lewis, *Eminent Domain* 478 (2d ed.).
[55]Manila R.R. Co. v. Velasquez, 32 Phil. 286 (1915).
[56]Manila v. Estrada, 25 Phil. 208 (1913).
[57]City of Manila v. Corrales, 32 Phil. 85 (1915).

here was that property could possibly be taken without any payment, if the taker proved that the market value and the consequential damages taken together could be offset by the consequential benefits (resulting in zero or a negative figure).[58] A further modification was adopted, now embodied in the Rules of Court, whereby consequential benefits could be offset against consequential damages only, never from the basic value of the property taken.[59] If the benefits are greater than the damages, both are disregarded.

The Philippine court has considered different elements to constitute a fair basis of valuation. In one case, it was held that all facts as to the condition of property and its surroundings, its improvements and capabilities, could be shown in the process of estimating its value. Different cases have relied on different evidences of value: (1) assessment; (2) rental rate; (3) owner's testimony; and (4 deeds of sale in the same community.[60]

In the leading case of *Manila Railroad Company v. Velasquez*,[61] the court made a succinct statement on contemporaneous sales as an evidence of value:

> "Evidence of bona fide sales of nearby parcels is competent if the character of such parcels is sufficiently similar to that of the condemned land. But to be admissible, the property thus sold must be in the immediate neighborhood, in the zone of activity with which the condemned property is identified. And the sales must also be sufficiently near in point of time with the date of the condemnation proceedings to exclude increases or decreases of property values due to changed conditions in the vicinity."

More recent cases have added that to be useful, the sale offered in evidence must be shown to have been made in the ordinary course of lawful business and competition,[62] and that the prices stated therein were real and unaffected by unusual conditions.[63] The topographical features, permanent improvements, access to the roads and streets in the vicinity may be considered for comparison between the land subject of a past transaction and the land being valued on the evidence of comparable sales.[64]

With particular reference to agricultural land, the Philippine court has had few holdings, mainly to stress that *agricultural* land should be valued as such, on a hectare rather than square-meter basis, despite

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[58]2 Paras, Civil Code Annotated, 114 (ed., 1967).
[59]Republic v. Phil. National Bank, G.R. No. 14158, April 12, 1961.
[60]Tenorio v. Manila R.R. Co., 22 Phil. 411 (1912), Manila R.R. Co. v. Mitchell, 49 Phil. 801 (1926); Manila R.R. Co. v. Fabie, 17 Phil. 206 (1910).
[61]32 Phil. 286 (1915).
[62]Republic v. Lara, 50 O.G. 5778.
[63]Republic v. Hufana, 2 C.A. Rep. 92.
[64]Republic v. Gonzales, G.R. No. 4918, May 14, 1954; 94 Phil. 956 (1954).

the land's admitted potential use as residential site,[65] building site,[66] or even its past conversion into other uses like an airstrip.[67] In *Republic v. Garcellano*,[68] where the land was taken by the Japanese and converted into commercial uses, the court held that the government should pay its value as agricultural land for that was what the owner lost at the time of taking.

3. *Market value in Puerto Rico*

The Puerto Rican court adopts reasonable market value as the measure of just compensation,[69] and like the Philippine and Indian courts equates market value with the price that a buyer would be willing to pay to a vendor who is willing to sell, taking into account the most profitable use of the property in question.[70] While it recognizes no single factor to be applied rigidly in the determination of the market value of land, it has likewise recognized contemporaneous sales as admissible in evidence provided those are free and voluntary. In *Puerto Rican Housing Authority v. Valldejuli*,[71] the court stated that voluntary contemporaneous purchases of land similar to that under condemnation provide the best evidence available of market value of the land in question; such evidence is deemed superior to expert opinion on value.

Where the Puerto Rican court differ with the Philippine court is in the use of valuation for taxation purposes as evidence. In *People v. Amadeo*,[72] the Puerto Rican court held that documents and testimonies regarding official determinations of the property's value, as well as the determinations themselves, do not constitute admissible evidence of market value. In contrast, the Philippine court recognizes that, as provided by law, the assessed value of property for taxation purposes constitutes *prima facie* evidence of its value in condemnation proceeding.[73] The policy reason for this statutory provision is the prevention of the owner from setting up a low assessment value against the government when it collects taxes only to be faced with a claim for higher compensation when the government undertakes expropriation proceedings. However, the owner is allowed by the court to present contrary evidence to rebut the foregoing presumption and establish

[65]Meralco v. Tuazon, 60 Pihl. 663 (1934).
[66]Sagay v. Sison, G.R. No. 10484, Dec. 29, 1958.
[67]Rep. v. Lara, 96 Phil. 170 (1954).
[68]G.R. Nos. 19556 & 12630, March 29, 1958.
[69]L.P.R.A., sec. 2915.
[70]People v. Colon, 73 P.R.R. 531.
[71]77 P.R.R. 600.
[72]82 P.R.R. 98.
[73]Com. Act No. 530.

the property's true value.[74] Comparatively, in India, there is an assertion that, following English practice, the principle that returns and assessment for taxation purposes could be utilized with modifications if necessary, for purposes of valution under the Indian Land Acquisition Act.[75]

The Puerto Rican and the Philippine courts agree in holding that the court need not be bound by the report or opinion of experts such as court-appointed commissioners. To determine just compensation, the court in Puerto Rico may consider expert evidence but need not follow blindly the opinion of expert witnesses.[76] In the Philippines, the expropriation commissioners occupy the role of an expert consultative panel to ascertain by testimonial evidence and ocular inspection the compensation due, including damages. But the commissioners' report does not bind the court absolutely; the items of compensation therein may be increased or diminished by the court validly.[77] In India, however, there is a holding that the judge could not delegate to a commissioner the taking of evidence as to valuation, which is considered a judicial function.[78]

It may be said that in the Philippines, commissioners occupy a similar position to those of commissioners appointed by U.S. district courts. In *U.S. v. Merz,*[79] Douglas J. marked out the task of commissioners. Conclusory findings alone, he said would not suffice to satisfy the court's need for review on the basis of the record. While the commissioners' findings need not be in detail, they must reveal the reasoning the commissioners used in making a particular award, the standard they tried to follow, and measure of damages adopted. What the court was interested in was not merely the result reached, but more significantly, the process leading to that result.[80] The guidelines to be followed by lower courts in relation to the work of commissioners under the U.S. Federal Rules,[81] as cited in the Douglas opinion, are akin to those set in the Philippine Rules of Court. The holding of the Philippine court in *Commonwealth v. Batac,*[82] is that the commissioners' appraisals should be upheld because their report was impartial, supported by substantial evidence on the record, and buttressed by the fact that the defendant owners had their day before the commissioners, who in turn had full opportunity to hear and

[74]Ilocos Norte v. Compania General, 53 O.G. 7687.
[75]Singhal, *op. cit.*, at 475.
[76]People v. Mercado e Hijos, 72 P.P.R. 740.
[77]Manila R.R. Co. v. Velasquez, 32 Phil. 286 (1915), 290.
[78]Sec. of State for India v. Barij Nath, 12 C.W.N. C.C., in Singhal, *op. cit.*, 342.
[79]U.S. v. Merz, 373 U.S. 192, 84 S. Ct., 639, 11 L. Ed. 2d 629.
[80]*Id.*, 11 Ed. 2d 629, 635.
[81]Fed. Rules of Civil Proc. Rule 71 A h, Rule 53 (e) (2).
[82]76 Phil. 233 (1946).

weigh the testimony of their witnesses as well as to conduct an ocular inspection of the land.

4. *Damages and Interest*

It must be noted that while market value has been regarded as the basis of just compensation in India, the Philippines and Puerto Rico, all three countries are further agreed on the inclusion of damages to form part of compensation due the owner.

In the Philippines the rule is: "Just compensation consists of the market value of the property expropriated, and the balance of the consequential damages and the consequential benefits to the owner."[83] More precisely, the compensation to be awarded will consist of that sum representing the price of the land taken, plus the *excess* of consequential damages over consequential benefits. The Rules of Court has resolved the old dispute of whether this formulation could result in non-payment, by providing that "in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property taken."[84] Consequential damages here refer to those suffered by the owner's property not taken, while the consequential benefits refer to what the owner, separately from other members of the community, would derive from the public use or purpose of the property taken.[85]

In India, the Land Acquisition Act declares that the court should take into consideration, in fixing the amount of compensation, not only the market value of the land but also the following damages sustained by the owner or person interested: (1) for the taking of standing crops or trees on the land; (2) by the severance of the land taken from his remaining land; and, (3) by reason of the injurious effect on the owner's other property. Also deemed compensable are (a) the reasonable expenses of the owner if he is compelled to move his residence or place of business; and (b) the bona fide diminution of profits of the land between the declaration to take and the actual taking of possession by the collector representing the government.[86]

In Puerto Rico, the rules on condemnation requires not only the payment of reasonable market value but also for (1) damages in case the condemnor desists from the taking, entirely or partly;[87] and (2) compensation for the use or possession of the property in advance of the

[83]3 Moran, Comments, at 222.
[84]Rules of Court, Rule 67, sec. 6.
[85]Republic v. Lara, 96 Phil. 170 (1954), Republic v. Mortera, 94 Phil. 1042 (1954).
[86]Act I of 1894, sec. 23.
[87]32 L.P.R.A. 2910.

taking.[88] The Puerto Rican court has further held that the compensation required by the Organic Act, now the Constitution, includes not only the value of the property but also the damages to the other property of the condemnee, as well as for the severance of the remainder from what had been taken, measured by the diminution in market value of the remainder.[89] And, in several cases,[90] the court refused to set off benefits accruing to the remaining property on the ground that those benefits are of general character, like access to a highway or communication lines. The court, however, suggested that if the benefits received by the remainder were special and direct, then set-off against the compensable damages would have been possible.[91]

Finally, in the three jurisdictions, legal interest is allowed on the market value and the damages compensable so long as they remain unpaid.[92] Interest, however, ceases when the sum due or part thereof is deposited in court in the course of the condemnation proceedings.[93] The Puerto Rican and Philippine courts both hold that even if there was no express provision in the expropriation law for paying or awarding interest, the court would grant legal interest on the amount unpaid.[94] According to the Indian court, the right to receive such interest is an equitable right, which differ from an ordinary claim for damages.[95]

5. *Exclusions*

One factor in valuation essential to the fixing of just what should be paid to the owner concerns exclusions. These are important since "the guiding principle of just compensation is reimbursement to the owner for property interest taken. He must be made whole, but is not entitled to more."[96] While it is the owner's loss, not the taker's gain, which is the measure of compensation for property taken,[97] not all losses suffered by the owner are compensable; the government as taker would pay only for what it takes, not for opportunities which the owner may lose. Thus in *T.V.A. v. Powelson,* the U.S. court stated that there are numerous business losses which result from condemnation

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[88]32 L.P.R.A. 2909.

[89]People v. Mercado e Hijos, 72 P.R.R. 740.

[90]Commonwealth v. Fonalledas, 84 P.R.R. 552; People v. Colon, 73 P.R.R. 531; People v. Mercado e Hijos, 72 P.R.R. 740; American R.R. Co. v. Quinones, 18 P.R.R. 720.

[91]People v. Mercado e Hijos, 72 P.R.R. 740.

[92]32 L.P.R.A. sec. 2908; India, Act I of 1894, sec. 34; Phil. Commission v. Estacio, G.R. No. 2760. Jan. 21, 1956.

[93]Republic v. Tayengco, G.R. No. 23766, April 27, 1967; 12 C.A.R. J. (2), 175.

[94]Phil.: Phil. Exec. Commission v. Estacio, G.R. No. 7260, Jan. 21, 1956. Puerto Rico: People v. Mercado e Hijos, 72 P.R.R. 740.

[95]Satinder Singh v. Umrao Singh, A.I.R. (1961) S.C. 903.

[96]Olson v. U.S. 292 U.S. 246, 54 S. Ct. 704; 78 L. Ed. 1236, 1244

[97]U.S. v. Miller, 317 U.S. 369, 63 S. Ct. 276; 87 L. Ed. 336; U.S. v. Chandler-Dunbar Co.; 229 U.S. 53, 33 S. Ct. 667, 57 L. Ed. 1063.

of properties which are not compensable under the Fifth Amendment.[98] It is essential, therefore, to determine what are those possible losses to the owner, or accretion to land values that are excluded in computing compensation.[99]

The avoidance of speculation by the owners at the expense of the government is an underlying reason for making specific exclusions. This is true in the U.S.A., India, the Philippines and Puerto Rico. Thus, in U.S. v. Miller,[100] the increment in value of the land arising from taking of other parcels nearby was held not compensable as the increase would be reflecting speculation. The legislative policy, for example, set by the U.S. Congress and upheld by the Supreme Court in *U.S. v. Cors*,[101] stated that when property or the use therefor is requisitioned, the owner shall be paid just compensation, "but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use."[102] A similar policy has been adopted by the Puerto Rican legislature which, wanting to carry out extensive programs of public works, found that property owners tended to demand inflated prices for land needed by the government.[103] Such inflation, the legislature decided, was contrary to public interest and the protection of the people's money. Thus, with the specific purpose of preventing speculative practices, the Puerto Rican legislature excluded increases in value to property on account of public improvements or expenditures in the locality, or the expectation of acquisition of land in the locality.[104]

The Indian Land Acquisition Act specifies those considerations that should not enter into the fixing of compensation. Among these are the increase in the value of land likely to accrue from use to which it would be put upon its taking, the increase in value of the remaining land of the same owner owing to the same cause.[105] The degree of urgency which led to the acquisition by the government should also not be considered. This is taken to mean that "in assessing compensation any special value which may attach to the land which is sought to be acquired, arising out of the necessity for acquisition, is to be disregarded," and that value enhanced simply by the act or scheme of the government as taker would not be considered.[106]

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[98]319 U.S. 266, 87 L. Ed. 1390 (1943).

[99]See statement of motives, Act of April 26, 1946, No. 479, 32 L.P.R.A. sec. 2915, at 413..

[100]317 U.S. 369, 63 S. Ct. 276, 87 L. Ed. 336 (1943).

[101]337 U.S. 325, 69 S. Ct. 1086, 93 L. Ed. 1392 (1949).

[102]Merchant Marine Act. 49 Stat. 1985, c. 858; 53 Stat. 1254, c. 555.

[103]32 L.P.R.A. sec. 2915.

[104]Act of April 26, 1946, No. 479; 32 L.P.R.A. sec. 2915.

[105]Act I of 1894, sec. 24.

[106]Singhal, *op. cit.*, at 620.

The Philippine court has noted that owners ask fabulous prices when land is wanted by the government or a corporation if only because their resources are popularly but quite erroneously supposed to be inexhaustible. The court therefore has ruled that potential speculative value should not be taken into account when fixing just compensation.[107] Owners have no right to recover damages in the form of unearned increment, where the increment result from public improvements for, as held in *Rizal v. Caro*,[108] that would discourage the construction of important public works. However, the court also does not take into account speculative benefits, to reduce the purchase price due the landowner as a set off against consequential damages. If benefits are to be set-off, they must accrue to the remainder of the land or parcel not taken in an actual, appreciable and direct manner as a proximate result of a government project that prompted the taking.[109] Lastly, the court does not recognize sentimental value to the owner or the inconvenience from the loss of the property as proper elements of damage and is therefore excluded.[110]

The Philippine courts have devised a rule, akin to estoppel that in expropriation cases the price for the land taken should not be higher than what the owner demanded for it.[111] The same rule is recognized by statute in India where the court is prohibited from making an award to exceed the amount claimed when the applicant did make such a claim.[112] This prohibition is deemed mandatory so as to make the court's jurisdiction defective if it awarded an excess amount.[113] However, where the owner with sufficient reason did not make a claim, the court may award an amount higher but not less than that granted by the Collector representing the government in the acquisition.[114] The explanation for this rule in India is that claimants are held in estoppel by their own claims, although the acquiring agency must be protected from inflated prices. Estoppel is also put forward as the explanation in a Philippine case,[116] where it was held that having accepted the assessed valuation of land to be correct value in an agreement to sell, supported by a valuable consideration, the owner would not be entitled to ask for more. The owner's valuation should set at least a ceiling price for the com-

[107]Manila R.R. Co. v. Mitchell, 49 Phil. 801 (1926).
[108]58 Phil. 308 (1933).
[109]Republic v. Mortera, 94 Phil. 1042 (1954).
[110]Republic v. Yaptinchay, G.R. No. 13684, July 26, 1960.
[111]Manila v. Gawtee, 71 Phil. 195 (1940).
[112]Act I of 1894, sec. 25 (1).
[113]Singhal, op. cit., at 635.
[114]Act I of 1894, sec. 25 (3).
[116]Rep. v. Yaptinchay, G.R. No. 13684, July 26, 1960, Manila v. Gawtee, 71 Phil., 195 (1940).

pensation due, although it does not bind the government to accept it as the true measure of value.

B. Variations Under Land Reform In India and the Philippines

Bearing in mind the foregoing discussion on market value, one may easily appreciate the striking differences in the basis of compensation adopted in India and in the Philippines under the land reform laws. In India, the basis for compensation for the estates taken under the zamindari abolition acts is usually not the market value,[117] but the net income or net assets of the estate multiplied a number of times as provided by statute.[118] The multipliers vary among the different states of India, with no reason being expressly stated by the abolition acts. But the pattern,[119] as found by the Indian court, is to deflate the gross income or gross assets and inflate the items of deductions provided in the law, so as to minimize the net income or net asset of the estate.[120] It is this net asset or net income which becomes the basis of compensation, without reference to the estate's market value.

"The quantum of compensation," explains the Planning Commission Panel on Land Reform in India," has been fixed in each State according to its own local conditions, the nature of the intermediary tenure concerned, and the State's financial resources and consequently there are considerable variations."[121] These variations are not merely between states but also within one state because the rate of compensation is on a graduated scale intended to allow smaller zamindars to receive proportionally more than the grander zamindars would.[122] For example, in Assam state, the rate of compensation is fifteen (15) times the net income for the lowest category of zamindars down to two (2) times only for the highest category.[123] In Bihar state, the rate is twenty (20) times for the lowest category.[124] And in Uttar Pradesh, taking together the basic compensation plus the rehabilitation grant, the rate is twenty-eight (28) times for the lowest category down to eight (8) times for the highest category of zamindars.[125] While each state legislature must have had its reasons for adopting particular rates, un-

[117]The exceptions are in cases of taking land within the ceiling allowed by law and under personal cultivation, and in land reforms undertaken by Bombay state.

[118]See Appendices II and III, IV Agric. Legislation, xxviii-xxxiii.

[119]This pattern could also be attributed to the effect of central planning in India. See India Planning Commission, Fourth Five Year Plan, at 125.

[120]Visweshwar Rao v. Madhya Pradesh (1952) S.C.R. 1020. Gajapati v. Orissa (1954) S.C.R. 1.

[121]India Planning Commission, *Reports* of the Panel on Land Reform, at 18.

[122]This time particularly because of the device called "rehabilitation grants".

[123]Assam State Acquisition of Zamindaris Act, XVIII of 1951, sec. 13.

[124]Bihar Land Reforms Act, XXX of 1950, sec. 24.

[125]Uttar Pradesh Zamindari Abolition and Land Reforms Act, I of 1951, sec. 54, 55, 73, 98, 99.

fortunately they are not explicitly stated in law nor are they discussed in the court decisions.

The Philippine Land Reform Code has one basic formula for compensation: the rental income of the land capitalized at six per cent per annum.[126] Simply, this means that the compensation payable to the owner will be 16.67 times the amount of yearly rental of the leasehold. And this rental is also determined by the Code, which declares that the "consideration for the lease . . . shall not be more than the equivalent of twenty-five per centum of the average normal harvest," after deducting the cost of seeds, harvesting, threshing, loading, hauling, and processing."[127] Briefly, for his land the owner would get as compensation about four (4)* times the value of the yearly net produce of his land if it is taken under the land reform code.

The Code does not explain why six per cent (6%) is used as the rate of capitalization of rental income. This rate, however, is the legal rate of interest on money loans in the Philippines.[128] An inference seems fairly indicated, that the legislature intended to treat land and money capital as entitled to a parity of returns or earning, six per cent (6%) annually. If this inference is correct, then a flaw in the analogy is obvious. For while the legal rate and the money capital have a direct invariable relationship, between the capitalization rate and the land value there is an intervening factor: rental income based on a percentage of the harvest. And the harvest is a variable thing. To lower the land price all the tenant needs to do is lower his production deliberately. This situation has happened in some rice-producing areas, to the prejudice of the nation's food production program.[129]

The formulation of the basis of compensation under the present Land Reform Code rejects not only judicial precedents applicable to eminent domain cases but also the formulation in an earlier law which the Code superseded, the Land Reform Act of 1955. Under this Act, the basis was "real value" of the land, taking into account (a) the prevailing prices of similar lands in the immediate area; (b) the soil conditions, topography and climate hazards; (c) actual production; (d) accessibility, and (e) improvements.[130]

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[126]Rep. Act No. 3844, sec. 56.

*16. 67 times 25% of harvest equals 4.116.

[127]*Id.*, sec. 34 (for lease of riceland and lands devoted to other crops.)

[128]Civil Code, art. 961.

[129]Rep. Act No. 3844, sec. 56 provides a method of averaging the annual harvest, firstly based on the three agricultural years immediately before the leasehold was established, and secondly, if land has been cultivated less than three years, then the average of the preceding years when the land was actually cultivated or the first year of harvest if the land is newly cultivated.

[130]Rep. Act No. 1400, sec. 12.

Actual cases brought to count would show best the problems posed by these various bases of compensation adopted under land reform. In India, it may be noted, the conflict is essentially about the composition of gross income and the items of deductions from gross income. Among the usual items are the land revenue due the government, income taxes, other forms of taxes and cesses, and the cost of management.[131] The illustrative cases would show how the Indian court considered these factors. The Philippine court thus far has not decided a valuation case directly under the provisions of the present Land Reform Code, but there are decisions under its predecessor, the Land Reform Act of 1955.[132]

1. *Illustrative Philippine cases*

In the leading Philippine case of *Republic v. Nable-Jose*,[133] the landowner filed a motion to dismiss the expropriation proceedings commenced by the Land Tenure Administration on the ground that the Land Reform Act of 1955 was invalid. Even if the law was valid, it was further contended, the expropriation could not continue because there was no agrarian conflict in the area, and the majority of tenants did not petition for the expropriation of the land.[134]

The court brushed aside the foregoing objections as academic, since the Land Authority under the Land Reform Code has superseded the Land Tenure Administration under the 1955 Act, and the Land Authority has been given express powers to expropriate private agricultural land on petition of only one-third, instead of the majority of the number of tenants.[135] Under the Land Reform Code, the presence of agrarian conflict is not a condition precedent to expropriation.[136]

But the court found justified the objection of the landowners that the price fixed for the hacienda did not constitute the fair market value. The government agency had valued the land at ₱1,200 per hectare; the landowner had wanted ₱4,000 per hectare. The lower court, however allowed the average price of ₱2,000 per hectare. The landowner challenged the factors used by the trial judge as unfair and contrary to well-known precedents on expropriation. The Supreme Court agreed with the landowners on the following points:

(1) it was improper to consider as the basis for valuation, the sale of other haciendas because these were not in the same vicinity nor were they of similar conditions as the hacienda in question;

[131]E.g. U.P. Act I, 1951, sec. 39-46, and discussion in Srivastava, *op. cit.*, 334-39.
[132]Cases reported and considered in this study are up to February, 1968.
[133]G.R. No. 18001, June 30, 1965, 22 Decision L.J. (6) 430.
[134]*Id.*,
[135]Rep. Act No. 3844, sec. 53.
[136]Cf. Republic v. De los Reyes, C.A. G.R.-29365-R, July 30, 1966.

(2) it was also improper to consider (a) the buying power to tenants in whose favor the expropriation is being made, and (b) the fact that the sale price would be exempt from income tax.

The court pointed out that what should be considered is the loss caused to the owner, from the viewpoint of the land's value to him, not the value to the taker nor the beneficiary.[137]

Previously the owners had offered to sell at the price of ₱2,700,000, provided that there would be no court litigation.[138] The court held that this ceiling price was not binding. For, there was no acceptance of the offer, and the condition was not met as in fact a litigation ensued.

Having rejected the findings of the trial court, the Supreme Court considered the report of the commissioners of appraisal, composed of three members representing respectively the taker, the landowners, and the court. The majority set the value at ₱3,554,413.90 for the entire estate; while the minority set it at ₱4,032,981.60. The Supreme Court chose to side with the majority, reasoning that the commissioners' report was entitled to reliance by the court since it was based on the following: (1) several hearings; (2) several ocular inspections; (3) contemporaneous sale of adjacent property; (4) testimonial evidence of owners of land in the adjacent area; and (5) analysis of social conditions, accessibility, improvements and the classification of the land within the hacienda into appropriate classes of irrigated and unirrigated riceland.[139]

Declared the court, "Considering that the sales taken into account by the Commissioner were mostly made in the year 1957, or much earlier, and at that time the value of our [Philippine] currency was much higher, we believe that the evaluation made by the Commissioners in their majority report is fair enough and may be said to reflect the fair market value of the hacienda in question."

In another case, *Republic v. Venturanza*,[140] involving also the Land Reform Act of 1955, the trial court rejected the appraisals of experts. This time the Supreme Court sustained the ruling of the trial judge. The landowner in this case had claimed that his land was worth half a million pesos (₱500,000) on the basis of rental income, assessment of banks, and the tenants' purchase offer. The government was willing

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[137]22 Decision L.J. (6) 430, 433-34. Citing Olson v. P.S., 292 U.S. 246, 78 L. Ed. 1236 (1934), 54 S. Ct. 704; Bauman v. Ross, 167 U.S. 548, 42 L. Ed 270, 17 S. Ct. 966.

[138]And provided that the owner be allowed to retain six hundred (600) hectares.

[139]22 Decision L.J. 430-38.

[140]G.R. No. 20417, May 30, 1966, 11 C.A.R. J. (2) 158.

to pay only ₱86,912.76 on the basis of comparable deeds of sale of neighboring properties and the testimony of realtors in the area. The trial court adopted neither valuation, and ruled that the fair market value of the land being expropriated was only ₱54,590. The trial judge's opinion, adopted *en toto* by the Supreme Court, negated the appraisals of experts on the following grounds:

(1) the bank appraisers used the income approach for the entire property without considering that most of the land was actually idle and unproductive;[141]

(2) the government's own appraisers presupposed the existence of improvements which were not yet constructed and were speculative, hence their appraisal did not reflect the present market value but only potential value.[142]

The tenants' offer was deemed by the judge not binding on the government as taker nor upon the trial court, for the offer was made to the landowner on a mistaken impression that the land would be sold to the tenants as fully developed and not as idle or unproductive land.

What is unusual about this decision, however, is that the trial judge brought to bear openly his own personal experience gained previously while serving as legal counsel for a realty company and his own knowledge about real estate values in the neighboring area to set the fair market value of the land in question, without explaining why his appraisal would be superior to that of experts presented by either the government or the landowner.[143] The case leaves one in the dark as to what criterion, other than the personal knowledge or experience of the trial judge, was applied to find the land's market value.

2. *Illustrative Indian cases*

The case of *Visweshwar Rao v. Madhya Pradesh*[144] shows what factors are considered by the Indian court in determining compensation. Here, the zamindar claimed his estate was worth Rs. 2,500,000, but under the Abolition of Proprietary Rights act the government was bound to pay for it only Rs. 65,000 in thirty installments. To quote verbatim the court's finding:[145]

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[141] *Id.*, 169.
[142] *Id.*, at 168, 171-72.
[143] *Id.*, 172-73. The expert evidence offered included those of the city assessor, the appraiser of the Land Tenure Administration, the appraisers of the Phil. National Bank and the Development Bank of the Philippines.
[144] (1952) S.C.R. 1020.
[145] *Id.*, at 1031.

"This figure of Rs.65,000* is arrived at by the following process: —

(*a*)	Gross income from rents	Rs.55,000
(*b*)	Siwai income	Rs.80,050*
	Total	1,35,000

"Deductions permissible under the Act are the following: —

(*a*)	Revenue	45,000
(*b*)	Income tax on 39 years average	66,600
(*c*)	Cost of management	21,000
	Total	1,32,600
"Net income		2,400*

"Ten times net income would be Rs. 24,000; but as the net income cannot be reduced below five per cent, of the gross income which comes to Rs. 6500,* compensation payable is Rs. 65,000 and the market value of his property is 25 lakhs."[146]

The court, in an opinion written by Mahajan J. upheld the validity of the entire Madhya Pradesh Act, particularly the provision on payment, despite this *obiter dictum* that it didn't provide "for payment of just compensation to the expropriated proprietor."[147] The court held that under the Act's principles of compensation some amount of money would become payable in every case to the proprietor since the Act provides that the net income should never be reduced below five percent of the gross income,[148] and that in no case would the compensation work into a zero or a minus figure. The Madhya Pradesh Act was deemed an improvement over the Bihar law, previously held void.[149] For the Madhya Pradesh Act left the arrears of rent due in the hands of the proprietors, and there were no artificial devices to reduce the net income.[150]

In the same breath, however, the court declared that the Act followed the pattern which is common to all zamindari legislation — inflate the amount of expenditure and deflate the actual income.[151] Instances in the Act which deflated actual income were enumerated by the court:

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* The discrepancies are obvious. The total gross income should have been 1,35,050.

* Five percent of total stated — 1,35,000 — should have been 6,750. There appears to be a rounding off of figures, unexplained in the decision. cf. U.P. Zamindari Abolition and Land Reforms Rules (1952), Rule 75 (3): "The amount payable in cash under this rule shall be rounded off to the nearest naya paisa."

[146] *Id.*, One lakh equals 100,000; one crore equals 10,000,000.

[147] S.C.R. 1020, 1030 (1952).

[148] Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, XVII of 1950, sec. 8 Schedule I, 4 (2).

[149] Bihar Land Reforms Act, XXX of 1950.

[150] S.C.R. 1020, 1030 (1952).

[151] *Id.*, (Court opinion written by Mahajan).

(1) The siwai income, defined as income from various sources such as bazars, melas, grazing and village forest, is computed only at two times that in the 1923 settlement income record, although in 1951 that record was obsolete, and the court remarked that the "siwai income recorded in the year 1923 is appreciably less than the actual income of the proprietors from those sources in 1951."[152]

(2) Income known as "consent money," received by the zamindar for assenting to the transfer of tenancy lands from one farm hand to another, was based on the average of ten (10) years preceding the date of vesting, which resulted in less than the actual income realized the previous year.[153]

(3) To inflate expenditure, the deductible income-tax on big forests were averaged on the basis of thirty years although, the court found, no such income-tax existed during most of this period. "It only came into existence recently."[154]

(4) Cost of management was calculated at a "flat rate" of eight to fifteen per cent, depending on gross annual income of mahals or estates, which in effect barred the owner from giving evidence as to the actual cost in each case.[155]

Thus while upholding the Act, Mahajan J. stated:

> "There can therefore be no doubt that the principles laid down for determination of compensation cannot be called equitable and they do not provide for payment of just compensation to the expropriated properties."[156]

This sentiment was echoed in his opinion in the case of *Suriya Pal v. Uttar Pradesh*,[157] which nevertheless upheld the U.P. Zamindari Abolition Act. And a similar view was expressed by Mukherjea J. in *Gajapati v. Orissa*,[158] involving the validity of the Orissa Estates Aboli-

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[152]Bazar means a market-place; mela means a fair.

[153]"Consent money" was only one of the numerous ways by which the intermediary drew income from his estate and abetted sub-infeudation. Mukherjee, *Land Problems of India*, at 38: "The conferment of protected tenant with security of tenure and restricted transfer has led everywhere to the evils of *nazarana*, or the uneconomic practice of the extortion of the large sum by the landlord in consideration of his recognizing the status of the incoming tenant, while there also has arisen the custom of sub-letting at high rents."

[154]Madhya Pradesh Act I of 1951, sec 8, Schedule I, (2) (c). The effect is to set a larger denominator or divisor to reduce the quotient.

[155]In Bihar v. Kameshwar Singh, S.C.R. 889 (1952), Das J. admitted that "the percentage of costs of management calculated on the basis of the income of the big estate is less than that of a smaller estate." But he would uphold the scale of deduction, which negated this fact because the scale was fixed "according to the capacity of the proprietor or tenure-holder to bear it." So long as the legislature has fixed the principle of compensation the court could not inquire into the correctness of that principle.

[156]S.C.R. 1020, 1030 (1952).

[157]S.C.R. 1056, 1069 (1952).

[158]S.C.R. 1, 20 (1954).

tion Act. "The fact that deductions are unjust, exhorbitant or improper," according to Mukherjea's opinion, "does not make the legislation invalid unless it is shown to be based on something unrelated to the facts."[159]

In the *Gajapati* case, the zamindars claimed that the legislature intentionally amended its taxation statutes[160] just before the passage of the Estates Abolition Act so that the income of the zamindars would be cut down drastically, to reduce the amount of compensation due under the Act. The tax, then, was challenged along with the Act as a "colourable piece of legislation;"[161] and a "fraud on the Constitution." But the court found that the power of determining the principles of compensation belongs to the legislature. The mere fact that this power is exercised in an indirect or disguised manner did not make the act invalid. The tax statutes reduced the net income of the zamindars because the amount of deductions from gross income increased, but the court held this did not make the Abolition Act void.[162]

The use of a particular tax, however, was successfully challenged in *Madhya Pradesh v. Sirajuddin Khan*[163] by the zamindar of seventy-eight villages who contended that a "super-tax" as distinct from income tax was not included among those provided by law as deductible. The super-tax was prejudicial to him because it almost doubled his deductions and decreased correspondingly the compensation due him. Adopting a rule of construction, the court held that, in interpreting expropriatory statutes, the court should inquire why one deduction was provided and another was not. Here, the court found that income-tax deduction from gross income bore a direct relation with the net income allowed in favor of the zamindar. On the other hand, the super-tax was deemed of a speculative nature that bore no such direct relations. The court added that in India, the super-tax is historically distinct from income tax proper, although both taxes are collected on the zamindar's total income. The main difference was that the income tax was collectible on separate heads based on the sources of the income,

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[159]Cf. Union of India v. The Metal Corporation Ltd. S.C.R. 253, 1957 where the principles of compensation of the acquisition of an undertaking (a corporation) was held irrelevant to the value of the property at the time of acquisition. Example: A machine purchased in 1950 for Rs. 1000, was depreciated for income tax purposes in ten years, but actually was still in good use in 1965 and could be sold for Rs. 10,000 at current prices which had risen. Under the impugned acquisition act, the same machine would be taken over by the state for no compensation at all because the acquisition act declared that used machinery must be acquired at its written down value in accordance with the income tax act.

[160]S.C.R. 1, 11 (1954).

[161]Id., This expression means that the provision of the law on compensation is merely a cloak for confiscation. 2 Basu, Commentary, at 233.

[162]*Id.*, at 20.

[163]7 S.C.R. 838 (1964).

and payable either directly or by set-off, while the super-tax is payable only directly and on the total income regardless of source.[164]

In *Suriya Pal v. Uttar Pradesh*,[165] the zamindar questioned two types of deduction: the income tax, and the debts or unpaid cesses to the government. On the deduction of income tax, he argued that there was no basis of such a deduction from the gross income, and being artificial, it was unjust. Concerning debts, he argued that formerly they were payable in installments but under the zamindari abolition act, they were deducted as a whole outright. But the court found that the compensation scheme whereby income tax was deducted from gross income to determine net income, the annual net income being the basis of the compensation payable, was reasonable. The land having been "converted into money" in the process of expropriation, the debts had to be deducted in full from the compensation due the zamindar by way of set-off.[166] The deduction provisions were therefore upheld.

But in another case,[167] the artificiality of deductions, in the sense of having no factual foundation, proved fatal to the Bihar land reform act. These deductions consisted of four to twelve and one-half (4 to 12 1/2%) per cent of the costs of irrigation works and five to twenty (5 to 20%) per cent of the costs of management. The deductions grew progressively higher as the size of the estate increased.[168] The majority of the court found that the proportion of increasing works or management costs did not coincide with the factual situation. Larger estates tended to have proportionately lower costs, whether in its operations or management costs[169] But there were two dissenters led by Sastri C.J. who felt that deducting the costs of irrigation works proper because the zamindars were obliged by their settlement agreements to maintain them for the benefit of their estates.[170]

C. Should Payment be in Money?

A sustained attack against the validity of land reform statutes centers on the fact that they do not provide for payment entirely in money. In India and the Philippines, following many other countries, the statutes specify payment in bonds along with a minimal payment

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[164] *Id.*, at 844.
[165] S.C.R. 1056 (1952).
[166] *Id.*, at 1072.
[167] Bihar v. Kameshwar Singh, S.C.R. 888 (1952).
[168] Bihar Act XXX of 1950, sec. 23 (e) and (f). Example: If the gross asset does not exceed Rs. 2,000 the rate of management cost deductible would be 5% of such gross asset, while if the gross asset exceeds Rs 2,000 without exceeding Rs. 5,000, the rate deductible would be 7½% (without reference to the actual cost incurred).
[169] 1952 S.C.R. 951.
[170] *Id.*, at 911.

in cash.[171] Bonds are also used in Puerto Rico but they are issued for flotation in the money market, and it is their proceeds in cash that are intended to be paid to the expropriated landowners.[172] The problem of bond payment, then, is acute only in the Philippines and in India.

The principle of money payment is well entrenched in U.S. jurisprudence. In *Vanhorne's Lessees v. Dorrance*,[173] the U.S. Supreme Court declared that, "No just compensation can be made except in money." A similar holding have been made by state courts. Thus in *Martin v. Tyler*,[174] it was held that "Just compensation, when ascertained must always be in money.... Just compensation can be made in no other medium." In *Oregon Short Line RR. Co. v. Fox*,[175] the Utah court stated that compensation as a *quid pro quo* must be in money. "Bond or anything else," the court added, "may be a compensation, but then it must be at the election of the party; it cannot be forced upon him...." It is therefore asserted that, in the American sense, compensation is usually monetary.[176] The reason for making money the medium is that money is a common standard by which the value of other things could be compared; it is readily exchanged for other property, easily portable, liable to little variation, a universally recognized medium of exchanged.[177]

Other than in cases of land reform, in India and the Philippines there are precedents that compensation be in money.

The Philippine court in the case of *Manila Railroad Co. v. Velasquez*[178] held that the owner of the property expropriated is entitled to a just compensation which should neither be more nor less than the *money equivalent* of the property taken. In speaking of market value as a measure of compensation, judicial references are made to "price" of the land in money. In *Manila v. Arellano Law College*,[179] the court voided the expropriation undertaken by the government pursuant to a statute implementing the constitutional mandate of taking lands for

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[171]Land Reform Code, Rep. Act No. 3844, sec. 80. India: Assam State Acquisition of Zamandari Act, XVII of 1951, sec 21; Bihar Land Reforms Act, XXX of 1950, sec. 32; Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, Act I of 1951, sec. 9; Uttar Pradesh Zamindari Abolition and Land Reforms Act, I of 1951, sec. 68.

[172]28 L.P.R.A. sec. 361; Edel, *op. cit.*, (Part one), at 58.

[173]2 Dall. 304, 1 L. Ed. 391.

[174]Martin v. Tyler, 60 N.W. 392, 4 ND 278.

[175]78 P. 800.

[176]III Nichols sec. 8.6, at 43 (rev. 3d. ed.).

[177]Vanhorne's Lessees v. Dorrance, 2 Dall 304, 1 L. Ed. 391, 396. No doubt the reference here is to paper money, not gold which is the international medium of exchange and basis of managed currencies.

[178]32 Phil. 286 (1915).

[179]85 Phil. 663 (1950).

subdivision to tenants; and here the court observed that, aside from involving a parcel of land which was not an "estate", the price of the subdivided lots would be too stiff for tenants to pay[180]

Historically, it may be recalled that the American government negotiated for purchase of the friar lands which the government in the Philippines paid in cash and redistributed to the cultivators, although the cash payment were raised by bond financing.[181]

Neither the Philippine Constitution nor the Civil Code categorically states that money be the medium of payment in expropriation cases. But in the Rules of Court concerning eminent domain, the entry into possession by the condemnor is allowed provided he deposits with the court the estimated value of the property to be taken.[182] And the Rules goes on to say, "*Such deposit shall be in money,* unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a depository of the Republic of the Philippines payable on demand to the National or Provincial Treasurer, as the case may be, in the amount directed by the court to be deposited."[183] The purpose of such deposit is two-fold: *pre-payment,* if taking succeeds, and *indemnity* for damages if expropriation fails. Under the Land Reform Code, the agrarian court must comply strictly with the Rules of Court in expropriation cases.[184] But the cash deposit requirement conceivably might conflict with the bond scheme of compensation in land reform. The conflict between the Code and the Rules ought to be resolved by the Court.

In Puerto Rico, both the Land Law and the Code of Civil Procedure specify money payment for land expropriated. The procedure code provides that, in the declaration of taking, the petition must fix "the sum of money estimated" by the acquiring authority to be the just compensation for the property sought to be acquired.[185] To satisfy any deficiency judgment when the money deposited is less than the compensation award,[186] the procedure code includes a clause on automatic appropriation for that purpose from funds in the Commonwealth Treasury.[187] The constitutionality of this scheme has been upheld by the

[180]Cf. Republic v. Baylosis, 96 Phil. 461, 475 (1955).

[181]Reuter, *op. cit.,* 138, Alice M. McDermaid, Agricultural Public Lands Policy in the Philippines during the American Period, 28 Phil. L.J. 851 (1953).

[182]Rules of Court, Rule 67, sec. 2.

[183]*Id.,* See 3 Moran, at 216.

[184]Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

[185]32 L.PP.R.A. sec. 2907.

[186]The compensation award is necessary only to fix the final amount payable, but it is not necessary to vest title in the state. People v. Registrar, 70 P.R.R. 243; P.R. Housing Authority v. District Court, 68 P.R.R. 50.

[187]32 L.P.R.A. sec. 2908.

Puerto Rican court.[188] Under the Land Law, there is also a specific requirement of "fixing the sum of money estimated by the Authority to be the just compensation" for property to be acquired.[189] And, should there be a deficiency judgment, the Land Authority or the Commonwealth becomes liable for the amount of money due to the landowner.[190]

Under the Land Acquisition Act in India, the term used is "compensation-money" which readily identifies the mode of payment in expropriation cases.[191] Questions as to the person to whom compensation-money is payable or disputes as to the apportionment of compensation-money could be decided either by the Land Acquisition judge or by the regular courts.[192] Like the Philippine and Puerto Rican courts, the Indian court in one case also equated market value with "the price" which a willing seller might reasonably expect to obtain from a willing purchaser.[193]

The use of bonds in land reform, then, is a significant departure from precedents. While governments normally issue bonds to meet their financial needs, these bonds are sold to investors who take the bonds voluntarily with the hope of profiting by the transaction. But bonds under the land reform laws of India and the Philippines are issued directly to landowners who have no choice but to accept them. The provision of the present Philippine Land Reform Code, compelling the acceptance of bonds, is in stark contrast to the provision of its predecessor, the Land Reform Act of 1955, which declared that "After the court has made a final determination of just compensation for land expropriated, *it shall be paid wholly in cash unless the landowner chooses to be paid wholly or partly in land certificates.*"[194]

Thus, while the amount of compensation for land taken might escape challenge, the use of bonds as a form of payment has been contested in Indian courts and, although there has been no case exactly on this point, criticized in the Philippines.[195]

A weighty objection to the use of bonds is that they are merely evidences of indebtedness. In India, under the rules implementing the Uttar Pradesh zamindari abolition act, bonds are characterized as "pro-

[188]McCormick v. Marrero, 64 P.R.R. 250. P.R. Railway, L. & P. Co. v. District Court, 59 P.R.R. 912.

[189]28 L.P.R.R.A., sec. 270.

[190]28 L.P.R.A. sec. 272.

[191]Act I of 1894. sec. (IV).

[192]*Id.*, sec. 3 (d); Singhal, *op. cit.*, at 90. The regular civil courts exercise jurisdiction only where there is no Land Acquisition court.

[193]Mudaliar v. Special Deputy Collector 1 S.C.R. 614, 631 (1965).

[194]Rep. Act No. 1400, sec. 19.

[195]S. Guevara, *A Second Look at the Agricultural Land Reform Code of* 1963, 38 Phil. L. J. 537 (1963); D. Ferry, *op. cit.*, 144.

missory notes."[196] An American definition of the term *bond* states that "it is an obligation in writing, generally under seal, binding the obligor to pay a sum of money to the obligee, usually with a clause to the effect that upon the performance of a certain condition the obligation shall be void."[197] In a New York case,[198] bonds are said to represent a loan. In a California case,[199] it was held that the legislature might, without denying due process, provide for the issuance of bonds to pay for public improvements, but these bonds were not issued to the expropriated landowners but were sold in the bond market. In *Martin v. Tyler,*[200] the North Dakota court annulled the use of interest-bearing bonds by a county to pay for condemned land needed for a drainage system. While bonds might be voluntarily acceptable to some owners as representing an investment, the presence of compulsion — in the sense that the expropriated landowner must take the bonds together with the cash in proportions determined by law — casts doubt on the constitutionality of payments in bonds.

The use of bonds, however, have been defended on four points: (1) the use of bonds merely defers payment in cash, and there is no constitutional prohibition against a reasonable postponement of payment as determined by legislature;[201] (2) bonds are universally utilized for large-scale taking either for land reform or nationalization of industries because of economic necessity and because cash payment is impossible;[202] (3) bonds, as a medium of deferred payment, is a less precarious and in the long run a more just method of compensating the landowner because if outright cash payments are made and inflation occurs by reason thereof, the result would be prejudicial to those with much money in their hands;[203] and, (4) bonds, when guaranteed unconditionally to its full face value by the government, are as good as

[196]Uttar Pradesh Zamindari Abolition & Land Reform Rules, sec. 62; Srivastava, *op. cit.*, at 886.

[197]11 C.J.S. 398.

[198]Brooks v. Eschwege, 162 N.E. 2d 897, 76 A.L.R. 2d 2440.

[199]City of Dunsmuir v. Porter, 60 P 2d 836, 7 Cal. 2d 269.

[200]60 N.W. 392, 4 N.D. 278.

[201]P. Fernandez, The Compensation Provisions of the Agricultural Land Reform Code, 38 Phil. L.J. 562 (1963).

[202]Other countries, with constitutional provisions analogous to the U.S. Fifth Amendment requirement of just compensation, which pursue land reform on the basis of bond financing include Italy and Japan; Bolivia, Chile, Colombia, Guatemala and Venezuela; Iran, Iraq, Pakistan, and Turkey; Egypt and Tunisia. Analogies, however, must take note of distinctions in the political organization in these countries. There are others like Cuba, and the divided countries of Korea and Vietnam, which are also engaged in land reform in a revolutionary of war setting. Obviously, the features of bond financing each country uses should be examined carefully in the process of comparison.

[203]Reference is here made to the Japanese experience. Hewes, *Japan — Land and Men;* but note legislative bills providing that the expropriated landlords be further compensated by the Japanese government. See Tuma, *op. cit.*, at 46, 198.

paper money or bank note issued as legal tender which is also merely an evidence of liability of the issuer.[204] A further argument adduced in favor of bonds in the Philippines is that their assured earning power in terms of six percent annual interest would provide the expropriated landowner a higher and surer return than what agricultural land would earn for him; [205] but this argument will have no force in India where only two and one-half (2 1/2) per cent interest is allowed on land reform bonds.[206]

Thus far, the Philippine landowners affected by land reform have not brought suits specifically contesting the use of bonds, although there have been cases involving the leasehold portion[207] of the act and other provisions favorable to the landlord such as to the right to evict tenants on the ground that the owner would like to resume personal cultivation.[208] In India, however, there have been serious though oblique challenges in court against the bond scheme.[209]

The zamindars in *Suriya Pal v. Uttar Pradesh*[210] attacked the zamindari abolition act on the ground that compensation which was left by the legislature to be prescribed by the state government in cash or in bonds or a combination of both meant that compensation was at the pleasure of the state government. They argued that since the government had the option to make payment, it might never exercise that option. The court, however, found the zamindars' apprehension unfounded and pointed out different sections of the Act making payment mandatory.[211] "If the Government does not prescribe anything," said the court, "it is obvious that compensation will be payable forthwith." And if the period of payment prescribed be unreasonable, the court hinted judicial action would lie on the ground of abuse of power by the executive.[212]

In *Bihar State v. Kameshwar Singh,*[213] it was contended by the zamindars that since the land reform act did not specify how much should be paid in cash and how much in bonds, and it did not set the date for payment as well as the intervals between periods of redemption (by installments) of the bonds if they were issued, the compensation provisions of the act would be unenforceable. The court

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[204]Guevara, *op. cit.*, 549.
[205]Ferry, *op. cit.*, at 150.
[206]See note 1, *ante*.
[207]Genuino v. C.A.R. G.R. 25035, Feb. 26, 1968, 1968 A Phil. 646.
[208]Diokno, *op. cit.*, at 8.
[209]In Bihar v. Kameshwar Singh, S.C.R. 889, 997 (1952), the zamindars' first line of attack was that the state legislature had no power to enact the law.
[210]S.C.R. 1056, 107, (1076) (1952).
[211]Uttar Pradesh Act I, 1951, secs. 60, 65, 66, 68.
[212]S.C.R. 1056, 1072, 1087 (1952).
[213]S.C.R. 889 (1952).

countered that although the manner of payment, the determination of the proportion between cash and bonds, and the fixing of redemption periods have been left to the rule-making power of the state government, it could not be said that the Act would not be enforced. For, the constitutions binds the state to provide for compensation. Moreover, in *Rao v. Madhya Pradesh*,[214] it was suggested that should the rules be arbitrary in fixing the installment periods of bond redemption, those rules could be challenged, so that the landowners could compel by court action the enforcement of the compensation provisions in their behalf.

This, however, did not deter further oblique attacks on the use of bonds. The issue shifted to the validity of the delegation to the state government, more precisely the executive branch, of the power to fix the ratio between bonds and cash, the period of redemption of the bonds, and the rate of interest. The zamindars' argument proceeded in this manner: the Constitution having conferred on legislature the power to make laws on which compensation is to be determined in the form and manner it was to be given, the legislature must exercise that power by itself.[215] The legislature was not competent to delegate this essential legislative power to the executive. It follows that if the delegation was void, then the whole statute would fall since the compensation scheme was not severable from the rest of the act.[216]

Sastri C.J. disposed of the zamindars' objection in his opinion upholding the Bihar, Uttar Pradesh and Madhya Pradesh land reform acts:

> "The legislature has applied its mind to the form in which compensation has to be paid and has fixed the number of equal installments in which it should be paid. It has also provided for payment of interest on the compensation amount in the meantime. The proportion in which the compensation could be paid in cash and in bonds and the intervals between the installments have been left to be determined by the executive government as those must necessarily depend on the financial resources of the State and the availability of funds in regard to which the executive government alone can have special means of knowledge. By no standard of permissible delegation can the vesting of such limited discretion by a legislature in a legislative body be held incompetent."[217]

Agreeing with the Chief Justice, Mahajan J. found that what the legislature delegated were "matters of detail which the executive would more appositely determine in the exercise of its rule-making power."[218] It was

[214]S.C.R. 1020 (1952).
[215]India Const. art. 31 (2); art. 246, seventh schedule, list II, 18. (List III, sec. 42, as it stood before amend. seven, sec. 26).
[216]Bihar v. Kameshwar Singh, S.C.R. 889, 952 (1952).
[217]*Id.*, at 912.
[218]*Id.*, at 954-55.

not the executive but the legislature, according to him, which had settled policy and the broad principles of compensation since the legislature already indicated that payment could be in cash or bond and that the bonds be redeemed in forty installments. However, he passed over the more difficult question of whether the legislature itself had the power to issue bonds, reasoning that since the stage of issuance had not yet arrived, the issue then was not ripe for decision.[219]

While the bond provisions of the Philippine Land Reform Code have not been subject to court action thus far, a line of decisions[220] concerning a Philippine government agency, the National Waterworks and Sewerage Authority, has been asserted as suggesting that bonds might be acceptable compensation in the exercies of eminent domain.[221] However, a re-examination of these cases would show they could not be safely relied upon to support that assertion. For, these cases involved no private individuals but only public entities, the city or local governments as owner and the Authority as taker. The enabling statute[222] had authorized the transfer to the Authority of waterworks owned by municipal corporations with the payment consisting of "an equal value of the assets" of the Authority. The statute also authorized the Authority to issue bonds and certificates of indebtedness. But, the Authority chose merely to make credit entries in its books in favor of those municipal corporations. There were no actual exchanges of tangible assets. The Philippine court in these waterworks cases found the taking unconstitutional for failure to provide effective payment.[223]

Unlike the Indian bonds which are government "promissory notes," or the Cuban bonds which are directly issued by the Land Authority, the Philippine bonds are issued not by the government or the Land Authority but by another agency, the Land Bank created by the Land Reform Code.[224] In the Philippines, therefore, there is bifurcation between the agency liable on the bonds. The Philippine bonds, however, have more uses authorized by law than the Indian bonds. Thus the bonds issued by the Philippine Land Bank are acceptable for the following purposes: (1) payment of agricultural lands or other real properties purchased from the government;[225] (2) payment for the purchase of assets of certain

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[219]*Id.*, at 956.

[220]Lucban v. NAWASA, G.R. No. 15525, Oct. 11, 1961; Cebu v. NAWASA G.R. No. 12892, April 30, 1960; Baguio v. NAWASA, G.R. No. 12032, Aug. 31, 1959.

[221]Fernandez, *op. cit.*, at 581-82.

[222]Rep. Act No. 1383.

[223]Cf. Lassen v. Arizona, 385 U.S. 4458. 17 L. Ed. 2d 515, wherein the Arizona highway authority was ordered to pay the full compensation for the taking of federal lands given as a special trust (for the benefit of community schools) to Arizona. The trust would be impressed on the compensation money in favor of the beneficiaries.

[224]Rep. Act No. 3844, sec. 74.

[225]*Id.*, sec. 71. Significantly, using bonds, an individaul can purchase 144 hectares, exempt from further expropriation, which area is far above the maximum holding allowed under sec. 51 (b).

state-owned corporation;[226] (3) surety or performance bonds where the Government require or accept real property as bonds; and (4) payment for reparations goods procured by the government from Japan. Under the Indian land reform acts, for instance the Uttar Pradesh Zamindari abolition acts, there is no mention to what uses bonds may be put, except that they are negotiable.

In the case of *Uttar Pradesh v. Sri Narain*,[227] the Indian court explained:

> "The fact that the bonds are negotiable does not make them legal tender and does not make it obligatory on anyone, including the Government, to accept them in payment of any dues. The only result of their being treated as negotiable instruments is that the owner of the bonds can transfer them to any person who is agreeable to purchase them."[228]

Thus, the bond-holder could not compel the state government to accept the bonds in payment of his tax dues. The court also found that the bonds could not be converted into cash before the date set for their redemption. Set-off between dues to the government by the landowner, on one other, could not be effected for the court believed there was no basis for set-off. In the court's view, once the bonds were issued, compensation had taken place so that, strictly speaking, dues for the land taken ceased to exist. What the landowner could do, if he could not dispose the bonds to a willing purchaser, is to wait for the bonds' date of maturity, which could be up to forty years.[229]

In the Philippines the prior law, the Land Reform Act of 1955, allowed the issue of negotiable land certificates in payment for land taken provided the owner voluntarily chose the certificates. It expressly stated that the certificates could be used in payment of all tax obligations of the holder and any debt or monetary obligation he might have to the government.[230]

But the present Land Reform Code is silent as to whether the Land Bank bonds could be used for payment of taxes. It however states that they can be mortgaged to government-operated financing institutions up to an amount not exceeding sixty precent (60%) of their face value,[231] for the purpose of investments in productive enterprises.[232] But despite the

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[226]*Id.*, sec 85 (The National Development Co., the Manila Gas Corp., the Cebu Portland Cement Co., and the Manila Hotel Co. The Cebu Portland Co. and the Manila Hotel, however, have been sold to private businessmen since the Code was enacted.)

[227]Uttar Pradesh Act I, 1951, sec. 68; Rules 62-66.

[228]3 S.C.R. 130 (1965).

[229]*Id.*, at 134; U.P. Zamindari Obolition and Land Reform Rules, sec. 64, Appendix IV; Srivastava, *op. cit.*, at 1043.

[230]Rep. Act No. 1400, sec 10 (3).

[231]Rep. Act No. 3844, sec. 76.

[232]*Id.*, Ferry, *op. cit.*, at 147-48.

attempts to make these bonds attractive — with advantages like being negotiable, fully tax-exempt, interest-bearing, and unconditionally guaranteed by the Government[233] — there is also a fear in the Philippines that the bondholders would find very limited uses for the bonds and very few persons interested to purchase them so that the bondholder would just have to wait for the Land Bank to redeem them, at the option of the Bank, within a period not exceeding twenty-five years.[234]

V. A SUMMING UP

Thus far, discussion has focused on three topics: the justiciability of compensation, the challenges to the validity of reform laws in general and compensation provisions in particular, and the special problems of valuation and payment. An overriding concern throughout this discussion has been whether constitutional principles are observed. Account is taken generally of how those principles compare with doctrines laid down in America. Then, more specifically, the inquiry focuses on how just compensation is formulated and applied by courts in India, the Philippines and Puerto Rico in land reform cases.

By way of recapitulation, points of comparison might first be summed up briefly. On one hand, attention must be directed to constitutional policies of the subject countries concerning (a) compensation and expropriation; (b) the control and use of natural resources particularly land; and (c) the promotion of social justice. On the other hand, consideration must be also made of the policies expressed in land reform laws themselves; here the comparable points could include: (1) the scheme of compensation provided; (2) the objectives of legislation; and (3) the role of the courts in relation to land reform. Often implicitly rather than explicitly, these points provided a springboard for topical discussion of the cases.

Because this study centered on court decisions, important points not yet brought to court, or even if raised but not essential to adjudication were mentioned only in passing if not entirely omitted. Such questions could be important to the legislature that sets the policy and the executive branch which implements the land reform program. Among these questions, for example, would concern the relation between the estimated expenses for entire land reform program to the total national income and the state revenue; the relation of the agricultural sector and the industrial sector in the total economic setting; and the relation between the growth of the state's population and its gross national product. There has also

[233] *Id.*, sec. 78.
[234] Guevara, *op. cit.* 548-49

been no discussion of the monetary system, particularly its stability, prevailing in each country. With undoubted bearing on decisions on paying compensation, or its promptness and extent, would be the previous occurrence or the imminence of inflation or devaluation of the currency, the trend of prices of agricultural commodities locally and abroad, and the earning power of the whole population including the farmers.[235]

Whether the tenants or landless laborers would have the ability to pay for the land at a given price when the state redistributes the land expropriated from the landlords, is a question that has been bypassed in the cases studied except for one reference to it in one case. The new systems of tenure that could emerge from land redistribution, whether on leasehold, proportional profit farms, or controlled types of proprietorship have received scant attention. The response of the tenants themselves to land reform in those areas where it has taken place is not discussed in the cases although that certainly could provide pragmatic confirmation or negation of assumptions or premises expressed in legislation or court decisions.

Further, because the focus of this paper has been on compensation there are certain constitutional issues not fully dealt with. Three of these concern the impairment of contracts, administrative due process, and equal protection of the law. They were taken up only indirectly, if found to relate to compensation.[236] But, they undoubtedly require fuller treatment if court responses to land reform should be fully understood.

For all these omissions one caution should be made clear: that land reform is best understood in its total setting, and that there is a danger in viewing a reform program in isolation from its operational context. That risk, however, was taken here if only to hold within manageable limits the scope of discussion and to allow a deeper thrust into the compensation issue. It should not be forgotten nonetheless that the constitutional aspects of land reform form but one area of inquiry, although that is a crucial one.

Land laws, it is said, have developed largely prior to or outside the discipline of modern economics, and neither land law nor land economics have benefited much from either.[237] The law tends to lag behind economic changes. Land reform itself could be viewed as an attempt to cover that

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[235]Curtis, *Land Reform, Democracy and Economic Interests in Puerto Rico;* Myrdal, *Asian Drama* (particularly, Ch. 26, Agricultural Policy) and Rutan. *Land Reform and National Economic Development,* for example, discuss broader aspects of policy related to land reform legislation in Puerto Rico, India and the Philippines.

[236]A study of the impact of land reform in Uttar Pradesh, India, has been done. Singh and Misra, *Land Reforms in Uttar Pradesh.*

[237]John F. Timmons, *Methodological Problems in Legal-Economic Research,* in M. Harris & J. O'Byrne (ed.) *Legal Economic Reseach,* at 25. (Iowa City: Iowa Agric. Law Center, 1959).

gap, lest the law by its static nature prove an impediment to economic growth. Moreover, it is also said, that many of the economic problems that arise from the law relate largely to the settling of problems of distribution, in this case of land.[238] Those problems seldom reach the court, unless there is a contest over an item of value high enough to warrant court action. It is obvious that of these problems only a small fraction ever filters in the process of appeals and reaches the Supreme Court in each country. But for their magnitude and urgency, land reform issues, particularly compensation, have been among these few questions that have attracted the attention of the highest court. Their resolution, therefore, was a proper field of inquiry.

A. WHAT THE COURTS HAVE DECIDED

1. *In Puerto Rico*

No serious challenge against land reform prospered in Puerto Rico. The power of the insular legislature to lay down a ceiling on corporate land-holding passed judicial tests in local as well as federal courts. The issue of the validity of the 500-acre law was laid to rest by the decision of the U.S. Supreme Court in *People vs. Rubert Hermanos Inc.*[239] which held that the setting of land policy was Puerto Rico's own concern as nothing touches more intimately the welfare of the people of that island. The mere fact that for over three decades the ceiling on holding (adopted as a policy by the United States upon the acquisition of Puerto Rico, continued through its Organic Act, and then carried into its Constitution), has been unenforced provided no excuse for the continued violation of the law. It must be noted, however, that even in cases of "confiscation" that resulted from quo warranto proceedings against the guilty corporations, the lands taken by the state were compensated for, under the rule of "reasonable market value," and not forfeited without payment to the state.[240] But court action and inadequate funding delayed land reform.

2. *In the Philippines*

A line of Philippine cases starting with *Guido v. Rural Progress Administration*[241] invalidated the taking of private property pursuant to the constitutional mandate that lands be expropriated and resold at cost to tenants. The court reasoned that this constitutional provision applied only to big landed estates. The legislature in the Land Reform Act of 1955

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[238]Walter E. Chryst, *Some General Considerations of the Theoretical Foundations of Legal-Economic Research, id.*, at 18.

[239]309 U.S. 543.

[240]28 L.P.R.A. sec. 290; 32 L.P.R.A. sec. 2915.

[241]84 Phil. 847 (1949); Republic v. Baylosis, 96 Phil. 461 (1955); NARRA v. Francisco, G.R. No. 14111, Oct. 24, 1960, 6 C.A.R. J. (3) 171; Phil. Realtors Inc. v. Santos, 10 C.A.R. J. (1) 1.

sought to overcome this judicial objection, by expressly providing that agricultural lands above three hundred hectares could be expropriated upon payment of compensation equivalent to the true value of the land.[242] This ceiling, however, would not apply where there existed a *justifiable agrarian* unrest, in which case land could be taken regardless of size.[243] This exception appears to modify court holdings that tenancy trouble alone would not justify expropriation proceedings. The present Land Reform Code, which superseded the 1955 Act, sets the maximum area that could be exempt from expropriation at seventy-five (75) hectares.[244] Compensation for the land taken will be based not on real value but on a statutory formula, that is, the rental income capitalized at six per cent (6%) per annum.[245] Neither the ceiling allowed nor the formula for and mode of compensation provided for, however, have been brought to court.

Another series of cases has held that the limitation of shares due the landlord in the produce of his land under tenancy is a reasonable exercise of police power.[246] Though the landlord loses a determinable quantity of the produce or its worth in money, compared to what he could receive under a pre-existing contract, the court rulings since the case of *Ramas v. Court of Agrarian Relations*[247] have denied that this would be a case of a taking of private property that would warrant compensation. This precedent was applied by the court to uphold the leasehold provisions of the Land Reform Code which also reduced the share of landlords without resulting in a compensable taking.[248]

3. *In India*

Three land reform laws were struck down by the Indian courts as entirely void and two provisions of another law related to compensation was invalidated. The first two, the Kerala agricultural relations act[249] and the Madras ceilings of holding act,[250] were declared unconstitutional on the ground that compensation provisions were discriminatory in the sense that certain owners, the big landlords, would receive proportionally less compensation than other owners because the laws provided for progressive

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[242]Rep. Act No. 1400, sec. 6 (2).

[243]*Id.*, Republic v. de los Reyes, C.A.-G.R. 29365-R, July 30, 1966, II C.A.R. J. (3) 336.

[244]Rep. Act No. 3844, sec. 51 (1).

[245]*Id.*, sec. 56.

[246]Reyes v. Santos, G.R. No. 19961, Sept. 14, 1966; Enriquez v. Cabangon, G.R. No. 21097, Sept. 23, 1966; Cuizon v. Ortiz, G.R. No. 20905, April 30, 1966; Uichangco v. Gutierrez, G.R. No. 20575, May 31, 1965; Macasaet v. C.A.R., G.R. No. 19750, July 17, 1964.

[247]G.R. No. 19555, May 29, 1964, 4 C.A.R. J. (2), 142.

[248]Genuino v. C.A.R., G.R. No. 25035, Feb. 26, 1968, 1968 A Phil. 646.

[249]Kerala Act IV of 1961; Karimbil Kunhikoman v. Kerala, Supp. 1 S.C.R. 829 (1962).

[250]Madras Act 58 of 1961; Krishnaswami v. Madras S.C.R. 83 (1964).

cuts in compensation as the size of their holdings increased. The analogy with progressive rates in taxation was rejected in these cases. The Bihar land reform act,[251] which was found entirely void by the Patna court on the ground of denying equal protection of the law to the zamindars, was only partly annulled by the Supreme Court on the ground that its compensation scheme contained one provision — the forfeiture to the state of 50% of arrears i nrent — unrelated to land reform. Another provision, the deduction of the cost of irrigation works and the costs of management were found baseless and unrelated to the actual facts. The West Bengal acquisition act was voided for specifiying an arbitary date of valuation unrelated to the date of actual taking by the state.[252]

In a series of cases, the Indian court felt unable to decide whether the compensation provided was unjust because it was inadequate. The court had to bow to constitutional amendments that expressly took from the jurisdiction of the court the power to decide the adequacy of compensation. While individual justices expressed their views in *obiter dicta* that the land reform laws did not provide the equivalent of market value or did not satisfy their sense of justice, still the court upheld the compensation provisions and the land reform laws as a whole. For sixteen years, the court stuck to its holding in *Sankari Prasad v. Union of India*[253] that constitutional amendments contravening fundamental rights guarranteed in the Constitution could be validly passed by Parliament. But in *Golaknath v. Punjab State*,[254] decided in 1967, six of eleven justices declared that thereafter Parliament would have no power to amend the Constitution if the amendment abridges or takes away fundamental rights. Among these rights are the right to compensation, and the right to move the court for its enforcement.

A line of cases, starting with the decisions upholding the zamindari abolition acts in Uttar Pradesh and Madhya Pradesh,[255] has consistently ruled that the zamindars were not denied the equal protection of the laws when the class of zamindars were practically abolished by law and their status lowered to that of ordinary proprietors (the bhumidhars). Laws which lower the amount of rentals due the landlord were previously upheld as involving no acquisition of property for which compensation was due. Certain ceiling laws, however, were voided as involving "ryotwari" lands not covered by the constitutional definition of "estates" which could

[251]Bihar Act XXX of 1950; Bihar v. Kameshwar Singh S.C.R. 889 (1952).
[252]West Bengal Development and Planning Act, 1948; West Bengal v. Bela Banerjee S.C.R. 558 (1954).
[253]S.C.R. 89 (1952).
[254]2 S.C.R. 762 (1967).
[255]Suriya Pal v. Uttar Pradesh, S.C.R. 1056 (1952); Visweshwar Rao v. Madhya Pradesh, S.C.R. 1920 (1952); Gajapati Narayan v. Orissa, S.C.R. 1 (1954).

be taken under land reform.[256] The seventeenth constitutional amendment has expressly included ryotwari, however, and could now be taken.

B. THE COURT, THE CONSTITUTION, AND LAND REFORM

Marshall C.J. in *Marbury v. Madison,*[257] faced with a conflict between the federal Constitution and a statute, did not hesitate to uphold the Constitution. Subba Roa in *Golaknath v. Punjab State*[258] was faced with a far more difficult conflict, a conflict between two provisions of the Indian Constitution, both of which fall under the part on Fundamental Rights. Subba Roa held that Parliament could not amend the Constitution by inserting amendments intended to take away fundamental rights but only five justices agreed with him while five others dissented.

Today most countries of the world possess written constitutions. But those constitutions are not necessarily intended to define and delimit the powers of government vis-a-vis the recognized rights of the citizens. On the contrary, these constitutions are positive instruments of governmental power, often with the explicit mandate that those powers be exercised to promote group interests represented by the state even at the expense of interests of the individual.[259] Such a positive directive are contained in constitutions of India, the Philippines and Puerto Rico.

Thus, the Constitution as an expression of public policy contains in itself the seeds of conflict. In one sense the contradiction is inherent between the provisions of the individualistic bill of rights and the group-oriented directives of state policy. Thus, while the bill of rights bars the taking of private property for public purpose except upon compensation, there are other constitutional provisions that allow interferences with property, not merely by regulation, but even by acquisition or expropriation. Because land reform taking appears motivated by private purposes and for inadequate compensation, often not entirely in cash, land reform laws have been challenged as unconstitutional. Actually, however, these laws were passed to comply with constitutional provisions that either specifically ordained the redistribution of land or generally sought to promote social justice. Land reform laws, then, manifest the policy conflicts in the constitution.

This internal conflict in the constitution could be explained by reference to the sources of the provisions. In India, for example, the funda-

[256]Karimbil v. Kunhikoman v. Kerala, Supp. 1 S.C.R. 829 (1962); cf. Narasimhan v. Orissa Supp. (1963). 1 S.C.R. 750. Roop Chand v. Punjab Supp. 1 S.C.R. 539 (1963)

[257]1 Cranch 137, 2 L Ed. 60.

[258]2 S.C.R. 762 (1967).

[259]K.C. Wheare, *Modern Constitutions,* 2-6, (London: Oxford Univ. Press, 1962). Henry Rottschaeffer, *The Constitution and a Planned Economy,* 38 Mich. L.Rev. 1133.

mental rights drew largely from the American ideals of liberty and equality, but the directive principles spring from the Russian ideology of eliminating one class of exploiters to do justice to the exploited, the working class and the peasants.[260] The Puerto Rican Constitution, while influenced directly by the American federal and state constitutions, aspires to the devolpment of a social welfare state.[261] The Philippine Constitution, whose bill of rights is modeled after the American, drew inspiration from Yugoslavia in its provision on land policy.[262]

All these three countries subscribe to the promotion of social justice. Precedents have been shattered by the emergence of social justice as a dominant purpose of government and community aspiration. The promotion of social justice has cut across the traditional areas of government functions like the maintenance of order, the conduct of war, and the pursuit of diplomacy. It disrupted the separation of powers principle which is intended to result in the efficiency of the executive, democracy in the legislature, and independence of the judiciary. As a driving force of state policy, the adoption of social justice means the rejection of limited government which has been the essence of constitutionalism. As described by Laurel J. in a Philippine case,[263] social justice means neither communism nor anarchy but the equalization of social and economic forces by the state, *constitutionally*, through the adoption of measures legally justifiable, or *extra-constittutionally*, through measures that require the exercise of inherent powers rationalized by the principle of *salus populi est suprema lex*.

An analogue of social justice can be found fairly in the excercise of legislative power to promote the general welfare found in the U.S. Constitution, and the judicially evolved doctrine of police power. The essence of police power, in Freund's view, is "that every individual must submit to such restraints in the exercise of his liberty or of his rights of property as may be required to remove or reduce the danger of the abuse of these rights.[264] Police power has expanded to cover not only the social interests of safety, order and morals but spilled over to economic interests and all great public needs.

Moreover, while Douglas J. states that political ethics in America confiscation as a method of justice, the American experience has effectively utilized the powers of confiscation. During the American Revolution the revolutionary forces confiscated lands of the royalists, even if "primarily

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[260]Subramania Ayyar, *Planning the Indian Welfare State*, at 41.

[261]Victor Gutierrez-Franqui and Henry Wells, *The Commonwealth Constitution*, 285 The Annals 33; Carl J. Friedrich, *The World Significance of the New Constitution*, 285 The Annals 46.

[262]Guido v. Rural Progress Adm., 84 Phil. 487, 850 (1949).

[263]Calalang v. Williams, 70 Phil. 726 (1940).

[264]Freund, *The Police Power*, at 6.

motivated by equity considerations." In the course of the Civil War, Lincoln offered to compensate owners who would free their slaves, but the amendments after the war ruled out the question of payment. Under the thirteenth amendment, slavery was abolished;[265] under the fourteenth, neither the United States nor any state would assume "any claim for the loss or emancipation of any slave but all such . . . claim shall be held illegal and void."[266] The class of property which, however morally reprehensible, was held by Taney C.J. *Scott v. Sanford*[267] as legally protected, was therefore abolished without compensation to the owners. More recently land reform was carried out in Korea by the confiscation of Japanese-owned estates; and in Japan itself, on the basis of minimal payments.[268] Both these reforms were administered under American authority. In 1945, then, unlike the 1900's when the Philippines and Puerto Rico were taken, the American official attitude allowed confiscatory measures to affect land reform in American-occupied territory. These historical precedents are often adverted to, by those who would reject the applicability of the American doctrine of just compensation to land reform.[269] Moreover, there are American decisions that enunciate strong exceptions to the right of compensation. Thus, in *Block v. Hirsch*,[270] the U.S. court held that a public exigency, like a war situation, could justify the legislature in restricting property rights in land to a certain extent without compensation. A rent control measure that allegedly resulted in less than fair returns to the landlord was held constitutionally valid.

C. The Formulation of Just Compensation

So long as the Indian court believed that it was prohibited from inquiring whether the compensation provided for was adequate, it could not invalidate land reform laws whose compensation provisions revolted its sense of justice. Provided there was some amount of payment, however grossly inadequate that might be, the land reform laws were allowed to stand. Thus, the leading decisions in *Suriya Pal v. Uttar Pradesh*[271] and *Visweshwar Roa v. Madhya Pradesh*[272] dismissed petitions of zamindars despite their objections to the adequacy of amount of their compensation resulting from the rules of computation of their net assets or net income under the land reform law. The Indian court's role, therefore, has narrowed down to examining only whether some compensation is present or absent.

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[265]American Const. amend. 13, sec. 2.
[266]American Const. amend. 14, sec. 4.
[267]19 How. 393.
[268]Clyde Mitchell, Land Reform in Asia, at 14, 25. (Washington: National Planning Assn., 1952).
[269]Ruttan, *op. cit.*, 93-96. Santo & Macalino, *op. cit.*, at 79.
[270]256 U.S. 135.
[271]S.C.R. 1056 (1952).
[272]S.C.R. 1020 (1952).

In contrast, the Philippine court is expressly directed by the Land Reform Code to approve a joint motion embodying the terms of purchase if it is by negotiation and to determine the amount of compensation if by expropriation. However, the legislature has provided in the Code a definite formula for just compensation, as follows: "The Court, in land under leasehold, shall consider as a basis, without prejudice to considering other factors also, the annual lease rental income authorized by law capitalized at six *per centum per annum.*"[273] Again the court's role is circumscribed by legislative formulation.

Only the Puerto Rican court has broad leeway for the determination of compensation. Its code of civil procedure allows the court to resolve the "reasonable market value." However, the legislature has set two expectation of expropriation: (a) increase in value owing to the expectation of expropriation; (b) increase of value owing to expropraition or public improvements made by the government. Thus, it can also be said that the legislature has set a limitation for the court to observe in fixing just compensation.

In all these countries there is a long line of judicial precedents concerning the use of *market value,* often intensified by the adjectives *fair* or *reasonable,* in expropriation cases.[274] But in the light of legislative formulation of compensation in land reform laws, these precedents appear to be of limited utility.

India has gone furthest from these precedents by adopting the net assets or net income from the estate as the basis of compensation for the zamindars, without reference to market value. State land reform statutes provide that the net income or net assets shall be determined from the gross income or gross assets of the estate by making certain specified deductions, usually the land revenue due the government, the income and other taxes imposed on the estate, and the costs of management and operations incurred by the estate. Certain items are also directly excluded from the gross income. The tendency of this scheme is to deflate the gross income and inflate the deductions so as to minimize the net income or net assets. Then the statutes themselves

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[273]Rep. Act No. 3844, sec. 56.

[274]Phil.; Republic v. Venturanza, G.R. No. 20417, May 30, 1966, 11 C.A.R. J. (2) 158; Republic v. Gonzales, 94 Phil. 956 (1954); Manila R.R. Co. v. Velasquez, 32 Phil. 286 (1915); Macondray & Co., v. Sellner, 37 Phil. 370.

Puerto Rico: Iriarte v. Secretary, 84 P.R.R. 164; Commonwealth v. Fonalledas, 84 P.R.R. 552; People v. Colon, 73 P.R.R.R. 292, P.R. Housing Authority v. Sagastivelza, 72 P.R.R. 208; People v. Garcia, 66 P.R.R. 478; People v. Figuerao, 42 P.R.R. 602.

India: Vajravelu Mudaliar v. Sp. Deputy Collector 1 S.C.R. 614 (1965); Bombay v. Merwanji, 10 Bomb. L.P. 907; Frenchman v. Assistant Collector, 24 Bomb. L.R. 782; Land Acquisition Officer v. Adinarayan, S.C.J. 431 (1959). A.I.R. 1959 S.C. 429.

provide for varying multiples, depending on the total net income or net assets determined, in such a way that owners of larger estates would receive proportionally less than owners of smaller ones. By constitutional amendment, the adequacy of compensation that results from that formulation could not be questioned.

From the experience of India, the Philippines and Puerto Rico, it may therefore be fairly said that the formulation of just compensation is no longer solely a judicial function. In Puerto Rico, the legislature contented itself with setting a defensive policy by providing mandatory exclusions. In the Philippines, the legislature has set a definite statutory formula of compensation without, however, ousting entirely the court's discretion to consider relevant valuation factors. Finally, in India, not only has the legislature set a mandatory formula for fixing compensation in the land reform law, but by constitutional amendment the Parliament has also excluded judicial review of the adequacy of compensation.