

THE SOCIAL AND ECONOMIC POLICIES EMBODIED IN THE NEW CONSTITUTION*

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In analyzing the social and economic policies embodied in the New Constitution, I venture to suggest that the task could be undertaken with some logic and also critically, positively and constructively, by our asking two major questions:

The first question is: Do we have in the New Constitution a more potent instrument for the realization of economic, social and cultural rights?

The second question is: Do we have in the New Constitution a more potent instrument for development?

You will, of course, realize that even as we ask question no. 1, there is a necessity of disposing of the preliminary question: What, in the first place, do we mean when we speak of "economic, social and cultural rights"? To what extent were these rights recognized in the 1935 Constitution? To what extent are they recognized in the New Constitution?

As to question no. 2, these are the preliminary questions which we should ask ourselves: What is development? What provisions in the 1935 Constitution have a bearing on development? If there are such provisions, in what ways and to what extent did these provisions help or deter development? Have these provisions been changed? If so, is the change for the better, judged against the requirements of development?

These questions, you will note, are a bit tangential to an inquiry in constitutional law. There is need then to bring back the inquiry within the jurisdiction of constitutional law.

You will recall that Dean Maximo Kalaw, in one of the earliest articulations by a Filipino in the field of constitutional law,¹ declared that a constitution actually consists of three essential parts: the *constitution of government*, which determines the framework of the government and its relationship with the individual; the *constitution of liberty*, which provides for a Bill of Rights; and the *constitution of sovereignty*, which provides for the mode whereby the people can, should they at a

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¹ Kalaw, *Materials for the Constitution*, 6 PHIL. SOC. SC. REV. 214-247 (1934).

later time desire to do so, bring about formal changes in the fundamental law.

When we think of constitutional law in these terms, we must focus attention on those provisions of the New Constitution with economic and social implications that have a bearing on government, on rights and on sovereignty. For example, when we speak of the New Constitution as a constitution of liberty, we must try to find out how it extends the traditional area of the Bill of Rights, earlier restricted to civil and political rights, into the challenging, more significant and meaningful areas of social and economic development.

Rights may be loosely grouped into three categories.² There is the category of personal rights, exemplified by the right to life and liberty. There is the category of political rights, basically the right to participate in the decision-making process of government. And there is the category of rights, referred to as social and economic rights.

You will readily see that there are differences among these categories of rights. When we speak of personal rights like the right to liberty, and of political rights like the right to free speech, we are speaking of rights that the government could easily implement simply by doing nothing to infringe upon these rights.³ But social and economic rights are altogether different. These rights are many times at best declarations of an aspiration or a policy. Implementing legislation is necessary in order that they may be realized for all.⁴

Of course, it does not mean that social and economic rights are nothing but pious expressions of hope. For they could be considered as mandates directed at those entrusted with the power to govern, so that the social and economic rights spelled out in the Constitution may be realized.

When we talk about economic, social and cultural rights, we are actually referring to those rights formally enunciated in the International Covenant of Economic, Social and Cultural Rights adopted by the United Nations General Assembly in 1966,⁵ which in turn had as its predecessor the 1948 Universal Declaration of Human Rights.⁶

Covered by this Covenant is the very important right to work, the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Complementing the right to work is the

² LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 280 (1950).

³ *Id.* at 280-284.

⁴ *Id.* at 284-286.

⁵ Published in 61 *AM. J. INT'L. L.* 861-70 (1967).

⁶ The Universal Declaration of Human Rights was approved by the United Nations Assembly at its 3rd session in Paris, December 10, 1948.

right to the enjoyment of just and favorable conditions of work, which includes receiving a fair and a living wage, having safe and healthy working conditions, enjoying equal opportunity to be promoted, and being entitled to rest, leisure and a reasonable limitation of working hours.

Very basic in the fight for social justice, the worker's right to form and join the trade union of his choice is recognized by the Covenant. The right of workers to go on strike is also explicitly mentioned in the Covenant which likewise recognizes the right to social security.

In addition to the economic rights cited above, the Covenant also speaks of giving the widest possible protection and assistance to the family, particularly for its establishment and for the care and education of dependent children.

Then, there is also the right of everyone to a decent standard of living for himself and his family, made very specific in terms of adequate food, housing and clothing and other aspects that determine the level of one's living condition. Likewise, there is a reference in the Covenant to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Aware that it is education that could enable all persons to participate in a free society, and promote understanding, tolerance and friendship among all nations and all social, ethnic or religious groups, the Covenant recognizes the right to education directed at the full development of the human personality or the sense of human dignity. Education should also seek to strengthen respect for fundamental human freedom.

Then, there is the right of everyone to take part in the cultural life of the community. And for this purpose, the State is enjoined to take all steps necessary for the preservation of culture and the development of science.

When we speak, therefore, of the standard against which we should try to read our 1935 and 1973 Constitutions, we must bear in mind these various rights, as enunciated in this very historic Covenant of human rights.

Now, let us focus attention on the Philippine situation.

As mentioned earlier, the authoritative references of economic, social and cultural rights are the 1948 Universal Declaration of Human Rights and the 1966 International Covenant of Economic, Social and Cultural Rights. Yet we ask: Did the 1935 Constitution, a document that antedates the above international covenants, already have any reference to economic, social and cultural rights?

We can proudly answer in the affirmative. The 1935 Constitution already embodied very categorically ideas that were to be formally enunciated later by the United Nations in 1948 and 1966 in the landmarks of human rights earlier cited.

This should not be surprising because the leading members of the Constitutional Convention that drafted the 1935 Constitution were men who were actively thinking along the major intellectual current which rose to historic heights in the 1930's and which proclaimed the urgency of recognizing everyone's claim for social and economic justice.

For instance, of the 1935 Constitution, Delegate, later President Manuel Roxas said: "[T]his constitution has a definite and well-defined philosophy, not only political but social and economic. A constitution that in 1776 or in 1789 was sufficient in the United States, considering the problems they had at that time, may not now be sufficient with the growing and ever-widening complexities of social and economic problems and relations. If the United States of America were to call a constitutional convention today, to draft a constitution for the United States, does anyone doubt that in the provisions of that constitution there will be found definite declarations of policies as to economic tendencies; that there will be matters which are necessary in accordance with the experience of the American people during these years when vast organizations of capital and trade have succeeded to a certain degree to control the life and destiny of the American people? If in this constitution the gentleman will find declarations of economic policy, they are there because they are necessary to safeguard the interests and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically imposes."⁷³

Former University of the Philippines President Rafael Palma, who was a delegate in the 1934 Constitutional Convention, called attention, to use the apt phrases of Justice Enrique Fernando, "to the few millionaires at one extreme with the vast masses of Filipinos deprived of the necessities of life at the other. He asked the Convention whether the Filipino people could long remain indifferent to such a deplorable situation. For him to speak of a democracy under such circumstances would be nothing but an illusion. He would thus emphasize the urgent need to remedy the grave social injustice that had produced such wide-

⁷³ LAUREL, PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION 177-178 (1966).

spread impoverishment, thus recognizing the vital role of government in this sphere,"⁸ *i.e.* the social and economic field.

Still another delegate, Tomas Confesor of Iloilo, said: "Take the case of tenancy system in the Philippines. You have a tenant. There are hundreds of thousands of tenants working day in and day out, cultivating the fields of their landlords. He puts all his time, all his energy, the labor and the assistance of his wife and children, in cultivating a piece of ground for their landlord, but when the time comes for the partition of the products of his toil what happens? If he produces 25 *cavanes* of rice, he gets only perhaps five and the twenty goes to the landlord. Now can he go to court? Has he a chance to go to court in order to secure his just share of the products of his toil? No."⁹ Thus Delegate Confesor, again to use Justice Fernando's words, "was quite emphatic in his assertion for the need of a social justice provision which is a departure from the *laissez-faire* principle."¹⁰

Then, we also have Delegate Juan Ventanilla of Pangasinan saying: "The spiritual mission of government has descended to the level of the material. Then its function was primarily to soothe the aching spirit. Now, it appears, it must also appease hunger."¹¹

So Justice Jose P. Laurel, one of the leading lights in the 1934 Constitutional Convention, was most accurate when he said in a memorable Supreme Court decision: "It should be observed at the outset that our Constitution was adopted in the midst of surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. Alive to the social and economic forces at work, the framers of our Constitution boldly met the problems and difficulties which faced them and endeavored to crystalize, with more or less fidelity, the political, social and economic propositions of their age, and this they did, with the consciousness that the political and philosophical aphorism of their generation will, in the language of a great jurist, 'be doubted by the next and perhaps entirely discarded by the third.' (Chief Justice Winslow in *Borgnis v. Falk Co.*, 147 Wis. 327; 133 N.W., 209.) Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which are intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as

⁸ *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices*, G.R. Nos. 21484 & 23605, November 29, 1969, 30 SCRA 649, 676 (1969); Justice Fernando paraphrased the words of President Palma found in 3 LAUREL, *op. cit.*, at 227-228.

⁹ *Id.* at 677 citing 3 LAUREL, *op. cit.*, at 293-294.

¹⁰ *Id.* at 677.

¹¹ *Id.* at 678 citing 1 LAUREL, *op. cit.*, at 471-472.

the *justitia communis* advocated by Grotius and Leibnitz many years ago to be secured through the counter-balancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*. "The promotion of social justice to insure the well-being and economic security of all the people" was thus inserted as vital principle in our Constitution. x x x."¹²

It is, therefore, very clear that the articulate leaders of the 1934 Constitutional Convention, in a decisive manner that could not be ignored, focused the attention of the Convention on issues directly relevant to economic, social and cultural rights. As a result, we have in the 1935 Constitution provisions that lay down the specific basis for measures that could positively advance the realization of economic, social and cultural rights.

What are these provisions? We can start with Section 6 of Article XIV of the 1935 Constitution which states: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

Then, there is Section 5 of Article II of the 1935 Constitution which reads: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."

Even as we cite the above specific provisions of the 1935 Constitution as incontrovertible evidence of our very early recognition that economic, social and cultural rights should be realized, it could also be proudly pointed out that these declarations of economic and social policy were actually acted upon by past national leaders. An enumeration of our labor and social legislations will prove this assertion for it could be rightfully stated that the Philippines definitely has about the most comprehensive complex of labor and social legislation in Asia which is comparable even with the enlightened policies of industrialized countries.¹³

In the area of labor relations, for instance, we are familiar with the so-called Magna Carta of Labor, the Industrial Peace Act¹⁴ which is supplemented by the law creating the Court of Industrial Relations.¹⁵

¹² Ang Tibay v. Court of Industrial Relations, G.R. No. 46496, May 29, 1939, 7 Lawyers J. 487, 494 (1939.).

¹³ A look at COMPILATION OF LABOR AND SOCIAL LEGISLATION (Manila: Central Book Supply, Inc., 1964) 510 pp. shows how many Philippine labor laws have been promulgated.

¹⁴ Rep. Act No. 875 (1953).

¹⁵ Com. Act No. 103 (1936).

In the area of labor standards, with respect to wages, there is the Minimum Wage Law;¹⁶ with respect to hours of work, the Eight Hour Labor Law;¹⁷ with respect to the beginnings of a recognition of security of tenure, the Termination Pay Law;¹⁸ and with respect to the safety and health of workers, the Industrial Safety Act¹⁹ and the Free Emergency Medical and Dental Treatment Act.²⁰

Then, under the general category of welfare legislation, we have the Employers' Liability Act,²¹ the Workmen's Compensation Act,²² the Social Security Act,²³ and now the Medical Care Act.²⁴

If only to show how significant was the provision in the Constitution which spoke not only of protecting labor in general, but also of giving special attention to working women and minors, we have the Woman and Child Labor Law.²⁵

But as we look at this enumeration, we find that they are political acts. In other words, if we are to find out who should take credit for their enactment, we must thank our political leaders who saw that it was in their interest to enact these pieces of labor and social legislation. This kind of a political response may just validate the proposition that labor and social legislation could be a function of the increasing power of the workers. As we have seen, since the late 1930's an increasing number of workers have been enfranchised. Of course, one must not ignore as positive factors the awakening of our social conscience, and at the same time, the increasing realization that if we do something for the worker, we give a decisive boost to raising the productivity of the economy.

Leaving the political perspective, what is another constitutional significance of the provisions in the Constitution on labor and on social justice? The answer one can make is: These provisions could be the basic defense available to the political departments of government when labor and social legislations are assailed for being seemingly violative of the rights to liberty and property which are protected by the due process clause of the Constitution.²⁶

To illustrate this point, we may now recall the *People v. Pomar* case.²⁷ In this 1923 case, a woman cigar maker of a tobacco factory went on

¹⁶ Rep. Act No. 602 (1951).

¹⁷ Com. Act No. 444 (1939).

¹⁸ Rep. Act No. 1052 (1954).

¹⁹ Rep. Act No. 104 (1947).

²⁰ Rep. Act No. 1054 (1954).

²¹ Act No. 1874 (1908).

²² Act No. 3428 (1927).

²³ Rep. Act No. 1161 (1954).

²⁴ Rep. Act No. 6111 (1969).

²⁵ Rep. Act No. 679 (1952).

²⁶ CONST., Art. III, sec. 1 (1) (1935).

²⁷ 46 Phil. 440 (1923).

vacation leave by reason of her pregnancy. In accordance with a law then in force, *i.e.* Act No. 3071, the woman worker should have enjoyed thirty days' vacation with pay before and another thirty days after confinement. The factory failed to pay the maternity leave pay provided for in the above law, which amounted to ₱80.00. Because of this failure, the manager of the factory, after trial, was sentenced to pay a fine of ₱50.00. The manager appealed this decision, saying that Act No. 3071 providing maternity leave pay for women workers was unconstitutional on the ground that it was violative of the constitutional principle that no person shall be deprived of his life, liberty or property without due process.²⁸

For us today, the claim that a maternity leave pay law is unconstitutional would be considered ridiculous. But in 1923, the American Justices sitting in the Supreme Court of the Philippines, following the jurisprudence prevailing at the time, said of Act No. 3071: "The statute in question is exactly analogous to the 'Minimum Wage Act' referred to above. In section 13 it will be seen that no person, firm, or corporation owning or managing a factory, shop, or place of labor of any description, can make a contract with a woman, without incurring the obligation, whatever the contract of employment might be, *unless he also promise to pay to such woman employed as a laborer, who may become pregnant, her wages for thirty days before and thirty days after confinement.* In other words, said section creates a *term* or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by law, makes the employer criminally liable and subject to a fine and imprisonment. Clearly, therefore, the law has deprived, every person, firm, or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a *term* in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract. The constitution of the Philippine Islands guarantees to every citizen his *liberty* and one of his *liberties is the liberty to contract.*"²⁹

It is against the above kind of constitutional jurisprudence that the significance of the labor and social justice provisions in the 1935 Constitution clearly emerges, particularly the command in the fundamental

²⁸ See first paragraph of section 3 of Act of Congress of the United States of August 29, 1916, published as Appendix D in 2 ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 801 (1937).

²⁹ *People v. Pomar*, *supra*, note 27, at 454.

law directing the State to afford protection to labor. The above provisions become the justification for, the support that constitutionally validates, the exercise of police power in the form of labor and social legislation. Thus, because of these constitutional provisions, the *Magna Carta of Labor* was considered constitutional in the *Pambusco* case,³⁰ the Termination Pay Law in the *Manila Trading and Supply Co.* case,³¹ the Minimum Wage law in the *International Hardwood and Veneer Co.* case,³² the Court of Industrial Relations Act, in the *Antamok Gold Fields Mining Co.* case,³³ the Tenancy Act in the *Tapang* case,³⁴ the Eight-Hour Labor Law in the case of the *Philippine Air Lines Employees' Association*,³⁵ and the Social Security Act in the case of the *Roman Catholic Archbishop of Manila*.³⁶

The labor and social justice provisions of the Constitution are defenses not only when laws are assailed as unconstitutional because they violate the due process clause of the Constitution, but also when what is involved is the right to non-impairment of obligations arising from contract.³⁷ This is illustrated by the *Ongsiaco* case³⁸ where the Supreme Court held that there is no constitutional violation of the clause on non-impairment of obligations arising from contract if you pass a Tenancy Law³⁹ revising a sharing system that exists and is in force because of a tenancy agreement.

From the above discussion, we can therefore summarize the uses of the labor and social justice provisions in the Constitution: They are not only commands upon those who would pass laws to enact labor and social legislation. They are also the validating provisions. Because they are in the Constitution, there is the imprimatur of constitutionality on labor and social legislations even if these may deprive a person of liberty or property.

But the 1935 Constitution did not limit itself to the labor and social justice provisions aimed at the realization of such economic and social rights as the right to work, the right to just and favorable conditions

³⁰ *Pampanga Bus Co. v. Pambusco's Employees' Union*, 68 Phil. 541 (1939).

³¹ *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485 (1940).

³² *International Hardwood and Veneer Co. v. Pangl Federation of Labor*, 70 Phil. 602 (1940).

³³ *Antamok Goldfields Mining Co. v. Court of Industrial Relations*, 70 Phil. 340 (1940).

³⁴ *Tapang v. Court of Industrial Relations*, 72 Phil. 79 (1941).

³⁵ *Phil. Air Lines Employees' Assoc. v. Phil. Air Lines, Inc.*, G.R. No. 18559, June 30, 1964.

³⁶ *Roman Catholic Archbishop of Manila v. Social Security Com.*, G.R. No. 15045, January 20, 1961. *Cf. Director of Forestry v. Muñoz*, G.R. No. 24796, June 28, 1968.

³⁷ CONST., Art. III, sec. 1(b) (1935). CONST., Art. IV, sec. 11.

³⁸ *Ongsiaco v. Gamboa*, 86 Phil. 328 (1939).

³⁹ Rep. Act No. 1199 (1954).

of work, the right to social security, the right to adequate standards of living and the highest possible attainable levels of health. It also paid attention to the right to education.

Thus, there is Section 5 of Article XIV which spells out a right to education as it, in part, states: "The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens."

You will also note that as we speak in the International Covenant of Economic, Social, and Cultural Rights of the right to participate fully in the cultural life of the nation, the 1935 Constitution makes reference to a national flag as the symbol of our own identity;⁴⁰ it speaks of the adoption of a common national language;⁴¹ it speaks of the necessity of promoting scientific research and invention.⁴²

And then with respect to the right of the family, motherhood and childhood to protection and assistance, a right also embodied in the above-mentioned Covenant, we note that there is this provision in the 1935 Constitution that "[t]he natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government."⁴³

I therefore wish to reiterate that the 1935 Constitution is a document we could be proud of because we find in it very categorical references to very basic rights of the human being, *i.e.* economic, social and cultural rights.

How does the 1973 Constitution strengthen the above-mentioned provisions in the 1935 Constitution?

With respect to the right to protection and assistance for the family, we notice, for instance, a longer provision in the 1973 Constitution.⁴⁴ There is now a reference not just to the natural right and duty of the parents in the rearing of the youth for civic efficiency.⁴⁵ There is this new provision: "The State recognizes the vital role of the youth in nation-building and shall promote their physical, intellectual, and social well-being."⁴⁶ We therefore say that the 1973 Constitution enlarged upon, by specifying further, the kind of protection and assistance that the family shall receive from the State.

⁴⁰ CONST., Art. XIV, sec. 1 (1935).

⁴¹ CONST., Art. XIV, sec. 3 (1935).

⁴² CONST., Art. XIV, sec. 4 (1935).

⁴³ CONST., Art. II, sec. 4 (1935).

⁴⁴ CONST., Art. II, sec. 4.

⁴⁵ *Ibid.*

⁴⁶ CONST., Art. II, sec. 5.

In the area of education, there are a number of significant additions. Thus, the right to education may now be realized more fully as the 1973 Constitution more clearly specifies the responsibility of the State in that regard. Thus, the New Constitution provides: "The State shall maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level."⁴⁷ The New Constitution also provides: "The State shall provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students."⁴⁸

And in the New Constitution, with respect to cultural rights, you will note that we are trying to break away from the traditions of the past, by giving the interim National Assembly the authority to adopt by law "a new name for the country, a national anthem, and a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people."⁴⁹ There is also a provision that "Filipino culture shall be preserved and developed for national identity."⁵⁰ This is a new provision. Another new provision that has to do with cultural rights is that which declares: "The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of state policies."⁵¹ This is a recognition that however much we should like to say that the Filipino nation is now one, it is not in reality so. In recognition of the diverse influences in our national life, there is a constitutional command asking the Government not to disregard the customs, traditions, beliefs and interests of the various national cultural minorities.

How about the social justice provision of the Constitution? The social justice provision in the 1935 Constitution has been reworded to make it more imperative: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people."⁵² And then there is this very, very significant phrase added to the social justice provision: "Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."⁵³ It is too soon to speculate on how this added sentence has expanded the constitutional outer limits of police power, *vis-a-vis* the constitutional restrictions imposed by the due

⁴⁷ CONST., Art. XV, sec. 8(5).

⁴⁸ CONST., Art. XV, sec. 8(6).

⁴⁹ CONST., Art. XV, sec. 2.

⁵⁰ CONST., Art. XV, sec. 9(2).

⁵¹ CONST., Art. XV, sec. 11.

⁵² CONST., Art. II, sec. 6.

⁵³ *Ibid.*

process clause⁵⁴ and by such concepts as "public use"⁵⁵ and "just compensation."⁵⁶ But surely, the outer limits have been expanded to a degree that is now difficult to predict.

Still on social justice, there is this completely new provision: "The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare and social security to guarantee the enjoyment by the people of a decent standard of living."⁵⁷ One could look at this provision as the basis for a welfare state in the country.

Now, how about the provisions on labor? The 1935 Constitution provided: "The State shall afford protection to labor, especially to working women and minors x x x." The phrase "especially to working women and minors" has been deleted in the 1973 Constitution,⁵⁸ perhaps because of the recognition that women no longer need such formal constitutional protection, that they could more than fight for their rights as women in this age of "Women's Liberation."

But the more important changes in labor are these: The New Constitution no longer limits its concern to the worker. It now speaks of a new concern — the promotion of full employment and equality in employment. No longer is the attention of the State merely focused on the worker and the need to improve his working conditions. There is now a recognition that perhaps there should be greater attention on the problems of unemployment and underemployment.

Also, very significant with respect to labor is the enumeration in the fundamental law itself of four rights now guaranteed to the worker: the rights to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. Thus, whereas before, the above rights belonged to workers only by virtue of legislative enactment, these are now enjoyed by the workers by virtue of the people's mandate, and can no longer be taken away from the workers except by the people themselves.

The right to security of tenure deserves more than a passing mention: One could now say that those in private employment also have the right to security of tenure, a right earlier enjoyed only by those in the government service. Before the 1973 Constitution, a private employee could be removed, even without just cause, as long as his employer was willing to give the required termination notice, or in lieu of such notice,

⁵⁴ CONST., Art. IV, sec. 1.

⁵⁵ CONST., Art. IV, sec. 2.

⁵⁶ *Ibid.*

⁵⁷ CONST., Art. II, sec. 7.

⁵⁸ CONST., Art. II, sec. 9.

termination pay.⁵⁹ Of course, one may ask: Does the 1973 Constitution, when it says "workers shall have the right to security of tenure," in effect repeal that particular provision in the Termination Pay Law giving the private employer the complete right to dismiss, as long as he gives a termination notice or termination pay? This is a question that is still to be answered by the Supreme Court.

Another significant aspect of the labor provision in the New Constitution is a question that may later on require some examination: When the Constitution speaks of securing to *workers* certain rights, *i.e.* the rights of self-organization and collective bargaining, does it include government employees in the term "workers"?

Now, let us proceed to Topic No. 2.

You will recall that for our second topic, we have propounded this question: "Do we have in the New Constitution a more potent, a more effective instrument for development?"

But what, in the first place, is development? I have been reading some United Nations materials on this, and I have found out that the word "development" could mean something like a qualitative change or a quantitative growth in the social and economic reality which we may call either society or economy.⁶⁰ These materials go on to say that there can be no development unless there is a rise in the level of welfare, which is defined as the state of well-being of the population; that development requires a rise in the level of living, which is defined as the level of satisfaction of the need of the population.⁶¹

From the statistical point of view, there may be development when there is an increase in the gross national product or in the *per capita* income of the people.⁶² But this is very pedantic. Development, to my mind, must be viewed in terms of the nation's response to three very serious problems which plague many developing countries like the Philippines. These problems are poverty, unemployment, and inequality.⁶³ Thus, we must look at development in terms of the amelioration of the conditions of the poor. There is no development in the country unless poverty, in terms of its extent, in terms of the misery that it inflicts upon the people, has been sufficiently reduced.

As to the unemployment problem, a basic premise is the significance of employment: that it is a prerequisite for participation in productive

⁵⁹ Rep. Act No. 1052 (1954), as amended.

⁶⁰ DREWNOWSKI, SOCIAL AND ECONOMIC FACTORS IN DEVELOPMENT 7-11 (1960).

⁶¹ *Ibid.*

⁶² ECONOMIC SURVEY OF ASIA AND THE FAR EAST 7-8 (1971).

⁶³ SEERS, THE MEANING OF DEVELOPMENT, INSTITUTE OF DEVELOPMENT STUDIES COMMUNICATION SERIES No. 44.

activity in society. If we look at an unemployed person, we find not only an irretrievable economic loss, but also a person isolated and apart from those who have found meaning in their lives.

Then, development must be viewed in terms of its effects on poverty and unemployment; we must begin to focus attention on the problem of inequality, for there could be no real development, even if there is an improvement in the condition of the poor, even if there are more people employed, unless that very meaningful criterion of a just society, namely, that of equality, is approximated.

Here are some facts about the Philippine situation:⁶⁴ We find, for instance, that as to our existing level of living, we have a *per capita* consumption of 2,000 calories a day, and of this, 47 grams are in meat, 43 grams are in milk, and 51 grams are in protein. In a relatively more developed country like Singapore, one finds that the Singaporeans have a *per capita* consumption of 2,500 calories or some 25% more. They eat much more meat — 75 grams, four times more milk — 160 grams, and their protein intake is 63 grams. Of course, we should not be terribly sorry for the Philippines, because in Indonesia, they only have a *per capita* consumption of 2 grams of milk.

How about life expectancy? We find that in Singapore a child born could expect to live up to 68 years; in the Philippines, 55 years. But, of course, it is worse in Indonesia, where a child born could expect to live only up to 48 years.

As to the availability of medical personnel and facilities, we find that: In Indonesia, for every 27,000 Indonesians, there is one doctor; in the Philippines, for every 9,000 Filipinos, there is one doctor; in Singapore, 1,500 persons have one doctor. In Indonesia, 1,400 persons share one hospital bed; in the Philippines, 800 share one hospital bed; in Singapore, 200 share one hospital bed.

The above statistics dramatize the magnitude of our problems as a developing nation.

What are the policies in the Constitution that may have a bearing on our development? The Constitution is basically a political document. But to the credit of the 1935 Constitution, it is not just a political document; it is likewise very much concerned with the economic and social aspects of our national life. One could identify at least five significant economic policies enumerated in the 1935 Constitution. One such policy addresses itself to the important question of how best to

⁶⁴ ECONOMIC SURVEY OF ASIA AND THE FAR EAST, Part One, 124-150 (1972).

conserve and utilize our natural resources.⁶⁵ Another policy has to do with the control and regulation of business enterprises.⁶⁶ Still another policy has to do with agrarian reform.⁶⁷ There are also the so-called "Filipinization" provisions in the 1935 Constitution,⁶⁸ and closely related to these provisions is that which gave parity rights to Americans.⁶⁹

You will note that there was in the 1935 Constitution, in Sections 1 and 2 of Article XIII a spelling out of a policy on our natural resources, the highlights of which are: (1) that our natural resources belong to the State; (2) that, except for public agricultural land, they could not be alienated and could be given to private persons only by way of license, lease, or concession, and for a limited period which should not exceed, all told, fifty years; (3) that as to public agricultural lands, there is a limitation with respect to the size that could be sold or otherwise disposed of; and (4) that, this was a very significant reservation, the disposition, exploitation, development or utilization of our natural resources shall be limited to Filipino citizens or to corporations at least 60 percent of the capital of which is owned by Filipino citizens.

With respect to the control and regulation of business enterprises, you will note that the 1935 Constitution—in Section 6 of Article XIII and Sections 7 and 8 of Article XIV—was socialistic in its orientation. It authorized the State in very categorical language to establish and operate industries and means of transportation and communication if these shall be in the interest of the national welfare and defense. It also specifically authorized the transfer to public ownership of public utilities and other private enterprises to be operated by the Government.

Then, we have in the 1935 Constitution provisions which—if only they had been earnestly acted upon soon after the promulgation of the 1935 Constitution—could have brought about agrarian reform in the country as early as the 1930's. I refer to Sections 3 and 4 of Article XIII. These provisions, it has been observed, sprang from the conviction: (1) that the existence of big landed estates was one of the causes of economic inequality and social unrest; (2) that the multiplication of landowners by the subdivision of land into smaller landholdings was conducive to social peace and individual contentment, and had been the policy adopted in most civilized countries after the World War; (3) that the encouragement of ownership over small landholdings would destroy the institution so deeply entrenched in many parts of the Philippines

⁶⁵ CONST., Art. XII, *Conservation and Utilization of Natural Resources* (1935).

⁶⁶ CONST., Art. XIII, sec. 6; Art. XIV, secs. 7 and 8 (1935).

⁶⁷ CONST., Art. XIII, secs. 3 and 4 (1935).

⁶⁸ CONST., Art. XIII, sec. 1; Art. XIV, sec. 8 (1935).

⁶⁹ CONST., Ordinance appended to the Constitution (1935).

known as *caciquism*, and that "[i]t is preventive of absentee landlordism, an institution which springs directly from the establishment of big landed estates and has time and again served as an irritant to the actual toiler of the soil."⁷⁰

In connection with the "Filipinization" provisions, it has been earlier pointed out that the disposition, exploitation, development and utilization of our natural resources were, as they still are, limited to Filipino citizens or corporations 60 per cent of the capital of which must be owned by Filipino citizens, a restriction also applicable to the operation of public utilities.

On the crucial significance of the Filipinization provisions in the 1935 Constitution, very apt are the words of President Sinco, quoted by Justice J.B.L. Reyes in his valedictory decision in the *Quasha* case: "It should be emphatically stated that the provisions of our Constitution which limit to Filipinos the rights to develop the natural resources and to operate the public utilities of the Philippines is one (sic) of the bulwarks of our national integrity. The Filipino people decided to include it in our Constitution in order that it may have the stability and permanency that its importance requires. It is written in our Constitution so that it may neither be the subject of barter nor be impaired in the give and take of policies. With our natural resources, our sources of power and energy, our public lands, and our public utilities, the material basis of the nation's existence, in the hands of aliens over whom the Philippine Government does not have complete control, the Filipinos may soon find themselves deprived of their patrimony and living as it were, in a house that no longer belongs to them."⁷¹

It is reiterated then that if we look up the Filipinization provisions in the 1935 Constitution, we should read into them the particularly eloquent phrases of President Sinco who identified these provisions as among the bulwarks of our national integrity.

We now come to the Ordinance appended to the 1935 Constitution, the so-called "parity" provision.⁷² We have earlier said that there are nationalistic provisions in the 1935 Constitution because the operation of public utilities, and the disposition, exploitation, development, and utilization of our natural resources were reserved to Filipinos. But what happened in 1946? In exchange for funds from the United States Government so direly needed for the rehabilitation of our economy after the Second World War, we granted the right which we originally reserved

⁷⁰ From the report of the Committee on Naturalization and Preservation of Lands and Other Natural Resources, quoted in 2 ARUEGO, *op. cit.*, at 595.

⁷¹ Republic v. Quasha, G.R. No. 30299, August 17, 1972, 46 SCRA 160, 170 (1972).

⁷² *Supra*, note 69.

in the 1935 Constitution to Filipinos and Filipino corporations also to Americans and American corporations. The United States Congress, through the Philippine Rehabilitation Act, seemed to say to the Filipino people: "You can have eight hundred million pesos for your rehabilitation, but none of this will be forthcoming, at least in an amount in excess of one thousand pesos per war damage claim, unless you approve parity rights for Americans." And so, we approved the parity rights in 1946.⁷³

Of this act, Justice J.B.L. Reyes, again in his valedictory decision earlier referred to, said that this was "certainly rank injustice and inequity . . . [and a symbol of] the dishonorable inferiority in which Filipinos find themselves at present in the land of their ancestors . . ."⁷⁴

Of the above economic policies enunciated in the 1935 Constitution, it will now be our task to find out if they were re-incorporated in the 1973 Constitution. If so, were they slightly or radically changed? Or were they repealed altogether?

One of the virtues of the 1973 Constitution is its ambivalence. It is conservative, and at the same time, radical. Why do I say this?

You will note that the provisions of the 1973 Constitution on natural resources,⁷⁵ are more or less a repetition of those in the 1935 Constitution. Of course, it may now be more difficult for the student of the law on natural resources, because there is in the 1973 Constitution a longer list of the natural resources of the Philippines. The 1971 Constitutional Convention has added such phrases as "fisheries" and "wild life". Then, there is a longer enumeration of the different kinds of lands, no longer just agricultural, timber and mineral; also added are industrial or commercial, residential, and resettlement lands. All these are an improvement for purposes of clarity.

Another particular change is that there has been a further modification of the constitutional policy on public agricultural lands. A corporation can no longer buy public agricultural land. It may continue to lease it but it can lease only a smaller size; the maximum has been rounded off from 1,024 to 1,000 hectares. With respect to public agricultural lands that may be acquired by purchase, the allowable size has been reduced from 144 to 24 hectares. There is also this reference in the 1973 Constitution to timber or forest lands: "No private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hun-

⁷³ A historian's view is enunciated in AGONCILLO & GUERRERO, *HISTORY OF THE FILIPINO PEOPLE* 495-496 (1970).

⁷⁴ *Republic v. Quasha*, *supra*, note 71, at 178.

⁷⁵ CONST., Art. XIV, secs. 8-11.

dred thousand hectares; however, such area may be increased by the National Assembly upon recommendation of the National Economic and Development Authority."⁷⁶

With respect to the control of business enterprises, we mentioned that the 1935 Constitution authorized their nationalization, *i.e.* that the Government could establish and operate business enterprises or could expropriate private enterprises.⁷⁷ This policy is continued in the 1973 Constitution.⁷⁸ But you will note that in the latter, the Government could also specifically undertake something less than that of expropriation: it could now "temporarily take over or direct the operation of any privately owned public utility or business affected with the public interest."⁷⁹ This would be very significant because in expropriation, at least in Section 6 of Article XIV, payment of just compensation is specifically required. But when you temporarily take over or direct the operation of any privately owned public utility or business affected with public interest, just compensation may seem not to be required as long as, in the words of the 1973 Constitution, it is done in "times of national emergency when the public interest so requires."⁸⁰

I also wish to draw your attention to the provision in the 1973 Constitution that: "The State shall encourage equity participation in public utilities by the general public."⁸¹ There is also a reference to the participation of foreign investors in the governing body of any public utility enterprises, that said participation shall be limited to their proportionate share in the capital of the business.⁸² This is very significant in view of the recent Supreme Court ruling in the *Luzteveco* case.⁸³

In this case, there was a ruling as to who could participate in the management of enterprises that are Filipinized. Filipinization initially meant only Filipino control as to ownership. But later on, by virtue of the implementation of the Anti-Dummy Act,⁸⁴ it also included the Filipinization of those who work for Filipinized enterprises. And as you Filipinize those who work for a Filipinized enterprise, there is the possibility that you would not even allow directors who are not Filipinos in enterprises that have been Filipinized. Just to make sure that this

⁷⁶ CONST., Art. XIV, sec. 11.

⁷⁷ CONST., Art. XIII, sec. 6 (1935).

⁷⁸ CONST., Art. XIV, secs. 6 and 7.

⁷⁹ CONST., Art. XIV, sec. 7.

⁸⁰ *Ibid.*

⁸¹ CONST., Art. XIV, sec. 5.

⁸² *Ibid.*

⁸³ *Luzon Stevedoring Corporation v. Anti-Dummy Board*, G.R. No. 26094, August 18, 1972, 46 SCRA 475 (1972).

⁸⁴ Com. Act No. 146 (1936) as amended.

is not so, there is now this provision in the 1973 Constitution that allows the participation of foreign investors in the governing body of any public utility enterprise, limited, of course, to their proportionate share in the capital thereof. This is less a restriction and more the recognition of a right, in view of the seeming thrust of the *Lustevenco* ruling.⁸⁵

Also of very great significance is the incorporation in the 1973 Constitution of a new provision embodying the anti-trust policy. Section 2 of Article XIV declares: "The State shall regulate or prohibit private monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."

Now, let us go to the Filipinization provisions which are the bulwark of our national integrity. Have they been diluted in the 1973 Constitution? My view is: they have not been diluted in the 1973 Constitution because everything found in the 1935 Constitution reserving certain economic activities to the Filipino is also reiterated in the 1973 Constitution. And in fact, it is expressly provided that the extent of Filipinization could be enlarged. Section 3 of Article XIV says: "The National Assembly shall, upon recommendation of the National Economic and Development Authority, reserve to citizens of the Philippines or to corporations or associations wholly owned by such citizens, certain traditional areas of investments when the national interest so dictates."

Of course, a valid query may be made: Did the above provision expand the power to Filipinize or did it restrict such power? You will recall that in its precedent-setting decision on the Retail Trade Nationalization Law,⁸⁶ the Supreme Court upheld the constitutionality of laws Filipinizing certain economic activities, in this case, retail trade. But now that there is a specific mention of the areas over which the principle of Filipinization could be extended, *i.e.* "certain traditional areas of investments when the national interest so dictates." May this not have taken away from the National Assembly the power to Filipinize economic activities which are not "traditional?"

With respect to "Parity," Section 11 of Article XVII of the 1973 Constitution provides that the rights and privileges granted to Americans by the so-called "parity" amendment⁸⁷ shall automatically terminate on July 3, 1974. But I draw your attention to the last sentence in this provision: "Titles to private lands acquired by such persons [meaning Americans] before such date shall be valid as against other private persons only." You will recall the *Quasha* case⁸⁸ which I have referred

⁸⁵ *Supra*, note 83.

⁸⁶ *Inchong v. Hernandez*, 101 Phil. 1155 (1957).

⁸⁷ CONST., Ordinance appended to the Constitution (1935).

⁸⁸ *Supra*, note 71.

to several times earlier. It would seem to me that the ruling in this case is now modified by the 1973 Constitution.

In the *Quasha* case, an American who had acquired a 2.6 hectare lot at Forbes Park, in effect asked the Court: "I, an American citizen, bought in 1954 a piece of real estate property at Forbes Park. What happens after July 3, 1974?" Responding, the Supreme Court said that the purchase by the American of that piece of real estate was against a constitutional prohibition—that private agricultural lands shall not go to persons other than Filipino citizens.⁸⁹ But even granting that his acquisition of that real estate was valid, would it stay after July 3, 1974? The categorical answer of Justice J.B.L. Reyes in the *Quasha* decision was in the negative—no, it could not stay after July 3, 1974.⁹⁰ The 1973 Constitution, however, seems to say that even after July 3, 1974, the property right of the American shall be valid "as against other private persons only."⁹¹

In addition to the above provisions, you will find that the 1973 Constitution also deals on two very important policy areas directly related to development. Thus, the 1973 Constitution talks about economic planning⁹² and population.⁹³ This reference to economic planning is very significant because we now realize that in the formulation of the national development scheme, in order to increase the probability of its actual implementation, there must indeed be "continuing, coordinated, and fully integrated social and economic plans and programs."⁹⁴ The 1973 Constitution creates the body to formulate such plans and programs. This is a National Economic and Development Authority. In addition, there is also a reference in the 1973 Constitution to "a central monetary authority which shall provide policy direction in the areas of money, banking, and credit."⁹⁵

It is a fact that we have, relatively speaking, greater productivity as regards babies than rice.⁹⁶ This underscores the need to concern ourselves with population growth. We must have a demographic population strategy for development. Something must be done about the level of our fertility, because as illustrated by the relative statistical data—where the crude birth rate of countries like Japan, Australia, and Singapore, is only 19 per thousand, in the Philippines, it is 50 per

⁸⁹ CONST., Art. XIII, sec. 5 (1935).

⁹⁰ *Supra*, note 71.

⁹¹ CONST., Art. XVII, sec. 11.

⁹² CONST., Art. XIV, sec. 1.

⁹³ CONST., Art. XV, sec. 10.

⁹⁴ *Supra*, note 92.

⁹⁵ CONST., Art. XV, sec. 14.

⁹⁶ *Supra*, note 64.

thousand⁹⁷—we must really begin to worry. For it could no longer be denied that a high rate of population growth means high density and high dependency ratios which, in turn, could only mean more unemployment and under employment, lower productivity, more widespread malnutrition, greater illiteracy, more sub-standard houses, increasingly inadequate medical facilities, and the like.⁹⁸

Easily among the most important provisions in the 1973 Constitution *vis-a-vis* the future pace and direction of our national development is the provision on agrarian reform. In the 1973 Constitution, there is now this specific mandate: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."⁹⁹

Earlier, I made reference to the fact that the 1935 Constitution already had provisions that could have been the constitutional infrastructure for agrarian reforms.¹⁰⁰ But these were not acted upon. Of course, if they had been acted upon, there are very serious doubts that the Supreme Court would have validated such bold attempts at agrarian reform.

The *Guido* case¹⁰¹ illustrates the conservative approach of the Supreme Court at the time. In this case, in granting the petition for prohibition to prevent the expropriation of a piece of land that was to be subdivided into home lots for resale to occupants, the Supreme Court characterized the law which was cited as authority for the act of expropriation in these words:

"x x x Carried to extremes, this Act would be subversive of the Philippine political and social structure. It would be in derogation of individual rights and the time-honored constitutional guarantee that no private property shall be taken for private use without due process of law. The protection against deprivation of property without due process of law and against the taking of private property for public use without just compensation occupies the forefront positions (paragraphs 1 and 2) in the Bill of Rights (Article III). The taking of private property for private use relieves the owner of his property without due process of law; and the prohibition that 'private property should not be taken for public use without just compensation' (Section 1 [par. 2], Article III, of the Constitution) forbids by necessary implication the appropriation of private property for private uses (29 C.J.S., 819). It has been truly said that the assertion of the right

⁹⁷ *Supra*, note 64 at 194.

⁹⁸ *Supra*, note 64 at 189.

⁹⁹ CONST., Art. XIV, sec. 12.

¹⁰⁰ CONST., Art. XIII, secs. 3 and 4 (1935).

¹⁰¹ *Guido v. Rural Progress Administration*, 84 Phil. 847 (1949).

on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government. (29 C.J.S., 820)."¹⁰²

Then it went on to say:

"x x x Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. In paving the way for the breaking up of existing large estates, trusts in perpetuity, feudalism, and their concomitant evils, the Constitution did not propose to destroy or undermine property rights, or to advocate equal distribution of wealth, or to authorize the taking of what is in excess of one's personal needs and the giving of it to another. Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country."¹⁰³

In the *Guido* decision, the Supreme Court also categorically stated: "Social justice does not champion division of property or equality of economic status..."¹⁰⁴

It would seem that the above sentiments were due for a radical change under the 1973 Constitution which now states very clearly:

"The State shall promote social justice to ensure the dignity, welfare, and security of all the people. *Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.*"¹⁰⁵

To dramatize what we are trying to say, let us focus our attention on Presidential Decree No. 27, that historic decree signed by the President of the Philippines on October 21, 1972, to effect—in the words of the Decree—"the emancipation of tenant from the bondage of the soil [by] transferring to them the ownership of the land they till". Among others, the Decree provides: "The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a

¹⁰² *Id.* at 850-851.

¹⁰³ *Id.* at 851-852.

¹⁰⁴ *Id.* at 852.

¹⁰⁵ CONST., Art. II, sec. 6 (underscoring supplied).

portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated."¹⁰⁶ If the Supreme Court were to look at the above Decree with the same attitude that it had in the *Guido* case, there would be a very strong possibility that Presidential Decree No. 27 would be declared unconstitutional under the 1935 Constitution. But under the 1973 Constitution, Presidential Decree No. 27 would easily be validated as having been issued pursuant to the mandate in the Constitution to "regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits" for the purpose of promoting social justice.

By way of close, I say: When we speak therefore of the 1973 Constitution in terms of economic, social and cultural rights, I think the basic reference should be its reiteration of social justice. Because it is here where we find the key to the realization of economic, social and cultural rights. This is the key to development because it has long since been discovered that you cannot improve the economy of any country unless you actually improve the potential of its people.

¹⁰⁶ Pres. Decree No. 27 (Oct. 21, 1972).