PROSPECTS FOR EFFECTIVE CONSTITUTIONAL LAND REFORM *

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Since there are both lawyers and sociologists present in this gathering, I shall begin with a distinction between law in the sense of the lawyers and law in the sense of the sociologist. For a lawyer defining law, the significant question is: What is valid as law? In other words, what normative meaning ought to be attributed in correct logic to a verbal pattern having the form of a legal proposition? For a sociologist, the important question is different: What actually happens in a community owing to the probability that persons participating in the communal activity subjectively consider certain norms valid and practically act according to them? This important distinction determines the relation between law and economy and is therefore very important for the topic I have chosen: the prospects for effective land reform through constitutional change.

If you merely skim through the proliferating number of suggested constitutional changes, you cannot miss noticing the preoccupation with land reform. Specifically, the clamor is for a more equitable distribution of land. The focus of my brief statement will be the role of the Constitution in land redistribution and, for this purpose, I shall touch on the present constitutional provisions for land distribution, on the intellectual climate that produced such provisions, and on the actual operation of such provisions as reflected in Supreme Court decisions. My hope is both to give a picture of the tradition against which reformers must be prepared to range themselves, and ask to the social scientists what chances such reformers have of effecting real radical change.

For our purpose, two constitutional provisions are most pertinent. The first, article XIII, sec. 3, says that

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

The second, section 4 of the same article, reads:

> Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

There is, in these two provisions, an attempt to limit the extent of land ownership, the first by limiting acquisition and the second by authorizing the expropriation of lands already held. The debates in the Constitutional Convention of 1935 which produced these provisions reveal a corporate mentality which tenaciously held on to land ownership as a sacred right. (Notice also the position held by property in the Bill of Rights: "No person shall be deprived of life, liberty, or property without due process of law." Property is thus placed on the same level as life and liberty.)

The purpose of section 3, which authorizes the limitation of the acquisition of private land,

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is to provide a means of preventing the concentration of large estates in the hands of only a few persons. There was a doubt among some delegates to the Convention whether the state had the power to limit land acquisition in the absence of an explicit constitutional provision authorizing such limitation. The reason for the provision, in the rhetoric of Delegate Filemon Sotto, is that "the right to life belongs not just to a few but to all, and in order to have life, God has given us liberty, the air, light, and land, and it has been said that in the beginning of human life the first man to put a fence around a piece of land to claim it as his own should have been shot and killed."

From a mere analysis of the terms of the provision, you will note that it is only a tentative gesture. First, the provision is not self-executing. It has to be activated by Congress: "Congress may determine by law . . ." Secondly, the provision covers only private agricultural lands and not public lands. Corporations may acquire public agricultural land up to 1,024 hectares, or, if the land is for grazing, up to 2,000 hectares (art. XIII, sec. 2). Finally, the authorized limitation applies only to future acquisition, not to present holdings, because whatever law Congress might pass is, according to the provision, "subject to rights existing prior to the enactment of such law."

A picture of the corporate mind which produced such a half-hearted gesture can be formed by putting together snatches of the convention debates. There was, for instance, an unwillingness on the part of some to admit that there were large estates in private hands. There was fear that, with a limitation on the power to acquire, human initiative would die and a powerful incentive to work would be removed. There also was fear that such a limitation would play into the hands of communists because, so the argument went, communist candidates for Congress would make themselves popular by running on a platform of limited land holdings. Finally, and this perhaps was the root of it all, the provision was viewed as an assault on the right both to life and to property! "La libertad de la propiedad es una consecuencia ineludible del derecho a la vida" (Francisco).

History seems to show that while the opponents of the present provision lost the convention floor battle, they seem to be winning the war. To date, no law has been passed limiting the acquisition of private agricultural lands.

Section 3 thus authorize limitation on acquisition; section 4, however, authorizes limitation on private holdings. What are the land reform implication of section 4?

Section 4 is one of the three eminent-domain provisions in our Constitution. The power of eminent domain, as every constitutional writer will point out, is an inherent power of government. Hence, government needs no constitutional authorization to exercise it. What most constitutions do is not grant the power but limit the power. This is what our Bill of Rights does – it limits the power. Section 4, however, makes an explicit grant of the power. And the question that necessarily arises is: Why?

One of the limitations on the power of eminent domain is that private property, if it is to be taken, can be taken only for *public use*. During the debates on section 4, Delegate Araneta raised the question whether the provision was necessary at all, considering the state's inherent power of eminent domain. In reply, it was pointed out that there was doubt whether expropriation and redistribution of private lands for the purpose of preserving peace and order was a public enough purpose to come under the right of eminent domain. Thus, the purpose of section 4 was to "remove all doubt as to the power of the government to expropriate the then existing landed estates to be distributed at cost to the tenant-dwellers thereof in the event that in the future it would deem such expropriation necessary to the solution of agrarian problems therein."

Unlike section 3, section 4 has actually figured in constitutional litigation, and we are thus in a position to see its effect on land reform. The first time the section was put to use was in

Guido v. Rural Progress Administration (1949). At issue was the constitutionality of Commonwealth Act No. 539 which authorized the President to acquire private lands through expropriation and to subdivide the same into home lots or small farms for resale at reasonable prices to tenant-occupants of the land. In virtue of this law, the Rural Progress Administration, the agency charged with the implementation of the law, attempted to expropriate a piece of land 22.5 hectares in area. The question posed before the Courts was: What "lands" could be expropriated by authority of section 4, article XIII?

The answer of the Court was based on the premise that expropriation under the Constitution must be for public use. Hence, in expropriation of land even under section 4, the size of land expropriated, the large number of people benefited, and the extent of the social and economic reform secured by the condemnation must be such as to clothe the expropriation with the character of public interest and public use. Such requirement, the Court said, is satisfied when the lands expropriated under section 4 are "large estates, trusts in perpetuity, and land that embraces a whole town or city." Expropriation in *Guido* was denied.

The *Guido* decision provoked a question very crucial to land reform: Can the requirement of public use be satisfied when the land expropriated is a small tract of land or does expropriation under section 4 require as a constant factor that the land be immense in size? Four years after the decision in *Guido* the Court said, in *Rural Progress Administration v. Reyes* (1953) that the size of the land need not be a constant factor. Involved in this case was a mere two-hectare lot, of which more than a half consisted of fishponds. The expropriation was made in favor of four families. The thrust of a sharply divided decision of the Court was away from the land-size norm set by *Guido*. The emphasis was not on the size of the land but on the requirement of social amelioration. Expropriation was allowed.

Within two years, however, the *Reyes* decision was rejected in *Republic v. Baylosin* (1955). At issue was the expropriation of 67 hectares of land consisting of smaller lots belonging to various owners. The land had formerly formed part of a huge estate. The tenants and occupants of the land for whom expropriation proceedings had been instituted had been, by themselves and by their ancestors, occupying, clearing and cultivating the land for many years. The Supreme Court, reversing a lower court ruling in favor of expropriation, returned to the *Guido* rule that "section 4, article XIII of the Constitution had reference only to large estates, trusts town or city." It rejected the argument that "as long as any land formerly formed part of a landed or large estate, it may, regardless of its present area, be still subject to expropriation under section 4, article XIII." Finally, the Court explicitly abandoned the *Reyes* decision.

Thus, the inflexible land-size test remains. Recently, in *J. M. Tuazon v. Land Tenure Administration* (1970), an attempt was made to resurrect *Reyes* and to de-emphasize property right and to reject the land-size test in favor of the state's "quest for social justice and peace." Unfortunately, however, this latest decision, for procedural reasons, is inconclusive.

From the brief remarks I have made, it is evident that both legislators and judges have shown a history of reluctance to tamper with the traditional manner and size of land holdings. The tradition, it is evident, is deeply rooted at least in legislative-judicial circles. The proposed changes in the Constitution advocate a reversal of this tradition. What measure of success can the reformers expect? If radical constitutional changes are made, will these changes merely remain law for the lawyer or will they be law for the sociologist as well? Or, if no radical changes are made, what can Philippine society expect? These, I submit, are some of the questions we can discuss today.

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. . . . . but the importance may be relative!

It is commonly stated that clannishness, or kin-bias, is a basic and traditional quality of Philippine and southeast Asian societies. This fact is pointed out in innumerable monographs, with the result that the proposition appears to be beyond question. On the other hand, the successful introduction of productive industry and efficient government, to name only two institutional requirements of a modern state, seems to require the adoption of kin-bias, at least in the choice of many kinds of voluntary action partners. But if practical clannishness is indeed an ingrained value in the traditional system, then the transition to modernity so avidly sought by southeast Asian nations is bound to be an extremely difficult one. For not only will the tendency to kin-bias be there as a fact, but – given the manner in which it is currently described as traditional, as the old and honored way – any attempt to challenge it is bound to be branded as tantamount to treachery.

But let us suppose it can be shown that where kin-bias exists, its presence is to be explained less by the inherited inflexible rule that kinsmen come first, than by the more general law that one survives and prospers, materially and spiritually, by a life-long succession of beneficial alliances of more or less permanence, some given and early reinforced (like those with one's family of orientation), others made by one's own choice or that of another. Supposing, in other words, that most close kinsmen are prominent in the lives of people, especially in the rural areas, not because they are kinsmen but because they are close – for whatever reason – or because they happen to outnumber nonkinsmen in the immediate social world, and so must inevitably form a significant segment of any man's body of action partners. These suppositions, if realized, would lead to a new view of Philippine and southeast Asian social organization, one in which the making and unmaking of alliances might legitimately depend on many, many considerations in addition to closeness of kinship.

If such a system were indeed found to be characteristic of the societies with which we are concerned, it would follow that they are far more pre-adapted to modernity than we had realized, and that a conscious understanding and acceptance of the old way would be the best preparation for the new. To be truly modern would in this basic sense be one's best expression of national identity and pride. From Frank Lynch, "Notes on the Alliance Model of Social Organization" (Unpublished manuscript).