SOCIAL JUSTICE, THE URBAN POOR, AND THE 1987 CONSTITUTION

CHRISTOPHER A. TAN*

INTRODUCTION

Social justice creates controversy because it imputes fault where there was no consciousness of such. One of the basic notions of social justice is the insight that the problems of the oppressed are often caused not by the calculated actions of one person but by the unconscious habits of many. This structural concept of justice brings about controversy because it imputes injustice where there is no intent to be unfair, because it places value to acts and habits which are not widely perceived as involving moral choices, and finally, because it makes people, otherwise unrelated, responsible for each other's welfare and misery.

This radical understanding of justice is enshrined in Article XIII of the 1987 Constitution.

In 1969, Dean Pacifico Agabin of the U.P. College of Law, observed how judicial conservatism, under the veil of substantive due process, restrained for some time the widening application of the social justice provision in the Constitution of 1935.[1] Judging from the debates in the 1986 Constitutional Commission (ConCom) alone, one can only imagine the length of time it will take for Philippine society, particularly the Philippine judiciary, to realize the full implications of Article XIII.

Part of the reason for this lengthy reorientation are the constantly emerging legal conflicts resulting from efforts to modify existing laws according to the new shift in paradigm. Two of the sections of the social justice article which are already the source of considerable legal difficulty are the two sections dealing with the urban poor. Against a legal tradition

* *Juris Doctor* 1995, Ateneo de Manila University School of Law.

[1] Pacifico Agabin, *Laissez Faire and the Due Process Clause: How Economic Ideology Affects Constitutional Development*, 44 PHIL. L.J. 709 (1969).

which views the entire life of a squatter as "one long illegality,"[2] the 1987 Constitution asserted that the urban poor has the right to a decent home and the right to a lawful, just and humane eviction.[3] In 1992, this constitutional assertion was enacted by Republic Act (R.A.) No. 7279, the Urban Development and Housing Act (UDHA). One year later, however, a petition to the Supreme Court was filed by Gen. Levy Macasiano, as consultant of the Department of Public Works and Highways on Demolition, to declare, ironically, the very sections of the law which interpreted the constitutional right to a just and humane eviction, as unconstitutional.[4] Although dismissed by the Court on the ground of the petitioner's lack of standing, the petition nevertheless, signaled the continuing opposition to the advance of social justice.

I. TWO DISTINCT RIGHTS

Article I, Section 2 of R.A. No. 7279 provides that "It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program . . . which shall: uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services and employment opportunities . . ." This State policy, to which R.A. No. 7279 refers, finds its roots in Article XIII, Sections 9 and 10 of the 1987 Constitution. Article XIII, Sections 9 and 10 read:

> Section 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program, the State shall respect the rights of small property owners.
>
> Section 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

[2] SCOTT LECKIE, FROM HOUSING NEEDS TO HOUSING RIGHTS: AN ANALYSIS OF THE RIGHT TO ADEQUATE HOUSING UNDER INTERNATIONAL HUMAN RIGHTS LAW 34 (1992).

[3] PHILIPPINE CONST. art. XIII, sec. 9 & 10.

[4] *Macasiano v. NHA*, 224 SCRA 237 (1993).

> No resettlement of urban poor or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

These sections involve two distinct rights: the right to decent and affordable housing, found in Section 9 and the right to just and humane eviction, found in Section 10. In her sponsorship speech, Commissioner Nieva explained that these two provisions address the needs of more than 25 million Filipinos who do not enjoy the advantages of home and land ownership. She reminded the delegates that in the urban centers alone, five million squatters still live in subhuman conditions, despite the fact that the previous Constitution had already provided a section on homelessness. Illustrating the inadequacies of the previous implementing programs, she recounted the experiences of squatters who were relocated to undeveloped rural areas, and eventually returned to slums where they at least had work. Thus, Commissioner Nieva stressed that a housing program needs to provide not only land or housing but also complimentary infrastructure, neighborhood services and employment opportunities. She ended by drawing the delegates' attention to the problem of squatters who in the past were simply driven out of their dwellings like animals and advocated the need to protect them and to prohibit evictions and resettlements unless the occupants are first consulted.[5]

II. THE RIGHT TO DECENT AND AFFORDABLE HOUSING

In dealing with the right to decent and affordable housing, the Constitution mandates the State to undertake a continuing urban land reform and housing program. Thus, Section 9 outlines the two components of the solution to the problem of homelessness: land reform and social housing.[6]

A. Urban Land Reform

Commissioner Foz explained the five objectives of urban land reform:

> First, to liberate human communities from blight, congestions and hazards and to promote their development and modernization; second, to bring about the optimum use of land as a national resource for public welfare rather than as a commodity of trade subject to price speculation and indiscriminate use; third, to provide equitable access to and opportunity for the use and enjoyment of the fruits of the land; fourth, to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and, finally, to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.[7]

Later, Commissioner Tan articulated the fundamental reason for land reform in more terse and lucid terms when she said, " . . . if we say 'REFORM,' it means to say that the land had been used unjustly . . ."[8] Commissioner Villegas then explained how this injustice is intended to be undone:

> I think that it has to be clear that we are giving the state the authority to expropriate large urban tracts of land for redistribution to deserving citizens in the spirit of agrarian reform. So, I think the State cannot only expropriate large agricultural lands; it can also expropriate large urban lands for the common good.[9]

B. Social Housing

The term "social housing", on the other hand, was clarified also by Commissioner Villegas when he explained that there are three housing markets in urban centers: 1) open market housing, which is the type of housing that high-income and upper middle-income families can afford to buy at the cost determined purely by supply and demand; 2) economic housing, which is the type of housing affordable only if there is some subsidy from financial institutions like the Social Security System (SSS) and Government Service Insurance System (GSIS), and 3) social housing, which is the type of housing that can be made available to low-income families only, almost as a dole out. Commissioner Villegas said that the Constitution addresses the third type of market. He explains that social housing, which is sometimes called low-cost housing, really means "no-cost housing" because "the low-income families who are earning P2,000 a month, for example, can never afford even the lowest cost of housing that is made available."

Commissioner Monsod added, however, that although the cost of housing will require state subsidy, dole out should not be constitutionalized. He explained that what was intended was for the recipients to pay what

[5] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 607 (1986) [hereinafter cited as RECORD].

[6] *Id.* at 716.

[7] 3 RECORD 90.

[8] *Id.* at 91.

[9] *Id.*

they can afford, and for the state to make up the difference between actual and affordable cost.[10]

Finally, Commissioner Nieva added that the word "housing" would also now embrace the newer concept of developing sites and services. She cited a new and effective trend in giving shelter to the homeless, which was to simply provide sites and services and encourage the urban poor to build their own houses as their incomes increase.[11]

C. Private Sector Involvement

Another important aspect of Section 9 is the inclusion of the private sector in the attempt to find a solution to homelessness. After describing the magnitude of the housing problem, Commissioner Nieva declared that the "problem of making decent housing and services available cannot be done by government solely." She explained that the government's main job is to create opportunities by developing sites, services and improved infrastructure and that the matter of direct housing opportunities should be left to the private sector, which includes the people themselves, the different landowners, land developers, financing institutions. She therefore proposed that the phrase "IN COORDINATION WITH THE PRIVATE SECTOR" be inserted to make it clear that the intention "is not for the government alone to be responsible for answering and addressing this very serious problem of our urban poor dwellers in the country."[12]

Later, Commissioner Nolledo proposed the replacement of the word "coordination" with "cooperation" to emphasize this interdependence between the private and public sectors. He explained that "when we coordinate, we coordinate only efforts on the part of either side. But when we use "cooperation," then cooperation may include investments, efforts and other factors.[13]

D. Social, Economic and Cultural Rights

These lofty promises made by the Constitution should, however, be tempered by an understanding of the difference between the rights found

[10] 2 RECORD 716.

[11] *Id.* at 717.

[12] 3 RECORD 90.

[13] *Id.* at 92.

in the Bill of Rights and the "rights" based on Social Justice. In his book on the Constitution, Fr. Joaquin G. Bernas, S.J. writes that the distinction between civil and political rights in the Bill of Rights and social justice rights is that the civil and political rights are self-executory and can be readily asserted in courts, while social justice rights are not self-executory, and depend on legislation for their satisfaction.[14] This distinction, however, is inadequate in describing the essential difference between them. To say that social justice rights are not self-executory and require further legislation for their satisfaction, implies that once the implementing law is enacted, these rights will then be fulfilled. Such, unfortunately, is not the case. It has, in fact, been three years since R.A. No. 7279 was enacted to enforce the two rights granted to the urban poor, but to this day the poor's demand for housing has yet to be satisfied.

Commissioner Padilla was the first to notice this problem:

> MR. PADILLA. ... I notice in this Article on Social Justice the many duties of the State because practically every section begins with the phrase "The State shall." We are imposing many duties on the State. Likewise, we are granting additional rights. Is it the intention of the Committee to grant more rights in addition to those mentioned in the Bill of Rights?
>
> MS. NIEVA. Yes. Those mentioned in this Article on Social Justice cover the social and economic rights of the citizens — social, economic and cultural rights. Whereas the Bill of Rights more specifically refers to the political rights of the citizens, as well as their civil rights.[15]

Although Commissioner Nieva clearly asserted that the article on social justice provided rights in addition to those found in the Bill of Rights, it later became uncertain whether she used the term "right" in the same sense. Later in the discussion, Commissioner Delos Reyes recalled Commissioner Padilla's interpellation, and clarified that the question was whether a citizen can demand the satisfaction of these social rights in court. On this point, Commissioner Nieva's response was more tentative.

> MR. DELOS REYES. ... When one of the Commissioners interpellated a member of the Committee, he pointed out the use of the word "shall." For example, "The State shall undertake a genuine land reform"; "The State shall recognize the right of farmers." And his question was: Can the citizen, for example, sue the State if it fails or refuses to do what is mandated in

[14] 2 JOAQUIN BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 468-469 (1988).

[15] 2 RECORD 625.

these provisions? Then, a comparison was made between the Bill of Rights and the proposal on social justice. And the answer was that the Bill of Rights contains civil and political rights while the latter contains provisions to enhance the social and economic rights of the citizens.

In other words, the civil and political rights which are contained in the Bill of Rights are for the protection of the citizens against the encroachment and violation by the State of the right to due process and equal protection of the law. In short, the individuals exercise these rights as inalienable and being recognized as such by the State. The State cannot prevent the individuals from exercising said rights without violating the guarantees in the Bill of Rights.

The purpose of the Bill of Rights, therefore, is to protect and free the citizens from interference by the government. But the provisions in the Article on Social Justice strengthen social justice rights and the State is being mandated through its instrumentalities, like Congress passing the necessary laws to give real meaning and substance to the concept of social justice, not just a mere philosophical or rhetorical concept. Is my understanding of the provisions of the Article on Social Justice correct?

MS. NIEVA. Yes. Basically, I would say it is correct.[16]

It would seem, that when the Constitution granted social justice rights to the marginalized sectors, it did not impose upon the state a legally binding obligation to provide for the needs of the poor, rather it merely expressed an intention to carry out certain progressive policies. Thus, Fr. Bernas concludes that social justice rights are not rights "in the strict sense that the rights in the Bill of Rights are", rather they are "more in the nature of claims or demands which people expect the government to satisfy."[17]

But the question remains, "Is the right granted by the social justice article a right at all?" Perhaps, the writings of Scott Leckie, a researcher for the International Institute for Environment and Development, would allow us some understanding of the problem. Leckie notes that this dichotomy of rights solidified in 1952, when the United Nation General Assembly, upon the insistence of the United States and United Kingdom, decided to adopt the civil and political rights and social, economic and cultural rights, in two separate covenants, which in turn, used different

[16] *Id.* at 638.

[17] 2 BERNAS, *supra* note 14 at 469.

terminologies in formulating their obligatory provisions. While the Covenant on Civil and Political Rights, provided that states are "under an immediate obligation to comply with its provisions, undertaking 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant . . . '", under the Covenant on Economic, Social and Cultural Rights, states promised merely "to take steps, individually and through international cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures." Leckie points out that from these two provisions, certain assumptions have been made to clarify the distinction. One of which is that in realizing social justice rights, the state will have to take positive action, while the protection of the civil and political rights in the Bill of Rights requires only that the state abstain from acts interfering with those rights. Although Leckie eventually refutes this assumption as "resting more on ideological concerns than on the equality of rights", he admits that there are "certainly valid distinctions to be made between the various rights . . ." Unfortunately, however, he no longer discussed what these valid distinctions are.[18]

It is submitted that one distinction revolves around the question of who is responsible for fulfilling these rights. Although certain rights in the Bill of Rights, particularly those relating to self-organization, can result in burdening certain private citizens, it is widely accepted that these rights are directed against the government. They are limits on the exercise of governmental powers. On the other hand, states are beginning to see that the realization of social justice rights entails not only considerable expenditure of government funds but also, weighty impositions on private citizens. Social justice desires to change a system which it judges as inherently unjust for rendering a large portion of its members incapable of legally acquiring what they need to live a fully human life. The problem, however, is that the resources available to satisfy these needs are finite, and worse, mostly privately owned. This is why the operational word for social justice is redistribution.[19] Redistribution means that existing resources will be taken from one who has more than he needs and given to another who needs them more. Although the state is tasked with the duty to redistribute goods, it is the private individual, from whom the goods are taken, who will suffer the real burden.

[18] LECKIE, *supra* note 2 at 10-11.

[19] Although art. XIII, sec. 1 of the Constitution uses the less startling term "diffusing".

With a tinge of cynicism, one might now suspect that the questions concerning the existence of the social justice rights are mere diversions, raised to evade social justice's concurring responsibility. Although it can be said that the existence of civil and political rights is now widely unquestioned because their recognition requires basically, the mere curtailment of aggression, while social justice rights are continuously denied because they require seemingly unceasing generosity (thus the contention that the dichotomy of rights is simply but an ideological assertion), one must admit that making one's self responsible for providing the needs of another requires more than a mere recognition of one's inalienable freedom.

Here, we can begin to see the delicately paradoxical nature of social justice. Social justice is at once a legal demand and a moral supplication. Commissioner Garcia explained that the concept of social justice "involves a vision of man in society" and fundamental to this vision are "two notions which must be held in a sort of dynamic tension."

> First, man is a person with personal dignity and possessed of certain rights which the State did not confer and cannot take away. He can never illegitimately become simply the instrument of another man or of the State. Also, man has certain inalienable rights which are inherent to his dignity.
>
> Secondly — and this is very important — he is by nature a member of various communities. He is a member of the family; he can be a member of indigenous communities; he can be a member of a sector; and finally he is a member of a national and the world community. He needs these communities to achieve his full development as a person. The communities themselves are concerned about his welfare. And just as he receives from them, he is obliged to contribute to them. So, the definition that we originally agreed on in the Committee but which is not part of the Article is that social justice is a condition of the structures and institutions of society which reflect on the one hand the inherent dignity and inalienable rights of the person, and the obligation of the community to use the material wealth and political power at its disposal for the welfare of all its members, especially the poor and the weak; and on the other hand, the individual's obligation to the community and to the welfare of all its members.[20]

So, the acceptance of social justice requires a shift in the understanding of justice, from one based purely on the rights and freedom of the individual to one which recognizes the existence of others and the imperative of the common good.

[20] 2 RECORD 620.

But for some, one question still remains: "Why do we have to provide for another's needs?" Indeed, are we our brother's keeper? The answer, simply, is "no" — we do not have to be responsible for another — at least, not in an ontological sense. In describing the point of departure of social philosophy, Eduardo Calasanz, professor of philosophy at the Ateneo de Manila University, says that as free individuals we can always choose to not be responsible. Irresponsibility is always possible. Calasanz, however, adds that responsibility for another must be understood not as an ontological "not being able" but as an ethical "not being allowed". Responsibility for another is an ethical command. One that can be denied, but whose "very denial is what precisely constitutes evil and the malignancy of evil." It is a command, "but in commanding us, it does not constrain our freedom violently but awakens it to goodness and generosity."[21]

Although the matter of enforcement of social justice rights may simply rest on ideological considerations, any man, regardless of ideology, will admit that goodness and generosity, if they have to be legally obtained, cease to be such. In the beginning of the discussions on the article on social justice, Commissioner Braid reflected that there is a need to locate the concepts of social justice within a more comprehensive framework which "views rural transformation and the delivery of services side by side with the transformation in attitudes and the transformation of some of the values and philosophies of development."[22] In this light, it is no longer surprising that the word "love" found its way into the Constitution's preamble.

III. RIGHT TO LAWFUL, JUST AND HUMANE EVICTION

Section 10 deals with the right of urban and rural poor dwellers to be evicted in a lawful, just and humane manner. Although the provision also covers rural dwellers threatened by huge infrastructure projects,[23] much of the discussion revolved around the question of whether the terms "urban poor" refer to squatters. This reference was clarified at least three times[24] during the deliberations because of the persistent fear that squatting was being constitutionalized.[25]

[21] Eduardo Calasanz, *The Point of Departure of Social Philosophy* at 32, 33.

[22] 2 RECORD 615.

[23] 3 RECORD 95-96.

[24] 2 RECORD 624, 642 and 3 RECORD 93.

[25] 2 RECORD 624.

The confusion stems from the first draft of the provision which read: "Urban poor dwellers shall not be evicted nor their dwellings demolished without due process of law."[26] This phrasing led Commissioner Romulo to ask whether the Committee on Social Justice took into account "the fact that squatting has been declared as a nuisance *per se* and it is punishable under the Revised Penal Code . . . because what else does 'due process of law' mean assuming 'urban poor dwellers' refers to squatters?"[27] This problem was further complicated not only by the different meanings the differing Commissioners attached to the phrase "due process of law" (especially, during arguments between lawyer and non-lawyer-commissioners) but also by the different levels of meaning the phrase itself has even within a purely legal context. As will be seen, the phrase "due process of law" developed different meanings as the deliberations progressed.

A. Due Process as Just and Humane Treatment

Commissioner Monsod was the first to attempt to clarify the issue by making a distinction between the right to "due process" and the right to land. He said that the intent of the provision was "to avoid the abuses of the past where the military and police just go in, bulldoze the dwellings and beat the people up. We are not making a judgment as to the title to the property. We are just establishing a principle that due process must be observed."[28]

This initial definition of "due process" as "just and humane treatment" was amplified when Commissioner Tan later distinguished between a squatter who has a valid claim because he "has been there for 10 years, 20 years, 50 years, 60 years, and has been paying for the land but he just does not get it because of the bureaucracy and graft and corruption" and squatters who "just come one night and take over a piece of land."[29] Working on this distinction, Commissioner Romulo then suggested the right not to be evicted without due process of law be granted only to those squatters who have valid claims. But Commissioner Monsod disagreed and quickly pointed out that even squatters without valid claims are entitled to humane treatment:

[26] *Id.* at 605.

[27] *Id.* at 642.

[28] *Id.* at 625.

[29] *Id.* at 643.

> We realize that there are urban poor dwellers who may have a valid claim, but as what Commissioner Tan has mentioned yesterday, for some reason or another, they encounter red tape and all kinds of impediment that they cannot get titles to their land. In that case, it is quite clear that there is already an existing valid claim and, therefore, they have a right to receive title because they have been there for sometime. But there is another kind of urban poor dweller whom people call squatters, and under the law, they may even be considered a nuisance *per se*. And we want to address ourselves as well to this problem, that even when there is no apparent legal claim or right, these urban poor dwellers should be dealt with in a humane manner. In effect, we have two types of urban poor dwellers here -- those who may have a valid claim and those who may have no claim at all. One is subject to due process and the other, perhaps to a just and humane manner of relocation.[30]

To which Commissioner Romulo replied, "Yes, even violators and criminals are entitled to humane treatment."[31] Later Commissioner Brocka gave the reason why the right to be evicted humanely must be granted not only to squatters who do not have a valid claim over the land, but even to professional squatters:

> We are not here to find out, I think, in this particular section whether or not they are illegal or professional squatters. This particular section is premised on the fact that they are human beings and should be protected by law. They should not be driven away like animals, in the way the demolition of shanties was done in the past wherein a group of army or military or security guards would just come, without due process of law. In certain cases, some people have been killed. An example has already been cited in the case of the Tatalon Estate. The particular section is premised on the fact that squatters, whether they are there illegally or not, are human beings. It is not their fault that they are poor. Under the law, they should be protected. That particular protection is what we are asking under this section on social justice.[32]

Thus, part of the confusion was answered once it was clarified that the phrase "due process" was used to mean "just and humane eviction."

[30] *Id.* at 714.

[31] *Id.*

[32] 3 RECORD 95.

B. Due Process as the Need for Judicial Intervention

Eventually, however, the phrase "due process of law" was replaced with "in accordance with law"[33] in order to distinguish this time between "due process" in a judicial sense and the settled right to "just and humane eviction." This second level of confusion was first aired by Commissioner Sarmiento when he expressed his discomfort with the clarification earlier made by Commissioner Monsod:

> I have reservations with the comment of one of the members of the Committee that if one is an urban poor dweller with no legal claim, he should be evicted but do it in a humane or compassionate manner. I think that is not the concept of the rule of law. Whether one is an urban poor dweller with or without legal valid claim, still he should be respected; he should be given the due process of law. So, I humbly request that we maintain the same provision of Section 11, without amendments.[34]

Commissioner Sarmiento's comment was based on his earlier remarks commending the Committee for including in the provision the words "without due process of law." He there narrated his experiences with several urban poor cases he handled during the past administration where, according to him, the dwellers, after their houses were dismantled, were ejected on the basis "of mere clearances issued by the National Housing Authority and the City Engineer's Office." He also said that during that time, the strongest anti-squatting decree was issued, which "directed all local government officials to immediately apprehend all squatters and demolish the illegal constructions they had built on public and private lands and after the arrest and demolition, it was only then that they were prosecuted before the appropriate court."[35] Thus, despite the consensus on the right to a humane manner of eviction, Commissioner Sarmiento insisted on the need to clarify whether a court order is a constitutional requirement for any eviction. This same issue was later taken up by Commissioner De Castro, although from a seemingly opposite light:

> MR. DE CASTRO. Yes. So, the owner of the land on which they are squatting will have to go to court to evict them. Is that right under this provision?

[33] *Id.* at 93.

[34] 2 RECORD 715.

[35] *Id.* at 652.

> MS. NIEVA. Yes.
>
> MR. DE CASTRO. Suppose the poor owner does not have the means to go to court because litigation is costly, will he then have to live with the situation that what he owns he does not have? With the statement "urban poor dwellers shall not be evicted nor their dwellings demolished EXCEPT IN ACCORDANCE WITH LAW AND ALWAYS IN A JUST AND HUMANE MANNER," we are forcing the owner of the land to go to court, in accordance with law for eviction. If the owner has no money because court litigation is quite expensive, then we are liable to have a small landowner ending up without any land at all.[36]

To which Commissioner Regalado replied:

> MR. REGALADO. As we were saying, a professional squatter with no valid claim whatsoever can be considered a nuisance *per se*. And in the abatement of a nuisance *per se* as distinguished from nuisance *per accidens*, the owner does not have to go to court. He can report to the municipal authorities or he can seek the aid of the police authorities. If, on the other hand, it is a nuisance *per accidens* which requires a determination of facts, then that will be the time when judicial recourse will be necessary. Also, the owner himself, under the law on property, is entitled to use a reasonable force in defense of his property, whenever there is a clear, patent infringement upon his property rights. Now, this does not compel the owner to go to court. If it is a nuisance *per se*, all he has to do is to seek the help of the local authorities.[37]

Thus, according to Commissioner Regalado, ordinary squatters, who are nuisance *per accidens*, as opposed to professional squatters, who are nuisance *per se*, can only be evicted by court order, despite the undisputed illegality of their occupation. Commissioner De Castro, however, objected to this distinction saying, ". . . we are constitutionalizing here squatting whether it is professional squatters or just mere squatters. We have no reason to constitutionalize what is nuisance *per se* or what is nuisance *per accidens*,"[38] and recommended that the sentence be deleted. The Committee did not accept the recommended deletion. Commissioner Rama then asked to take a vote on the matter. The proposal lost with 1 vote in favor and 30 against.[39]

[36] 3 RECORD 94.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 95.

C. *Consultation*

The second paragraph of Section 10 prohibits the resettlement of urban and rural poor dwellers without adequate consultation with them and the communities to which they will be relocated. This provision is not only an extension or emphasis of the right to be evicted humanely. It is also an application of an earlier deleted phrase in Section 1 of the Article XIII on the promotion of "independent and self-reliant socio-political and economic structures . . ."[40] Although eventually deleted because of it was already deemed covered by "similar and perhaps broader provisions" in the Article on National Economy and Patrimony and in the sections on the Role and Rights of People's Organizations,[41] this phrase was intended to embody "a principle that encompasses all the specific provisions" in the Social Justice Article.[42] Commissioner Garcia explained the meaning of this phrase:

> To bring about social justice, it is not simply sufficient to try to reduce and to try to diffuse wealth and power. It is also important to create the structures that in themselves will enable and encourage people to create wealth to be able to make decisions. So this is what is in a sense the objective of this section, to create structures or political processes that will enable people to bring about changes by themselves or through their communal or collective efforts. The word "independent" here refers to the nation -- the nation to be independent as much as possible, and not to be subservient or not to be dependent on any other power, but on its efforts as a nation.[43]

When asked what concretely does the term "processes" mean, he answered that, "the processes which are referred to in a given society are those of participation and consultation, mechanisms whereby popular consultation is afforded so that people become part of decision mechanism, giving them a say in decisions which affect their lives."[44] Later on, he gave the examples of fishermen in Laguna Lake who should be consulted in the planning and implementation of development programs and of farmer and landowners who should be consulted on questions regarding land reform. He explained that the intent was to institutionalize a

[40] 2 RECORD 605.

[41] *Id.* at 744.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 668.

consultative process in order to combine the efforts of the government and the people, and thus bring about a social structure which promotes empowerment rather than dependence.[45]

In applying this principle to the problem of the urban poor, Commissioner Regalado proposed a system of dual consultation where not only the evicted dwellers will be consulted but the communities to which the urban poor will be transferred are also given a chance to explain whether their resources or situation would accommodate the evicted dwellers in the resettlement area and inform the government what possible situation awaits the transferees.[46]

Consultation of these two affected parties, however, does not mean approval. When pressed by Commissioner Sarmiento to retain the lines "and their involvement in its planning and implementation," Commissioner Bengzon warned that, "The situation we are really trying to avoid is that, if after all the planning which is done by the government in consultation with these people, they ultimately refuse to be resettled, then everything will have to go to waste."[47] Later, when asked by Commissioner Davide what would happen should the community to which the urban poor will be relocated reject the transfer, Commissioner Regalado explained that the people consulted "cannot reject or override a government policy . . ." such that if the other community rejects the transfer, the "government can still insist."[48]

IV. SQUATTING AS A SOCIAL PROBLEM

Perhaps the most often repeated question[49] during the deliberations was how the Constitution would affect existing laws on squatting, particularly the Anti-Squatting Law, Presidential Decree (P.D.) No. 772 and the Urban Land Reform Law, P.D. No. 1517. The focus on these two laws reveals the eclectic views of the ConCom. Though the continued validity of both decrees were questioned for being unjust, one can see that the

[45] *Id.* at 745.

[46] 3 RECORD 96-97.

[47] *Id.* at 93.

[48] *Id.* at 97.

[49] 2 RECORD 619, 627, 642, 652, 659-660, 672, 676, 715, 717.

ines of inquiry came from seemingly opposite perspectives. While Commissioner Davide asked for the repeal of P.D. No. 772 for criminalizing the nere act of occupying another's land and allowing demolitions without ourt order,[50] Commissioner Padilla asked that the phrase "Land Reform" ıe eliminated to avoid constitutionalizing P.D. No. 1517, which to him was ınconstitutional for being issued, not for the common good, but to ap-ıease a particular sector of society.[51] To these and other similar questions, he Committee could only say that the underlying principles of these laws vill be upheld,[52] however, their implementing decrees, should they be in-onsistent with the new Constitution, will be rendered invalid by a gen-:ral transitory provision,[53] and more pointedly, the responsibility of sort-ng out which particular law will be repealed, amended or maintained will ıe left to the Legislature.[54] However, Commissioner Aquino, in response o an earlier inquiry, articulated what the author thinks is one of the Constitution's most essential insights to the understanding of the prob-em of squatting. Commissioner Aquino said that this problem is "seen ıetter in the context of that premise that squatting is a social problem."[55] Thus, whether these present laws will be expressly repealed, amended or naintained, they must necessarily be interpreted in a new light because he basic problem which they address had been redefined.

A social problem, according to D. Stanley Eitzen, sociologist at the Colorado State University, is social not only in effect but more impor-antly, in origin. The source of social problems is the organization of soci-:ty, *i.e.*, the normal ways that the social institutions function to distribute goods and service, to allocate jobs, to make societal decisions, and to set aws and sanction their violators. This definition goes against the ten-lency to find the basis for social problems within "problem" persons, those lawed by personal defect, rather than in the organization of society. The mplication of this is that the solutions to social problems require not chang-ng "problem" people but changing the structure of society.[56] This is the eason why the problem of squatters is a matter of social justice.

Id. at 672-673.

Id. at 627, 715.

Id. at 660.

Id. at 676.

Id. at 660.

Id. at 642.

D. STANLEY EITZEN, SOCIETY'S PROBLEMS 1-2 (1989).

This is also the reason why the Constitution now refers to squatters as the urban poor. The phrase "urban poor" is not a euphemism. The Constitution provides an article on social justice and legislative representation for the marginalized sectors of society[57] because the delegates realized that massive poverty exists, in large part, because of the historical concentration of wealth.[58] It is to the genius of the new Constitution that it recognizes this profound connection between the plight of the poor and the status of the rich. The phrase "urban poor" is used because it reflects of a new understanding — one that teaches us that squatting is not just a problem of a deviant sector, but a problem which involves all, and for which all, in varying degrees, are responsible.

CONCLUSION

Despite the controversies generated by these two provisions, they add little to the plight of the urban poor in terms of actual, enforceable rights. The right to a lawful, just and humane eviction is no more than a particularization of the right to not be deprived of life and property without due process of law. The prior judicial determination of the legality of possession as a condition for an order of eviction has long been provided by the basic concept of procedural due process, and that the urban poor should be treated as people and not be driven away like animals should not even have to be mentioned in a constitution. The right to consultation, although intended to help establish structures for greater involvement in decision making, stops short of giving the urban poor the right to approve or disapprove of government policies. The right to decent and affordable housing, which the ConCom was careful not to equate with the right to land, is not a right that can be demanded in court, but a mere expectation from government.

There is actually, only one, truly innovative contribution of the Constitution, and that is to present injustice not as a merely personal act but as a pre-existing structure which necessitates a compassionate response. Although most societies have been contented in merely using the law to discourage unwanted behavior, our Constitution seems to insist in also being a pedagogical instrument. This may, ultimately, be a futile exercise, but without this belief in man's ability to intend the Other's good, the rule of law is reduced to tyranny.

---

[57] PHILIPPINE CONST. art. VI, sec. 5 (2).

[58] 2 RECORD 627.