PHILIPPINE EXPERIENCE IN JUDICIAL INDEPENDENCE: GENERAL CONTEXT AND SPECIFIC PROBLEMS

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BACKGROUND

The motive forces of Anglo-American jurisprudence that have forged the legal regulation of absolutist power are historically telescoped into the development of judicial independence in Philippine experience. More particularly, judicial independence has acquired a central role in Anglo-American constitutionalism, which in turn becomes the medium of its implantation in the Philippine legal system. It is in this setting that the insulation of the courts from power politics is perceived as a central element in the conception of the rule of law.

The rule of law in Philippine experience, as transmitted from Western constitutionalism, synthesizes not only the essence of a law-governed political community as a regime of rules prescribed by definite norm-creating processes and not by the arbitrary play of power politics; it is as well a framework of limited government as a safeguard against political power that knows no bounds.

The system of safeguards that historically consolidated on the theory of separation of powers organizes the judiciary into a highly differentiated category of State power. While the judiciary maintains itself in a delicate mechanism of checks and balances in relation to the executive and legislative departments of government, it becomes the fulcrum on which the separation of powers revolves, as outlined below.

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As thus historically conditioned, the Philippine Constitution is an architecture of State power, reflecting as it does the accumulated experience distilled into legal principles and constitutional precepts from English history of monarchical power and its subjugation by constitutionalism and as theoreticized through American jurisprudence. However, the evolution of the rule of law in Philippine context draws special historical complexion from the dialectics of struggle between Spanish absolutism and national self-determination, in broadly comparable terms as the American war of independence from British colonial rule.

The Constitution is a fundamental law by reason of the structures and channels by which it shapes and canalizes the juridical expression of political power. It is the foundation of the Philippine social and political order on account of its reduction of power into law. In this framework, the judiciary is integrally built into the constitutional triad of powers as co-equal with the executive and the legislature. But, as pointed out below, it acquires its reason for being by rising above this triadic structure of power. Thus, constitutionalism invests the judiciary with a special character to keep the dynamics of power within its legal boundaries. Like any formula born out of a historic dilemma of power in its social dynamics, it carries the essential virus of its limitations. The expansion of the judicial function beyond the traditionally recognized dimension may disturb the balance of power in the triadic structure and stretches those limitations into tension, making the judiciary vulnerable to a breakdown of confidence in the justice system it administers.

SOCIAL NATURE OF JUDICIAL FUNCTION AND POLITICAL POWER: A RATIONALE OF JUDICIAL INDEPENDENCE

Judicial authority is a category of State power but it implies supremacy in the distribution of powers. It is the interpreter of State power. In interpreting, it defines their scope and their propriety, it determines their legality. It is the function of the courts to put the executive and the legislative departments in their proper constitutional places. The judiciary itself is so often called to respond

to questions about its own authority. But it interprets its own power for itself the moment it is legislated on or set out in the Constitution.

The felicitous phrase of Justice Oliver Wendell Holmes embodies the core of judicial supremacy. "The Constitution is what the Supreme Court says it is."

The Constitution, it is true, is a statement of limitations upon State power. More than the allocation of powers for the administration of the State apparatus, however, these limitations embody the bulwark of the citizens' rights and liberties. In the constitutional context, the care and delicacy with which the definition of State powers are crafted is clearly in the service of human rights.

Starting from the Constitution as a testament of human rights, the fundamental law may justifiably be considered as a blueprint of national destiny, identifying as it does the ideals and aspirations of the nation through clearly articulated State policies. Whatever may be the desired angle of vision for a perspective of the Constitution, the fact remains that the full range of its coverage is addressed to the interpretative power of the courts. In a larger sense, judicial function does not only spell supremacy in the legal system; it assumes paramountcy in the social order.

The courts are the supreme interpreter of our lives. Justice Montemayor, in a concurring opinion in *Ocampo v. Secretary of Justice*[1] has given us a good grasp of the defining role of the judicial function in our social life, assuming some god-like qualities:

> To sit in judgment over your fellowmen, pass judgment upon their controversies involving their rights and fortunes, and in criminal cases determine their innocence or guilt, which decision directly affects their honor, even their lives, is no ordinary chore or business. It is a serious task, weighty and fraught with grave responsibility and of far-reaching effects, a task, earnest and solemn almost partaking of the divine.

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[1] G.R. No. 7910, January 18, 1955, 51 O.G. 181-182 (January, 1955).

A substantial part of judicial responsibility is engaged in confrontation with State power residing in the political organs of the government. The potential clash between judicial review and legislative or executive power is built into the conceptualization of the basic rights and liberties. "No law shall be passed abridging the freedom of speech, of expression, or of the press, or of the right of the people peaceably to assemble and petition the government for redress of grievances."[2] This constitutional mandate of freedoms encapsulizes a threat from legislative and executive power, which immediately entails as protection the application of judicial review over legislative-executive acts to strike them down as contrary to the Constitution in appropriate cases.[3] Still bearing the imprint of history in the making of constitutionalism against the arbitrary power of the monarchies, the entire bill of rights of the Constitution is conceived as an arena between State power and the rights of the people, in which the protection of judicial power independent of State mechanism becomes a conceptual component of the constitutionally-defined freedoms. Clearly in context, independence inheres in judicial function and, to be independent, courts must be supreme in their own sphere of constitutional duty.

The integral bond between supremacy and independence lies in the concept that the Supreme Court, as the highest tribunal of the land, must perforce be one of last resort. It is not amenable to a higher appeal, except perhaps to the Last Judgment.

Supremacy of the judiciary is the price the people pay for its independence. The people's stake in judicial independence lies beyond the independence of the courts *vis-a-vis* the executive and the legislative powers. Justice, which is the business of the courts, is a social demand and its administration underlies the relations among members of civil society. Conflicting individual and sectoral interests must find their way to the courts as the main mechanism for dispute resolution. In this light, judicial function moves into a larger frame

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[2] CONST., art. III, sec. 4.
[3] *See* CONST., art. VIII, sec. 5, par. (2)(a).

and becomes the medium for achieving social stability through justice under a rule of law.

Accordingly, it must be seen that the sources of pressures and threats to judicial independence ramifies into every conceivable partisan interest in justiciable conflicts. The courts in this regard have developed safeguards to the integrity of the judicial function by assuming certain "inherent powers." The courts, says the Supreme Court,

> have not only the power to maintain their life, but they also have the power to make their existence effective for the purposes for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of the Government. Courts have, therefore, inherent powers to preserve their integrity, maintain their dignity, to insure effectiveness in the administration of justice. This is clear; for if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins.[4]

MECHANICS OF JUDICIAL INDEPENDENCE

The basic element of judicial function or power is identified by the Constitution when it speaks of "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."[5] An established jurisprudence at the time the 1987 Constitution was promulgated has defined judicial power as "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights."[6]

Independence of the courts inheres in the nature of judicial power as thus constitutionally described. In criminal prosecutions at least, judicial independence converges with the constitutional

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[4] Borromeo v. Mariano, 41 Phil. 332 (1921).
[5] CONST., art. VIII, sec. 1, par. (2).
[6] Lopez v. Roxas, G.R. No. 25716, July 28, 1966, 17 SCRA 761 (1966).

requirement that the accused must "have a speedy, *impartial*, and public trial."[7] Thus, the Constitution is explicit in the guarantee of the right to an impartial tribunal, which spells independence of the court in dispensing individual justice. Impartiality is applied judicial independence.

Even without such textual specificity, the requirement is to be met as an integral part of due process under the Constitution, to be applied in all types of cases. "All suitors," the Supreme Court declares in *Luque v. Kayanan,*[8] "are entitled to nothing short of the cold neutrality of an independent, wholly free, disinterested and impartial tribunal." Bias on the part of the trial judge implies a disregard of this due process safeguard that can justify his disqualification as was done by the Supreme Court in *Mateo, Jr. v. Villaluz,*[9] *Ignacio v. Villaluz,*[10] and *People v. Opida.*[11]

To preclude extraneous, whimsical, or arbitrary considerations, it is required that courts must decide by reasoned methodology, which under the Constitution must express clearly and distinctly the facts and the law on which it is based.[12] What the Supreme Court has referred to as "the mental process from which the [c]ourt draws the

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[7] CONST., art. III, sec. 14, par. (2). Emphasis added. The full text of this provision reads:

> "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusations against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

[8] G.R. No. 26826, August 29, 1969, 29 SCRA 178 (1969).

[9] G.R. No. 34756-59, March 31, 1973, 50 SCRA 18 (1973).

[10] G.R. No. 37527-52, May 5, 1979, 90 SCRA 16 (1979).

[11] G.R. No. 46272, June 13, 1986, 142 SCRA 295 (1986).

[12] *See* CONST., art. VIII, sec. 14.

essential ultimate facts,"[13] as the basis for the application of law, puts impartiality to a test the court must pass.

In the Supreme Court and in all inferior collegiate courts, the number of members taking part in the deliberations on a case may affect the strength of the Court's decision or its procedure (either decision by division or *en banc*).[14] It makes for stricter accountability in individual voting and for safeguarding the integrity of the decision-making process for each member not taking part in the deliberations, abstaining or dissenting, to require an explanation therefor, as the present Constitution does.[15] The two previous Constitutions required only a statement of reason for a dissent from a decision.[16]

In the appointment process, judicial independence has considerably minimized vulnerabilities to power politics. Three inter-related lines of change have reinforced independence of the judiciary under the existing Constitution:

(a) A system of control over the discretion of the President as appointing power;

(b) Elimination of legislative power as a decisive factor in appointments to the Supreme Court and of all judges of inferior courts; and

(c) Greater control by the Supreme Court over the system of judicial appointment.

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[13] *See* Air France v. Carrascoso, G.R. No. 21438, September 28, 1966, 18 SCRA 158 (1966).

[14] For example, under Article VIII, Section 4(2) of the Constitution, in cases involving constitutionality issues, the majority vote required *en banc* is based on "the Members who actually took part in the deliberations on the issues." Under Section 4(c) of the same Article, the number of Members not taking part may determine whether the decision be made by division or *en banc*.

[15] *See* CONST., art. VIII, sec. 13.

[16] *See* CONST. (1973), art. X, sec. 8 and CONST. (1935), art. VIII, sec. 11.

Under the present Constitution, the President can only make appointment to the Supreme Court and of all judges of lower courts from a list of at least three nominees prepared by a new constitutional body, the Judicial and Bar Council,[17] in which the executive and the legislative departments have only one *ex officio* representative each.[18] (But under Article VIII, Section 8(2) of the Constitution, Presidential influence may also operate through the appointment of the Council's regular members, subject to confirmation by the Commission on Appointments.)[19]

The Chief Justice of the Supreme Court presides over the Council as *ex officio* chairman.[20] The Supreme Court provides appropriation for the Council in its annual budget and determines the emoluments of its regular members, namely, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector.[21]

The 1935 Constitution required that appointment to the Supreme Court and of all judges of inferior courts be with the consent of the Commission on Appointments, composed of 12 members of the Senate and 12 members of the House of Representatives.[22] The present Constitution has eliminated the requirement of consent or confirmation of the said Commission. Article VIII, Section 9 is explicit: "Such appointments need no confirmation."

Constitutional safeguards ensure security of tenure for members of the judiciary. As in previous Constitutions, the present fundamental law mandates that members of the Supreme Court as well as all judges of inferior courts "shall hold office during good behavior until they reach the age of seventy years or become

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[17] CONST., art. VIII, sec. 9.
[18] *See* CONST., art. VIII, sec. 8, par. (1).
[19] *See* CONST., art. VIII, sec. 8, par. (2).
[20] CONST., art. VIII, sec. 8, par. (1).
[21] *See* CONST., art. VIII, sec. 8, par. (1) and (4).
[22] CONST. (1935), art. VIII, sec. 5.

incapacitated to discharge the duties of their office."[23] To be sure if "good behavior" or incapacity becomes an issue, the Supreme Court alone will be the best judge of the matter. With regard to the members of the Supreme Court themselves, "good behavior" can only be put to question through impeachment on grounds specified for the purpose by the Constitution.[24]

Moreover, the Constitution inhibits Congress from passing a law reorganizing the judiciary in the manner that undermines the security of tenure of its members.[25] How a law is to be interpreted in this context is left to the courts to determine and finally to the Supreme Court's power to interpret the Constitution.

Constitutional protection of judicial independence includes the prohibition against diminution of the salary of justices and judges as fixed by law, during their continuance in office.[26]

The entire judiciary is placed by the Constitution under the administrative supervision of the Supreme Court.[27] Accordingly, the highest tribunal has the exclusive power to discipline judges of the lower courts, and to appoint all officials and employees of the judicial department.[28] The judiciary's fiscal autonomy is assured. Its appropriations for the previous year cannot be reduced by Congress and the Executive is under duty to release the appropriations automatically and regularly.[29]

Judicial independence in Philippine experience deserves a more comprehensive and deeper analysis. But the foregoing attempt to trace its contours will suffice to show that few constitutional

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[23] CONST., art. VIII, sec. 11; CONST. (1973), art. X, sec. 7; CONST. (1935), art. VIII, sec. 9.
[24] *See* CONST., art. XI, sec. 2.
[25] CONST., art. VIII, sec. 2.
[26] *See* CONST., art. VIII, sec. 10; CONST. (1973), art. X, sec. 10; CONST. (1935), art. VIII, sec. 9.
[27] CONST., art. VIII, sec. 6.
[28] CONST., art. VIII, sec. 5, par. (6).
[29] CONST., art. VIII, sec. 3.

systems in the world, if ever, could match the elaborate mechanism instituted in the Philippine Constitution and the laws for its protection and preservation.

The protective system of judicial independence may be in place, but it becomes a source of frustration out of an unfulfilled promise, if the people do not see its connection to justice as a living reality in their lives as dispensed by judges held beyond reproach in terms of moral character and quality of mind.

There should be no illusion, therefore, that independence as one element can make for the entire justice system. It is one significant building block on which we can construct the edifice of social justice as we gather together the other materials out of human qualities that strike Justice Montemayor as "almost partaking of the divine."

THE PRICE OF JUDICIAL INDEPENDENCE

To what extent must judicial independence be enforced by the courts through the exercise of "inherent powers," even in collision with the freedom of speech and of the press? How are these powers derived and by what rules proceeding from sources external to the courts themselves is their application to be controlled? On the theory that there is no power that is not susceptible to abuse, who will contain the excesses or govern the unreasonableness of their exercise?

The problem, it may be observed, is far from judicial absolutism. But the perils of unbounded discretion in the absence of external control do not lie so much in the possibility that each moment of its application will take the extreme end, as in the fact that it is the author of discretionary power that determines for himself and for the community the boundaries of that power.

The courts have established the view that the demands of justice and the necessity for maintaining their integrity operate as a restriction to the freedom of the press and of speech. Hence, any criticism or publication which tends, directly or indirectly, to impede

or degrade the administration of justice is judicially censurable and the offender can be subjected to criminal contempt. The objective effect becomes a limitation to freedom, but to the courts, justice requires that they take measures "to preserve their integrity, and render possible and facilitate the exercise of their functions."[30]

Justice Felix Frankfurter of the U.S. Supreme Court had occasion to point out that –

> The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring their independence is a free press.[31]

In which case, freedom emerges as a predicament which is placed in the hands of the judges to resolve for themselves and for the community.

The powers which the Constitution allocates to Congress constitute the core of republicanism. Whatever might be the deficiencies of representation between the people and the legislators, the principle of responsibility and accountability is well-defined as a constitutional imperative. When the courts therefore strike down and annul a law enacted by the mechanism of democratic representation, judicial independence becomes as well a protective accessory for the reversal of the people's will accomplished with finality by an unreviewable judicial power which is not directly accountable to the people. In confrontation with the power of judicial review, republicanism becomes a dilemma.

Independence stands the danger of becoming isolationism. The courts are accorded the fullest freedom to decide as their conscience dictate, but who must bear — or suffer — the consequences of their wisdom?

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[30] *See* In re Parazo, G.R. No. 120348, December 3, 1948, 45 O.G. 4382 (October, 1949).

[31] Pennekamp v. Florida, 328 U.S. 356 (1946) (Frankfurter, J.. concurring).

The judiciary may become too independent for its own good, unmindful of the sense of justice — and morality — of the community from which it derives its reason for being.