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# THE JUDICIARY UNDER OUR CONSTITUTION *

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I shall discuss a subject which, I presume, is nearest your heart. I refer to the Judiciary as provided in the Constitution of the Philippines. I say that this subject is nearest your heart because, as prospective lawyers and practitioners, you will be interested in knowing the organization of that major department of the Government of the Commonwealth with which you shall have continuous contact or to which you, or a great portion of you, may sometime belong. * * *

The only court strictly constitutional is the Supreme Court, composed of a Chief Justice and ten associate justices, who may sit either in banc or in two divisions, unless otherwise provided by law. At present, our Supreme Court is likewise composed of one Chief Justice and ten associate justices, who may sit in banc or in division of five or of three justices. The primary purpose of allowing our present Supreme Court to sit in divisions of three justices is evidently to enable it to easily dispose of those cases which may clog its calendar; i.e., those cases where the amount involved is not more than ten thousand pesos or in which the penalty imposed by the Lower Court does not exceed ten years of imprisonment or ten thousand pesos fine. In other words, under our present law, the decision penned by a justice with the concurrence of the other two of his division is sufficient. The scheme truly meets the end for which it was conceived or thought out. This system considers as of small importance those cases handled by a Division of Three.

Naturally, if without any serious protest we can stoically hear of sentences for 64 or more years of imprisonment metted for petty embezzlements or thefts, a sentence for ten years' imprisonment may probably be considered as an ordinary and common occurrence. It is to be observed however that ten years in a man's life are worth as much as the rest of his natural

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life. The Russian Soviets, considered until lately to be the most retrograde people in Europe, had to be the ones to call the attention of the scientific world to the fact that ten years is a sufficiently long period during which anyone should expect to reform a criminal by way of imprisonment. This was so provided in their Penal Code of 1926, as amended in 1930. In a Christian and civilized country like ours, which we are so proud to advertise on all occasions, an imprisonment for ten years cannot possibly be a thing of minor consequence!

Our attitude regarding civil cases and fines amounting to ₱10,000.00 can not be different. This amount would be insignificant in a nation teeming with millionaires, but in a country like ours, where only a very few (limited number have ₱10,000.00 ready and at hand, a cash amount of that quantity is a veritable fortune. This is more than true during this critical period.

These methods of passing judgment seem to be repugnant to the purposes of the creation of the Supreme Court itself. They defeat the objective of the law-maker in creating a corporate court in which the joint training, learning, and experience of its several members are supposed to be utilized in the disposition of its business.

You may ask how the Supreme Court, under the Commonwealth government, could cope with the work entrusted to it, knowing as we do that even under the actual system, whereby it is allowed to decide cases by Division of Three, it could hardly dispose of cases in its calendar. There is a justification for this doubt.

A little comparison will illustrate the point. The Federal Supreme Court is composed of nine members. In 1932, it decided 213 cases on the merits and 543 applications for certiorari, or a total of 756 cases; in 1933, it decided 248 cases on the merits and 632 applications for certiorari or a total of 880 cases.

On the other hand, our Supreme Court in 1930 decided 1120 civil cases and 660 criminal cases or a total of 1,780 cases. In 1931, 1,132 civil cases and 780 criminal cases or a total of 1,912, were registered; however, only 1,056 civil cases and 659 criminal cases or a total of 1,715 cases, were disposed of. In 1932, 1,350 civil cases and 740 criminal cases or a total of 2,090 were registered; out of these only 1,153 civil cases and 711 criminal cases or a total of 1,864 cases, were disposed of. In 1933, the dockets of the Supreme Court show the registration of 1,451 civil cases and 773 criminal cases or a total of 2,224; the court disposed of 1,535 civil cases and 855 criminal cases or a total

of 2,390 cases. In 1934, our Supreme Court's dockets show that 1903 cases were registered, in addition to 1524 cases pending at the beginning of the year; it disposed of 2,316 cases, 1784 by decision and 532 by resolution. The records also show that 88 civil cases and 23 criminal cases or a total of 111 were decided *in banc;* 330 civil cases and 146 criminal cases, or a total of 476, were in division of 5, and 820 civil cases and 377 criminal cases, or a total of 1197, in division of 3. All in all, 1611 civil cases and 705 criminal cases were disposed of.

Taking together the five years abovementioned, from 1930 to 1934, we have a yearly average of 188 cases decided by each and everyone of the eleven members composing our Supreme Court. In 1933, there is an average of 217 decisions penned by each and every member, and in 1934, an average of 210 by every one, supposing that all worked equally.

Compare this with that of the Federal Supreme Court in which during the two periods I just mentioned each justice had a yearly average of twenty five decisions and sixty five resolutions.

To meet this situation and to pave the way for either the creation of Intermediate Courts of Appeals or the reorganization of the courts of first instance into collegiate tribunals, composed of three members each, or any other possible plan of diminishing the work of the Supreme Court, the Constitution has delimited its strict original and appellate jurisdiction (of the Supreme Court, in Section 2 of Article VIII,) of which it could not be deprived at all. I refer to the original jurisdiction over cases affecting ambassadors, other public ministers and consuls, which would be of rare application, and to the appellate jurisdiction, either compulsory or discretionary, as the law and rules of courts may provide, in all cases involving the constitutionality of a treaty, law, ordinance or executive order, legality of a tax, impost, assessment or toll, jurisdiction of any trial court, in criminal cases in which the penalty imposed is death or life imprisonment and cases in which an error or question of law is involved.

Naturally, in the meantime that the National Assembly does not provide otherwise, the Supreme Court shall retain and exercise its present jurisdiction.

Foreseeing the creation of Intermediate Courts of Appeals or the limitation of the jurisdiction of the Supreme Court to its minimum, the National Assembly (has been empowered to reduce the number of its members; in other words, the National

Assembly) may reduce the membership of such Court to nine or seven members; of course, under the same power, such number could be increased to allow the Supreme Court to decide its cases properly, should no Intermediate Courts of Appeals be created nor a satisfactory reorganization effected.

The members of the Supreme Court and all judges of the inferior courts shall be appointed by the President with the consent of the Commission on Appointments of the National Assembly. This power of confirmation was considered to be unavoidable to maintain the essential checks and balances of government. It was considered undemocratic to entrust the appointment of judges of inferior courts to the Supreme Court or the appointment of both justices and judges to the President exclusively.

But the danger of political patronage, against which we have been protesting in the past, has not been entirely eliminated. Under the Constitution, the National Assembly shall have the power to define, prescribe and apportion the jurisdiction of the various courts; in other words, the National Assembly may at any time reorganize such courts even after the original organization contemplated under the Constitution. In such a case, judges may be compelled to solicit political favor in order to maintain themselves in their positions. True, they may hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office; but what would happen if, in the reorganization of such inferior courts, the tribunals presided by the politically recalcitrant judges are eliminated? Could you imagine a judge without a court?

In the matter of qualifications, we all know that the Constitution requires that a member of the judiciary must in all cases be a citizen of the Philippines and in cases of members of the Supreme Court, must for ten years or more have been a judge of a court of record or engaged in the practice of law in the Philippines; and with respect to inferior judges, must have been admitted to the practice of law in the Philippines.

However, under the Tydings-McDuffie Law and the appendix to the Constitution, citizens of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens thereof. Does this mean that Americans are also eligible as justices and judges? There are those who make a distinction between strictly civil rights and political privileges.

On the other hand, under one of the transitory provisions all officers whose appointments are vested in the President shall vacate their respective offices upon the appointment and qualification of their successors, if such appointment is submitted within a period of one year from the date of the inauguration of the Commonwealth.

Suppose a case in which the President does not appoint a successor to a justice of the peace who, at the time of the inauguration of the Commonwealth was not an admitted member of the bar of the Philippines. The situation would evidently be anomalous and apparently without any remedy because no courts of justice will ever entertain any action against the President to compel him to appoint a successor for such justice of the peace who does not have the qualifications prescribed by the Constitution. This question merits a more careful consideration but I may suggest that such justice of the peace could be ousted from office by quo warranto proceedings. If the office is vacated the President would have no other alternative but to appoint a successor, thereto.

I desire to briefly call your attention to another departure from the actual system. Under the Constitution of the Philippines, all cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court in banc and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all members of the court. This is a partial curtailment of the admitted power of our Supreme Court to interpret, the Constitution and dissipates the occurrence of the so-called and much discussed five to four decisions, six to five in our jurisdiction,—which had been famous in the history of the United States and of the Philippines, including the well-known Board of Control cases under the Wood régime.

Before leaving out the Supreme Court I wish to invite your attention to another innovation, the importance of which cannot be ignored. Under the actual rules and practice of the Supreme Court, when a case is called in the calendar the same is assigned by the Chief Justice to a member of the court, who pens the decision and submits it for the concurrence of the other members of the division to which the case pertains or to all the other members if the case is in banc. Considering the fact that, under the former computation I gave to you, in 1934 each member of the Supreme Court had to decide as *ponente* an average of two hundred ten cases, yearly, aside from their necessary concur-

rence in other decisions to promulgate them validly, you can easily imagine how these cases are really and in effect decided.

Under the Constitution, however, it has been expressly provided that the conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a justice for the writing of the opinion of the Court. This in a way furnishes an assurance that the members of the court in banc or of the corresponding division as the case may be will individually study the case submitted, because otherwise they would not be able to arrive at a conclusion; the *ponente* would be merely the voice of the conclusion reached at that session.

But before closing I desire to invite your particular attention to the rule-making power of the Supreme Court, one of the most sweeping innovations, under which said Court shall have the power to promulgate rules relating to pleading, practice and procedure in the courts and to the admission to the practice of law. Under this power, the Supreme Court may revolutionize the whole adjective law which had been considered defective, and do away or minimize the dilatory tactics and other improper practices that oftentimes have meant waste of money, energy and time on the part of litigants, to the detriment of a speedy and satisfactory administration of justice.

Prominent American authorities who have commented on similar provisions have gone to the extent of affirming that under the rule making power the court could even change the rules of evidence. Anyway this measure would require more time than what I have left for a more conscientious discussion.

It is to be noted, however, that this power is not absolute, inasmuch as the National Assembly, like the British Parliament, shall have the power to repeal or supplement such rules.

It is high time for each and everyone of us to study individually these different problems and join our efforts to obtain an efficient and speedy administration of justice, which after all should be the aim not only of all law-abiding citizens but particularly of the law practitioners.