ABOLITION OF INFERIOR COURTS: A LIMITATION ON JUDICIAL TENURE? *

The assertion that the independence of the judiciary is the means provided for maintaining the supremacy of the Constitution[1] is beyond question. Judicial independence means that the judiciary is "independent in the performance of its functions, undeterred by any consideration, free from politics, indifferent to popularity, and unafraid of criticism in the accomplishment of its sworn duty as it sees it and understand it."[2] This does not exist for judges alone but also for the litigants and the general public.[3] So necessary is the preservation of this principle to the present form of our government[4] that our Supreme Court has, on many occasions, seen to it that there is adherence to a free and independent judiciary.[5] The Constitution itself provides for

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* The term *inferior courts*—consisting of the present Court of Appeals, Courts of First Instance, Justices of the Peace Courts, and Municipal Courts—is used with particularity because the discussion that follows does not aim to include an investigation of the authority or lack of authority of the Congress of the Philippines to abolish *positions* in the Supreme Court by reducing the number of Justices therein, as was done by Com. Act No. 259, April 7, 1938 (now repealed). The affirmative recognition given by the Supreme Court itself to the legality of said Act in the case of *National City Bank v. Cu Unjieng*, G.R. Nos. 41927-29, Dec. 29, 1936 (unrep. dec.) is discussed in SINCO, PHILIPPINE POLITICAL LAW 319 (10th ed., 1954).

The discussion likewise evades any inquiry as to the constitutionality of Rep. Act No. 1186, sec. 3, par. 2 (June 20, 1954), abolishing the *positions* of thirty-three auxiliary judges (composed of eighteen judges-at-large and fifteen cadastral judges), a question which is at present pending resolution before the Supreme Court (*Ocampo et al. v. Solicitor General*, G. R. No. L-7910) upon petition of ten of the thirty-three judges adversely affected by said Act.

It is meta to point out at the outset that abolition of inferior courts in particular provinces may be effected through the territorial reorganization of judicial districts. This being so, the discussion of abolition of inferior courts is meant to include judicial reorganization in so far as the latter may result, in one way or another, the abolition of inferior courts.

[1] *Riley v. Carter*, 165 Okla. 262, 25 P. ed 666, 88 A.L.R. 1018, 1024 (1933).

[2] *People v. Vera*, 65 Phil. 56, 96 (1937).

[3] II TAÑADA AND FERNANDO, CONSTITUTION OF THE PHILIPPINES, 1073 (4th ed. 1953).

[4] See *Province of Tarlac v. Gale*, 26 Phil. 338, 348 (1937).

[5] Thus, the well-established doctrine that the legislature has no power to establish rules which operate to deprive the courts of their constitutional authority to exercise their judicial functions was reiterated in *Ocampo v. Cabangis*, 15 Phil. 626 (1910); the principle that judges are not civilly liable for acts committed in the exercise of judicial functions was announced in *Alzua v. Johnson*, 21 Phil. 308 (1912), *aff'd*, 231 U.S. 106, 34 Sup. Ct. 27, 58 L. Ed. 142 (1913), 42 Phil. 480 (1913); the arbitrary transfer of a district judge to another district by the Sec. of Justice without the former's consent was deplored in *Borromeo v. Mariano*, 41 Phil. 327 (1921); the exchange of judicial districts among judges of first instance having the same salaries by lottery under Act No. 2841 was declared illegal in *Concepcion v. Paredes*, 42 Phil. 599 (1921); the legislature was held to be without power to prevent a court from exercising its constitutional jurisdiction during the lawful sessions of the court in the case of *Fuentes v. Director of Prisons*, 46 Phil. 22 (1924); that sec. 14, Com.

several guarantees designed to maintain that independence.[6]

The security of judicial tenure is recognized as one of the means by which judicial independence is fortified. When the framers of the Constitution provided in Section 9 of Article VIII that—

> "The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office".

it was with the aim in view of securing the tenure of judges. They were aware that if the supremacy of the Constitution was to be maintained, the judiciary must remain independent. Judicial independence can be maintained only if judges are secure in their offices. There was a unanimous sentiment in the Constitutional Convention that a long tenure of office of judges would help maintain judicial independence.[7] The late Justice Perfecto, himself a member of the Convention, in explaining the *rationale* behind the provision for security of tenure judges in the case of *Summers v. Ozaeta*[8] stated:

> "The provision is founded on the age-long conviction that judicial inmovability or permanent tenure of office for judges is an indispensable condition to keep judicial independence, the cornerstone of systems of administration capable of rendering true justice, without fear or favor.
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> "There is perhaps no other government position wherein there is more demand for equanimity, prudence, fortitude, and courage, than that of a judge. He is to be impartial. He has to administer justice without fear or favor. He cannot betray his duties to please his friends or take revenge against or surrender to his enemies.
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> "...More often than not, he (the judge) will have to decide against the powerful in government, in the world of finance, in the industrial field, in religion, in politics, in labor, in the army, in other bodies, or any other cross-section. He must have to muster the necessary courage never to shirk his responsibility under any circumstance against odds, regardless of who are the parties affected favorably or unfavorably. To have him perform his official functions, which may affect all the rights of human beings, their life or death, their happiness or doom, it has been thought wise to guarantee for him a permanent tenure of office, so as to preclude the possibility of compelling him to bargain for his continuance in office..."

Act No. 682 (otherwise known as the People's Court Act) was declared unconstitutional as it provided for a new qualification of members of the Supreme Court in addition to those already provided for in Art. VIII, sec. 6, of the Constitution, *Vargas v. Villorara*, 45 O.G. No. 9, 3847 (1948); and the undiminishable character of judicial salaries as guaranteed by Art. VIII, sec. 9, was zealously asserted in *Perfecto v. Meer*, G.R. No. L-2348, Feb. 27, 1950 and in *Endencia v. David*, G.R. Nos. L-6355-56, Aug. 31, 1953.

[6] The Congress of the Philippines has no power to deprive the Supreme Court of its jurisdiction over certain specified cases (Art. VIII, sec. 2); no district judge may be transferred to another district without the approval of the Supreme Court (*id.*, sec. 7); justices and judges hold office during good behavior, until seventy years of age, or become incapacitated to discharge the duties of their office, and their salaries cannot be diminished during continuance in office (*id.*, sec. 9).

[7] I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 483 (1936).

[8] 46 O.G. No. 2, 416 (1948) (dissenting opinion).

In spite of the above provision which guarantees the security of judicial tenure, there are two provisions in the Constitution which seem to give Congress the power to establish and abolish inferior courts.[9]

Taking these provisions together—that which guarantees security of tenure of judges and those empowering Congress to establish and abolish inferior courts—the following questions become important: Has Congress really the power to abolish inferior courts, Section 9 of Article VIII notwithstanding? If it has, from where is the power derived? Does that power have to exist? And, if Congress can abolish courts and thereby terminate the tenure of the incumbent judge or judges, is the provision on security of judicial tenure rendered idle and nugatory?

Dean Sinco, a recognized authority in Political Law, aptly observes that the provisions of our Constitution on the Judiciary possess an indefiniteness which has caused a certain amount of difficulty and even equivocation in their interpretation, and that some of the provisions are uncertain in expressing the precise purpose and intent of their framers.[10] In the *Zandueta v. de la Costa* case,[11] where the constitutionality of an act[12] of the first National Assembly, reorganizing the judicial districts, was assailed as prejudicial to judicial tenure, Justice Laurel, in his concurring opinion, approached the problem with the same view, and thought he had to lay down his "fundamental proposition" that "the legislature may abolish courts inferior to the Supreme Court and thereby may reorganize them territorially or otherwise. . . ."[13]

In the light of Justice Perfecto's statement in the *Summers* case, is the constitutional provision on security of judicial tenure to be construed as depriving Congress of the power to abolish courts? The seeming conflict between the afore-mentioned constitutional provisions necessitates their proper interpretation andor construction, to the end that they be harmonized where possible.[14]

As a rule, a construction which would render any provision of the Constitution meaningless and inoperative should be avoided.[15] Recourse to the whole instrument, if necessary, should be adopted to ascertain the true intent and meaning of any particular provision. No one provision

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[9] Art. VIII, sec. 1 provides that "The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law." Section 2 gives Congress the "power to define, prescribe, and apportion the jurisdiction of the various courts..." with the limitation that Congress may not deprive the Supreme Court of its jurisdiction over certain cases enumerated thereunder.

[10] SINCO, PHILIPPINE POLITICAL LAW, 313 (10th ed. 1954).

[11] 66 Phil. 615 (1938).

[12] Com. Act No. 145, Nov. 7, 1936.

[13] See note 11, *supra*, 66 Phil. at 626.

[14] *People* ex rel. *Balcom v. Mosher*, 163 N.Y. 321, 57 N.E. 86, 88 (1900); *Hammond v. Clark*, 136 Ga. 313, 71 S.E. 479, 486 (1911).

[15] See *People* ex rel. *Balcom v. Mosher, supra; Hammond v. Clark, supra; Blockroch Copper Min. & Mill Co. v. Tingey*, 34 Utah 369, 98 Pac. 180, 183 (1908); *State v. Atlantic Coast Line R.R.*, 56 Fla. 617, 47 So. 969, 976 (1908).

of the Constitution is to be segregated from others, but that all the provisions bearing upon a particular subject are to be brought into view and so interpreted as to effectuate the great purposes of the instrument.[16]

It is submitted that there is no conflict between the security of tenure of judges guaranteed by the Constitution and the power of Congress to establish and abolish courts. We adopt the view that a judge's right to his full term, until he reaches the age of seventy, is not dependent alone upon his good behavior and capacity to discharge the duties of his office, but also upon the contingency that the legislature may, for the public good, in ordaining and establishing courts, from time to time, consider his office unnecessary and abolish it.[17] This view does not render Section 9 of Article VIII of the Constitution idle and nugatory.

In providing that the "Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law,"[18] the Convention unanimously agreed upon the establishment of only one *constitutional* court, *i. e.*, the Supreme Court.[19] The first report[20] submitted by the committee on judicial power to the President of the Convention recommended that the "Judicial power in the Philippines shall be vested in the Supreme Court, in District Courts, in Municipal Courts, and in such other courts, inferior to the Supreme Court, which may hereafter be established by law." This report was later revised and submitted along with the memorandum in defense of the committee report. Under its revised form, the proposed provision read:

> "Art. 1. The judicial power shall be vested in one Supreme Court, in District Courts, in Municipal Courts, and in such other courts inferior to the Supreme Court which may hereafter be established by law.
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> "Where the public interests so require, the National Assembly may abolish the Municipal Courts and confer their jurisdiction to the District Courts or establish in lieu of the Municipal Courts such Courts or system of Courts which shall exercise the jurisdiction that the Constitution hereby confers upon the Municipal Courts."[21]

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[16] See *South Dakota v. North Carolina*, 192 U.S. 286, 322, 24 Sup. Ct. 269, 280, 48 L. Ed. 448, 462 (1904) (dissenting opinion). Also *Cohen v. Virginia*, 6 Wheat. 264, 5 L. E. 257 (1821). The Constitution is not to be construed narrowly, but as creating a system of government whose provisions are designed to make effective and operative all the governmental powers granted. *Kansas v. Colorado*, 206 U.S. 46, 88, 51 L. Ed. 956, 971, 27 Sup. Ct. 655, 663 (1907); *United States v. Classic*; 313 U.S. 299, 316, 85 L. Ed. 1368, 1378, 61 Sup. Ct. 1031, 1038 (1941).

[17] *State ex rel. Coleman v. Campbell*, 3 Tenn. Cas. 355 (1875), cited in *McCully v. State*, 102 Tenn. 509, 53 S.W. 134, 141, 46 L.R.A. 567, 572 (1899). The Supreme Court of Tennessee held therein that the power to abolish existing courts, and to increase and diminish their number is included in the legislative power to ordain and establish them.

[18] Art. VIII, sec. 1.

[19] I ARUEGO, *op. cit. supra* note 7, at 463-4.

[20] Sept. 29, 1934.

[21] II ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 942 (1937).

Under this report, the committee proposed as *constitutional* courts, the Supreme Court and District Courts.

On October 26, 1934, the first draft of the Constitution[22] was submitted by the sponsorship committee to the Convention. The first section of the article on judicial power provided that:

> "The judicial power shall be vested in one Supreme Court, two Courts of Appeals, and in such inferior courts as now exist or may from time to time be established by law. When the public interest requires it, upon the recommendation of the Supreme Court, the National Assembly may divide the Philippines into three appellate districts and establish one Court of Appeals for each district."

The proposal in this first draft of the Constitution to create courts of appeals was strongly opposed.[23] The most persuasive argument against their creation was that stressed by Delegate Laurel to the effect that the matter should be left to the National Assembly to consider so that it could study more thoroughly all the questions connected with them, and so that "if found to be failures, the courts of appeals created by it could be easily abolished without the necessity of a constitutional amendment to that effect."[24] As a consequence, the proposal suffered defeat when put to vote. The first section of the judiciary article was accordingly amended as follows:

> "The judicial power shall be vested in one Supreme Court and in such inferior courts *as now exist* or may be established by law."[25] (Underscoring supplied.)

Professor Aruego, himself a member of the Convention, discusses the meaning and implications of this provision. Thus—

> "Under this provision which was copied from the Laurel draft, it was proposed to make, as constitutional courts, a Supreme Court and the other courts then existing—courts of first instance, municipal courts, and justice of the peace courts—leaving for national legislation the creation of other courts.
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> "During the consideration of the provision by the Convention, Delegate Grafilo presented an amendment for the suppression of the phrase, as *now exist*, which amendment in effect would mean the establishment of only one constitutional court—the Supreme Court. After the explanation by Delegate Laurel of the fact that it was the idea of the committee of three to create only one constitutional court—the Supreme Court—leaving the creation of all other courts to national legislation, the amendment was approved unanimously by the Convention."[26]

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[22] Prepared by the sub-committee of seven, with the subcommittee of technical advisers cooperating, of the sponsorship committee. II ARUEGO, *op. cit. supra* note 21, at 988.

[23] The proposal was defended by Delegates Romualdez, Ventura, Lim, Moncado, and Labrador; opposed by Delegates Laurel, Nepomuceno, Albero, Perfecto, Araneta, and Francisco.

[24] I ARUEGO, *op. cit. supra* note 7, at 463.

[25] *Id.*, at 464. As may be observed, the second paragraph of Article 1 of the revised report of the committee on judicial power, as well as the second sentence of section 1 of the judiciary article of the first draft of the Constitution were left out.

[26] *Id.*, at 464.

The final form[27] of the Constitution adopted by the Convention on February 8, 1935 provided that the "judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

The framers of the Constitution, in establishing a single constitutional court, are presumed to know the specific import of the term. They must have likewise been aware that there are, as distinguisable offices, courts known as *non-constitutional* courts. We cannot presume that the delegates to the Convention or the people who adopted the Constitution did not understand the force of the language used therein.[28]

Much of the present confusion over the question whether Congress can abolish a court notwithstanding the existence of a provision in the Constitution against judges being remove before they reach the age of seventy arises from a failure to recognize the relevant distinction between constitutional and non-constitutional courts. The case of *Perkins v. Corbin*[29] discusses this distinction clearly. There an act of the state legislature abolished a city court before the expiration of the six-year term of the incumbent judge as fixed under the Alabama constitution. The validity of the act was assailed, but the Supreme Court of Alabama sustained its constitutionality. It held that such an office as the judgeship of a city court is a statutory office, and one who accepts it does so with such infirmities as appertain to it. The court went one to say:

> "But...the courts of this state are not only divided into courts superior and inferior; they are of different characters. Some are established by the constitution itself—that is, by the people. They do not depend on legislative enactment for existence. They are created at the same time and in the same way with the legislature itself. They are a constituent branch of the government itself. The government under the constitution is not complete without them....These courts do not owe their existence to the legislative power, and the legislature cannot dispense with them or abolish them. They are emphatically the people's courts; and they proceed directly from the sovereign will...."

Our Supreme Court is a constitutional court, it being a creation of the Constitution. It cannot therefore be abolished except through proper constitutional amendment.[30] Since constitutional courts constitute an independent branch of the government, they cannot be hampered or

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[27] The final form of the Constitution with respect to Art. VIII, sec. 1, is the same as the second draft of the Constitution (II ARUEGO, *op. cit. supra* note 21, at 1009) and the third draft prepared by the special committee on style and submitted to the Constitutional Convention on Feb. 7, 1935 (II ARUEGO, *id.*, at 1016).

[28] See *Rasmussen v. Baker*, 7 Wyo. 117, 50 Pac. 819, 821 (1897).

[29] 45 Ala. 103, 6 Am. St. Rep. 698, 701-2 (1871).

[30] PHIL. CONST., Art. XV.

limited in the discharge of their functions by either of the two other branches.[31]

As to what non-constitutional courts are, the Alabama state supreme court went on to explain:

> "There are other courts, called in the constitution 'inferior courts of law and equity' which the 'general assembly may from time to time establish.' These latter courts derive their existence from legislative enactments. They are the creatures of the lawmaking power of the State. A city court, under our constitution, is of this latter character. It is established by the legislature. It is the creature of a statute law. All statute laws are subject to repeal, except when they create a contract. Here that is not the case. The establishment of a court is not creation of a contract. Then, such a law may be repealed. And when it is repealed, all the rights depending on it expire, unless there is a reservation or exception in their favor...."

To this category belong our Court of Appeals, the Courts of First Instance, the Justice of the Peace Courts, the Municipal Courts, and the defunct People's Court. They are "such inferior courts as may be established by law."[32]

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[31] See *Vidal v. Backs*, 218 Cal. 99, 21 P. 2d 952, 954, 86 A.L.R. 1134, 1137 (1933). In the case of *Commonwealth v. Gamble*, 62 Pa. 343, 1 Am. St. Rep. 422 (1869), the act abolishing the judicial district before the expiration of the judge's term was declared void, the office of the judge in that instance having been created by the constitution. And where a judge is a constitutional officer, and his term of office is fixed by the constitution, he cannot be deprived of his office or of the right to exercise its duties, before the expiration of his term, by a statute attempting to abolish the judicial district to which he was duly elected. *State* ex rel. *Gibson v. Friedley*, 135 Ind. 119, 34 N.E. 872, 21 L.R.A. 634 (1893). In *State v. Douglas*, 33 Nev. 82, 110 P. 177 (1910), and in *Magee v. Brister*, 109 Miss. 183, 68 So. 77 (1915), it was held that the legislature, in the absence of special authorization in the Constitution, may not abolish a constitutional office.

[32] Art. VIII, sec. 1. Even before the adoption of our Constitution, the Courts of First Instance of the Philippine Islands were not considered constitutional courts, or courts created by the Constitution, but by the Philippine Legislature. As such the Supreme Court and the Courts of First Instance did not, as they do not, have the same status or rank from the constitutional point of view. *Conchada v. Director of Prisons*, 31 Phil. 94, 105, 115 (1915). The Courts of First Instance were recognised as early as 1902 (sec. 9, Act of Congress of the United States of July 1, 1902, popularly known as the Philippine Bill of 1902; 32 *Stat.* at L. 691; *Comp. Stat.*, sec. 3804). The Court of Appeals was created by Com. Act No. 3, Dec. 31, 1935; abolished by Ex. Order No. 37, March 10, 1945; and revived by Rep. Act No. 52, Oct. 4, 1946. The People's Court was created by Com. Act No. 682, Sept. 25, 1945; abolished by Rep. Act No. 311, June 19, 1948.

The distinction between a *constitutional court* and *non-constitutional* or *statutory court* should not, however, be confused with the distinction under the United States Constitution, between *constitutional* and *legislative courts*. According to the United States Supreme Court, constitutional courts are those provided for expressly or by implication in the Judiciary Article of the Federal Constitution (Art. III) and as such, they share in the exercise of the judicial power defined in that setion (Art. III, section 2) can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power of Congress to provide otherwise. Ex parte *Bakelite Corporation*, 279 U.S. 438, 73 L. Ed. 789, 49 Sup. Ct. 411 (1929). Again, under the federal concept, legislative courts are those special courts established by Congress under power derived mainly from parts of the United States Constitution other than Art. III. The courts established this way derive their being and powers, and the judges thereto owe their right from the acts of Congress. The Congress has a free hand with respect to compensation, tenure, and even appointment of

The case of *Koch v. Mayor*[33] illustrates further the effects of the distinction between constitutional and non-constitutional or statutory courts. Section 22 of Article 6 of the New York state constitution provided that justices of the peace and other local judicial officers, when the article was to take effect, were to hold their offices until the expiration of their respective terms. Plaintiff, a police justice of the city of New York, lost his office by abolition thereof by an act of the state legislature before the expiration of his term. The issue raised was whether or not the act in question violated the constitution of the state. The court hald that—

> "Section 22...does not forbid the legislature to abolish such inferior courts and judicial offices as are not expressly continued or expressly discontinued by the Constitution; all it says is Congress can establish 'inferior local courts of civil and criminal jurisdiction.' The logical inference is that there was no intention to limit the power of the legislature to continue or abolish the numerous statutory courts that existed all over the state when the constitution was framed. It was left to sound legislative discretion to continue such tribunals, to create more of them, or to abolish them altogether...."

A noticeable parallelism exists between the New York state constitution as thus considered and our own Constitution. All that is said in our fundamental law is that Congress can establish by law such courts inferior to the Supreme Court. Various courts of first instance and justice of the peace courts were existing as the time of the framing and adoption of our Constitution. As Section 1 of our judiciary article shows, these inferior courts, like the numerous New York statutory courts, were obviously "not expressly continued or expressely discontinued." As shown elsewhere, the various courts like the two Courts of Appeals and the district and municipal courts which had hitherto been named to-

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judges. *Williams v. United States*, 289 U.S. 553, 77 L. Ed. 1372, 53 Sup. Ct. 751 (1933). Thus, the Court of Claims was created under the power of Congress to pay debts of the United States (U.S. Const., Art. I, sec. 8, cl. 1). Similarly, the Court of Customs Appeals was established under the power of Congress to lay and collect duties (Art. I, sec. 8, cl. 1), which court was later changed to the Court of Customs and Patent Appeals (Act of March 2, 1929, Ch. 488m 45 *Stat.* 1476) under the power of Congress to secure to authors and inventors the exclusive right to their respective writings and discoveries (Art. I, sec. 8, cl. 8).

It seems that, if we try to bring about an analogy, the Court of Industrial Relations (created by Com. Act No. 103, Oct. 29, 1936) is an example of a "legislative court" in our country, were we to follow the line of reasoning of the Federal Supreme Court, because the CIR was created not under Art. VIII of our Constitution, but under the power of the State, through the Congress, to afford protection to labor and to provide for compulsory arbitration (Art. XIV, sec. 6). Besides, the federal legislative courts can neither receive nor exercise judicial power as contemplated by the judiciary article of the Federal Constitution. *American Insurance Co. v. Canter*, 1 Pet. 511, 546, 7 L. Ed. 242, 257 (1828). The CIR is also a special court—more of an adminiwstrative board than a part of the integrated judicial system of the nation—a body exercising quasi-judicial functions. *Ang Tibay v. CIR*, 69 Phil. 635, 639-40 (1940).

[33] 152 N.Y. 72, 46 N.E. 170 (1897).

gether with the Supreme Court, had been left out by the framers, leaving to the lawmaking body the discretion to establish them later, or, to borrow the words of the court in the *Koch* case, "to continue such tribunals, to create more of them, or to abolish them altogether."

In view of this distinction between a constitutional court and a non-constitutional court, it has been held that the number of judicial districts depends upon legislative discretion. This being the case, a statute abolishing a judicial district before the expiration of the term of office of the district judge, and transferring all the counties comprising it to another district, was within the constitutional power of the legislature to enact.[34] And where the constitution authorizes the legislature to increase the number of judges from time to time, and the legislature exercises this right, it may in turn abolish the number thus increased. In *State* ex rel. *Coleman v. Campbell*,[35] the highest court of the state went as far as to declare that although the circuit and chancery courts of the state were named and defined in the state constitution, yet, according to the court, it was the intention of the constitutional convenion to give to the state legislature the power not only to create but also to abolish said circuit and chancery courts to suit the needs and circumstances prevailing in any given time.

The Supreme Court of Tennessee, in the *Coleman* case, explained the reason for its conclusion that the lawmaking branch of the government has the power to abolish the district and chancery courts of that state. It said:

> "...For the purpose of providing for future contingencies and exigencies, they (meaning, the framers of the charter) were content to leave the ordaining and establishing of inferior courts from time to time to the discretion of the legislature, with the single restriction as to continuance of the circuit and chancery courts. It is the legitimate business of the legislature to determine how many courts are necessary, and how the various circuits and districts should be arranged and formed. It was proper for the representatives of the people, session after session, to have the power to provide such changes in the circuits and districts as should be shown by experience and observation to be necessary for the public good... It was impossible that the object to be accomplished could be effectuated by simply adding to the number of circuits or districts. Changes would or be might become necessary, which involve the necessity of abolishing existing circuits or districts, in

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[34] *Aikman v. Edwards*, 55 Kan. 751, 42 Pac. 366, 30 L.R.A. 149, 152 (1895). It is noteworthy to observe that this decision was rendered as such despite the fact that the district courts were expressly named in the state constitution.

[35] 3 Tenn. Cas. 355 (1875), cited in *McCulley v. State*, 102 Tenn. 509, 53 S.W. 134, 140, 46 L.R.A. 576 (1899). The decision was so, notwithstanding the fact that the Tennessee constitution of 1870 provided that the judicial power was to be vested in "one supreme court and in such inferior circuit, chancery and other inferior courts as the legislature may from time to time ordain and establish." Accord: *Aikman v. Edwards*, note 11 *supra*.

> ordaining and establishing others, or in reducing the number. The power to abolish for the purpose of effecting these objects was there necessarily implied."

The Supreme Court of Kansas, in the case of *Aikman v. Edwards*,[36] has this to say:

> "to vacate the office of a district judge already elected by the people and serving...would clearly be...the removal of a judge from the office when his office was not destroyed. To allow the legislature, while making a new district, to legislate the judge of an old district out of office, and provide for the appointment or election of two new judges, would clearly be vicious in principle, and this is the class of legislation which falls within the constitutional inhibition. But to prohibit the legislature from abolishing a district which has been improvidently established, and thereby vacate the office of judge, is another and altogether different thing, which the Constitution does not, in express terms, prohibit."

If it had been intended to prohibit the abolition of courts once established, it would have required the framers of our Constitution but very few words to say so. They could have drafted a provision, complementing the security of tenure of judges provision, to the effect that the lawmaking department cannot, after establishing inferior courts, pass any act abolishing said courts. But they did not do so despite such facility, and thus could only mean that the power of Congress to abolish them "for the purpose of effecting these objects" of government "was there necessarily implied."[37] As the court stated in the case of *Koch v. Mayor*:

> "...The logical inference is that there was no intention to limit the power of the legislature to continue or abolish the numerous statutory courts that existed all over the state when the constitution was framed. It was left to sound legislative discretion to continue such tribunals, to create more of them, or to abolish them altogether..."[38]

There is another consideration which gives support to the proposition that Congress has the power to abolish inferior courts. One of the essential characteristics of our republican form of government is the prohibition against the passage of irrepealable laws. The present Congress has no right to bind its successors. To permit Congress now to create by law additional courts without the corresponding authority to abolish them later in appropiate circumstances would, in effect, sanction irrepealability of laws, which ought not to be so. There are times

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[36] 55 Kan. 751, 42 Pac. 366, 30 L.R.A. 149, 153 (1895).

[37] In construing the Constitution, what is implied is as much a part of the instrument as what is expressed. Re *Yarbough*, 110 U.S. 651, 658, 4 Sup. Ct. 152, 155, 28 L.Ed. 274, 276 (1884); *South Carolina v. United States*, 199 U.S. 437, 451, 26 Sup. Ct. 110, 113, 50 L.Ed. 261, 265 (1905); *Int'l Shoe Co. v. Pinkus*, 278 U.S. 261, 265, 72 L.Ed. 318, 320, (1928).

[38] See note 33 *supra*, 46 N.E. at 173.

when some courts would outlive their purpose or fall behind the changes in the governmental machinery. And it is not inconceivable that the number of courts would disproportionately exceed the volume of litigations to be heard and decided. If despite these we should still choose to bind the hands of Congress, then the taxpaying citizen, in the event these circumstances should exist, would eventually find himself in the absurd situation of being obliged to keep up a useless or anachronistic office by paying for the salaries of judicial officers who by then would no longer be needed. It is said that one of the worst tendencies to be provided against in our system of government is that of constantly creating offices to be filled, and increasing the salaries of old ones.[39] To prevent the abolition of courts which are deemed unnecessary may lead to an undesirable situation where the government becomes "one great pension establishment on which to quarter a host of sinecures.[40] Therefore, while the independence and integrity of courts in the exercise of all the powers confided in them by the Constitution should be firmly maintained, jealousy of encroachments on judicial power must not, as one court said, blind us to the just power of the legislature in determining within constitutional limits the number of courts required by the public exigencies.[41]

The grant of power in the Congress to create courts inferior to the Supreme Court has rendered possible the abolition of inferior courts.[42] That this result is logical and possible was made evident in the concurring opinion of Justice Laurel in the case of *Zandueta v. de la Costa.*[43]

Zandueta, prior to the judiciary reorganization act of 1936[44] was presiding judge over the Fifth Branch of the Court of First Instance of the Ninth Judicial District, comprising the City of Manila. Upon promulgation of said act, Zandueta was given an ad-interim appointment to the Fourth Judicial District, covering Manila and the province of Palawan. This appointment, however, was not confirmed by the Commission on Appointments. The President of the Commonwealth later appointed De la Costa to that court, and his designation was confirmed. Zandueta accordingly filed a petition for *quo warranto* against De la Costa, at the same time impugning the validity of the act on the ground that it contravened the security of tenure of judges provision of the Constitution.

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[39] *Aikman v. Edwards*, note 34 *supra*, 30 L.R.A. at 154.
[40] *Butler v. Pennsylvania*, 10 How. 402, 416, 13 L. Ed. 472, 478 (1850).
[41] See note 34 *supra*, 30 L.R.A. at 153.
[42] II TAÑADA AND FERNANDO, *op. cit. supra* note 3, at 1119.
[43] 66 Phil. 615 (1938).
[44] Com. Act No. 145, Nov. 7, 1936.

Justice Laurel urged the Court to harmonize the two provisions of the Constitution.[45] Unfortunately, his plea was not heeded. The majority of the Court evaded the constitutional question and disposed of the case against Zandueta upon certain principles of the law of public officers.[46] Justice Laurel, then undertook to dispose of the case upon what he considered to be the issue, *i. e.*, whether Commonwealth Act No. 145 was violative of the Constitution or not. He was for upholding its validity, explaining in his concurring opinion thus:

> "I am of the opinion that Commonwealth Act No. 145 *in so far* as it reorganizes, among other judicial districts, the Ninth Judicial District, and establishes an entirely new district comprising Manila and the province of Rizal and Palawan, is valid and constitutional. This conclusion flows from the fundamental proposition that the legislature may abolish courts inferior to the Supreme Court and therefore may reorganize them territorially or otherwise thereby necessitating new appointments and commissions. Section 2, Article VIII of the Constitution vests in the National Assembly the power to define, prescribe and apportion the jurisdiction of the various courts, subject to certain limitations in the case of the Supreme Court. It is admitted that section 9 of the same article of the Constitution provides for the security of tenure of all judges. The principles embodied in these two sections of the same article of the Constitution must be coordinated and harmonized. A mere enunciation of a principle will not decide actual cases and controversies of every sort (Justice Holmes in *Lochner vs. New York*, 198 U. S., 45; 49 Law. ed., 937).
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> "...I am satisfied that, as to the particular point here discussed, the purpose was the fulfillment of what was considered a great public need by the legislative department and that Commonwealth Act No. 145 was not enacted purposely to affect adversely the tenure of judges or of any particular judge. Under these circumstances, I am for sustaining the power of the legislative department under the Constitution...."

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[45] Justice Laurel was referring to the PHIL. CONST., Art. VIII, secs. 2 and 9. This was so because the question was whether or not the National Assembly had the power, under the Constitution, to reorganize inferior courts territorially or otherwise, necessitating new appointments and commissions. As mentioned elsewhere, however, the "coordination and harmonization" should involve not only the two aforementioned sections, but also section 1 of Article VIII.

[46] Namely, incompatibility of public offices, abandonment of public office, and the doctrine of estoppel. The majority, through Justice Villa-Real, may not at all be wrong in passing the constitutional question *sub silencio*. To the majority, the question was not the *lis mota* of the case, and the rule of construction that the court will not pass upon a constitutional issue although properly presented by the record was followed, if there are also present some other grounds upon which the case may be disposed of. See *Sotto v. Commission on Elections*, 43 O.G. 72, 76 (1946); *Siler v. Louisville & N.R. Co.*, 213 U.S. 175, 193, 29 Sup. Ct. 451, 455, 53 L. Ed. 753, 758 (1908); *Light v. United States*, 220 U.S. 523, 538, 31 Sup. Ct. 488, 55 L. Ed. 570, 575 (1910).

[47] Even as early as 1906, our Supreme Court, impliedly recognizing the legislative power to reorganize judicial districts, declared that judicial divisions and boundaries of provinces and districts are always fixed by law, so that any changes or alterations of the same can only be effected by express legislative enactment and not by inference and deduction. *United States v. Arceo*, 6 Phil. 29, 32, *writ of error dism'd*, 207, U.S. 602, 52 L. Ed. 359, 28 S. Ct. 260 (1907); 11 Phil. 799 (1908).

In another case,[48] where the question of tenure was involved again, the Supreme Court held that while it had no doubt about the constitutional right of members of the judiciary to hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office, yet the majority were also ready to believe that said right is waivable and should be construed without prejudice to the legal effects of abandonment in proper cases.[49]

In our jurisdiction, the lawmaking branch has since passed a number of statutes creating courts and districts, as well as reducing their number and abolishing them altogether. Thus the first National Assembly of the Commonwealth Government created the Court of Appeals.[50] Upon liberation of the Philippines, however, the same was abolished by the President, acting under his emergency war powers.[51] A year later it was revived,[52] notwithstanding the fact that Congress itself has accorded to the justices of the Court of Appeals greater security of tenure by prohibiting their removal from office except by impeachment under Article IX of the Constitution.[53] Nevertheless, such a restriction cannot prevent future Congresses from abolishing said appellate court where necessity or policy would so dictate.[54]

There was also the erstwhile People's Court which was created and abolished by the Congress.[55] The number of judges and judicial districts has intermittently been altered.[56] Section 41 of the Judiciary

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[48] *Summers v. Ozaeta*, 46 O.G. No. 2, 416 (1948).

[49] "From these two above cases...it is ovident that the constitutional guaranty of security of tenure of judges of first instance is less than what it should be. The Supreme Court, it appears, is not unduly sensitive to the disregard of the rights of a judge of Court of First Instance to his office." II TAÑADA AND FERNANDO, *op. cit. supra* note 3, at 1125.

[50] Com. Act No. 3, Dec. 31, 1935.

[51] No. 37, March 10, 1945.

[52] Rep. Act No. 52, Oct. 4, 1946.

[53] Rep. Act No. 296, sec. 24, par. 2.

[54] As a matter of fact, Dean Sinco expressed his doubt as to the constitutionality of such a provision. See Sinco, *op. cit. supra* note 10, at 332, n. 14.

[55] Created by Com. Act No. 682, Sept. 25, 1945; abolished by Rep. Act No. 311, June 19, 1948.

[56] Under Act No. 2711, Oct. 1, 1917, there were 57 judges of first instance (42 district judges and 15 judges-at-large). Under Act No. 4007, Dec. 5, 1932, there were 52 judges of first instance (46 district judges and 6 judges-at-large). On March 1, 1933, Act No. 4060 reduced the number of judges-at-large from six to five. And the latest of all the legislative acts touching the judiciary has abolished the 33 positions of judges-at-large and cadastral judges. (Rep. Act No. 1186, June 20, 1954. The validity of this act is pending resolution in the Supreme Court: *Ocampo et al. v. Solicitor General*, G.R. No. L-7910.)

Under Act No. 3911, Nov. 20, 1931, there were all in all 31 judicial districts. This number was reduced to 26 on Dec. 5, 1932 by Act No. 4007, and further reduced to 9 judicial districts under Com. Act No. 145, Dec. 31, 1935.

In 1915, our Supreme Court held that the Philippine Legislature had authority to enact Act No. 2347, July 1, 1914, reorganizing the judiciary by creating new districts and declaring that judges should cease to hold their offices and that new judges should be appointed without altering the jurisdiction of the Courts of First Instance. *Conchada v. Director of Prisons*, 31 Phil. 94. The Act evidently terminated the tenure of judges, although it continued the existence of the courts with

Act of 1948, as amended, provides that "District Judges shall be appointed to serve during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office, unless sooner removed in accordance with law."[57] It is submitted that the clause "unless sooner removed in accordance with law" includes, among other things, removal through abolition of courts of first instance by the Congress.

The foregoing instances may well show, through contemporaneous and subsequent practical construction, that the phrase "as may be established by law"[58] grants to Congress not only the power to create but also the authority to abolish inferior courts and reduced the number of judicial districts.

Let us now turn to a consideration of the nature of a judge's office. A judge of any court of justice in our jurisdiction is a public officer,[59] since he is, in the words of Mechem, invested with some portion of the sovereign functions of government which he exercises for the benefit of the public.[60] The office of a judge of a court has its origin in the establishment of that court. His office exists by virtue of law; it cannot be otherwise. Where the law of its creation is repealed, the office also ceases; and where there is no court, there cannot be any such office as judge of such court.[61] The destruction of the office naturally involves the official death of the officer.[62]

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regard to cases pending decision, sentence, or continuance of evidence. *Pamintuan v. Llorente and Dayrit*, 29 Phil. 341 (1915). It seems that while the judges were legislated or ousted out of office while the courts remained existing, this was understandable, because neither the Philippine Bill of 1902 (sec. 9) nor the Philippine Autonomy Act of Aug. 29, 1916 (sec. 26), at that time constituting the Philippine Organic Law, had any security of tenure of judges provision having import similar to that now found in Art. VIII, sec. 9, of the present Constitution. Even section 48 of Act No. 136, June 11, 1901, merely stated that the judges appointed by the Philippine Commission were to hold their offices during its pleasure.

As will be seen presently, judges of inferior courts cannot, without violating Art. VIII, sec. 9, be legislated out of office while their courts or offices are left to exist. There must be total abrogation of their courts before their respective tenures cease.

[57] Sec. 41 of the Judiciary Act of 1948 (Rep. Act No. 296, June 17, 1948), as amended by Rep. Act No. 1186, sec. 1, June 20, 1954.

[58] PHIL. CONST., *Art.* VIII, sec. 1.

[59] Speaking in broad terms, a judge is a public officer lawfully appointed to preside over a court for the purpose of discharging its duties. *Lontok v. Battung*, 67 Phil. 1055 (1936) (unrep. dec.). A judge is an "employee" (Rec. Adm. Code, sec. 2), and an "officer" (*ibid.*). He is also a "person in authority" (Rev. Penal Code, Art. 152).

[60] PUBLIC OFFICERS, Sec. 1.

[61] *Perkins v. Corbin*, 45 Ala. 103, 6 Am. St. Rep. 698, 702 (1871).

[62] *Koch v. Mayor*, 152 N.Y. 72, 46 N.E. 170-3 (1897). As Justice Field pointed out in the case of *Norton v. Shelby County*, 118 U.S. 425, 442, 30 L.Ed. 178, 186, 6 Sup. Ct. 1121, 1125 (1886), "the idea of an officer implies the existence of an office which he holds. It would be a misapplication of terms to call one an officer who holds no office, and a public office can exist only by force of law."

Hence, when an office, such as a court, is created by the legislature, it is subject to the power of its creator to abolish or change it.[63]

It is not uncommon to hear the argument that for the Congress to have this power is to enable this political branch of our Government virtually to control the judiciary and even reduce the latter to a state of servile dependency. It is claimed that it is a power that may be used to crush the judiciary, to break down its independence, and to stop the business of the judicial department. So much may be admitted. The possibility of such an occurence cannot be too remote. No doubt, it is possible that legislators may make use of this power to, paraphrasing Justice Perfecto's words, seek the removal of judges out of spite or revenge because of an unfavorable action that, in the performance of official duty, the judges had to take in obedience to law and to the dictates of conscience.[64]

But so well-known is the trusim that every power and authority, however indispensable, is susceptible of abuse.[65] As Justice Wilkes of the Supreme Court of Tennessee pointed out—

> "...But the same object may be accomplished by other modes by the legislature, if it shall decide to adopt revolutionary methods. It may unjustly impeach and thus remove. It may refuse to pay salaries and expenses, and thus stop the courts...it may, in other words, overthrow the government, because it handles both the sword and the purse ...So, after all, these questions are not for this court, but for the people; and in placing control of the judiciary in the hands of the legislature, the people have drawn it as near to themselves as it is possible to draw in under our system of government.
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> "But the idea (meaning, the independence of the judiciary) must not be pushed too far, and we must remember that, with the exception of the supreme court, all courts exist as a consequence of legislative action....
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> "...The argument that the power to abolish judicial office cannot exist, because it can be abused to the extent of destroying the entire judicial system, can have no force in the construction of the constitution, and the possibility of abuse of power is never a valid argument

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[63] *E.g.*, In re *Bulger*, In re *Merrill*, 45 Cal. 553, 557 (1873); *Crozier v. Lyon*, 72 Iowa 401, 34 N.W. 186, 187 (1887); *Comm'rs of Sinking Fund v. George*, 104 Ky. 260, 84 Am. St. Rep. 454, 47 S.W. 779, 784 (1898); *People v. McCormick*, 261 Ill. 43, N.E. 1053, 1057 (1914).

[64] See *Summers v. Ozaeta*, 46 O.G. No. 2, 416, 429 (1948) (dissenting opinion).

[65] "The great powers given to the legislature are liable to be abused. But this is inseparable from the nature of human institutions. The wisdom of man has never conceived of a government with power sufficient to answer to its legitimate ends, and at the same time incapable of mischief. No political system can be made so perfect that its rulers will always hold it to the true course. In the very best a great deal must be trusted to the discretion of those who administer it. In ours, the people have given larger powers to the legislature, and relied, for the faithful execution of them, on the wisdom and honesty of that department, and on the direct acountability of the members of their constituents. There is no shadow of reason for supposing that the mere abuse of power was meant to be corrected by the judiciary." Chief Justice Black in *Shapeless v. Mayor of Philadelphia*, 21 Pa. 147, 59 Am. Dec. 759, 765-6 (1853).

> against its existence. "This is an argument often resorted to, and no argument is more fallacious. It assumes that if the power be one that legislature might abuse....therefore the power does not exist, whereas it is certainly true that the legislature may, in many modes, in the exercise of unquestioned power, utterly ruin and destroy the government. The remedy, when legislature attempts to exercise power which it does not possess, is in the courts, but where it simply abuse power that it does possess, the remedy is with the people.' McFarland, J. State ex rel Halsey v. Gaines, 2 Lea. 322, 323."[66]

From what have been discussed in the foregoing, it is submitted that there is in reality no conflict between sections 1 and 2 on the one hand, and section 9 on the other, of Article VIII of the Constitution. High regard is to be given in support of the security of judicial tenure, it is true; but a limit is likwise set forth. Security of judicial tenure attaches only so long as the court or office of the judge exists by virtue of law yet unrepealed. The right of a judge to his office until he reaches the age of seventy years depends not only upon his good behavior and capacity to discharge the duties of his office, but also upon the contingency that the Congress may, for the public good, from time to time, consider his office unnecessary and abolish it. What Congress can not do, as can be inferred from section 9 of Article VIII, is to enact a law ousting a judge out of his court while the latter is left to exist, and for a new appointee to take his place. Precisely, section 9 was included to prevent the continuance of the practice, hitherto upheld permissible, of ordering incumbent judges by legislative fiat to vacate their offices to give way to the designation of new appointees.[67] What Congress can not also do, according to Justice Laurel, is to violate palpably and clearly the constitutional guaranty of judicial tenure by purposely prejudicing the tenure of presiding judges or any particular presiding judge, or by using its reorganizing power to check an unconstitutional purpose. "When a case of that kind arises," he warns us, "it will be the time to make the hammer fall and heavily."[68]

While the court exists, the incumbent judge may rest assured of his security in office until he himself resigns, or until he reaches the

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[66] See *McCulley v. State*, 102 Tenn. 509, 53 S.W. 134, 153, 46 L.R.A. 567 (1899) (dissenting opinion).

[67] For example, under Act No. 136, sec. 48 (June 11, 1901), the judges appointed by the Philippine Commission held their offices during the pleasure of the appointing power. While the law used to provide for permanency of judicial tenure until the age of sixty-five, neither the Philippine Bill of 1902 (sec. 9) nor the Philippine Autonomy Act of 1916 (sec. 26), at that time constituting the Philippine Organic Law, guaranteed security of judicial tenure.

What Art. VIII, sec. 9, of the Constitution prohibits is for the Congress to enact a law similar to Act No. 2347, sec. 7 (July 1, 1914), which ordered the then presiding judges of the Courts of First Instance, judges-at-large and judges of the Court of Land Registration "to vacate their positions" upon the taking effect of the Act. The statute was upheld as constitutional in *Concheda v. Director of Prisons*, 31 Phil. 94 (1915) and in *Pamintuan v. Llorente, and Dayrit*, 29 Phil. 341 (1915), which Act, if passed under the present Constitution, would be declared null and void.

[68] *Zandueta v. de la Costa*, 66 Phil. 615, 626-7 (1938) (concurring opinion).

age of seventy or becomes incapacitated to discharge the duties of his office;[69] andor, if he be a Justice of the Court of Appeals, until he is duly impeached and convicted therefor;[70] andor, if he be a judge of first instance, until he is separated or removed from office for serious misconduct or inefficiency after notice and hearing;[71] andor, if he be a justice of the peace or a judge of a municipal court, until he be removed for cause as provided in the Judiciary Law.[72] In all these instances, due process is adequately provided for.

RECOMMENDATION

We recommend that in the event that the Congress should decide to reduce the number of courts or judicial districts, a provision for a reasonable and adequate gratuity be embodied in the particular statute in order to minimize the loss imposed upon the judge whose office is abolished and to reward him for his services to the public and to the Government.[73]

We believe that if the electorate were only to cast their ballots in favor of congressional candidates whose ability, patriotism, and integrity are of the highest measure possible, there would be no cause to fear the possibility of indicriminate abolition of courts as a means of persecution and oppression. Likewise, to avoid particular lawmakers from begrudging some of our judges of the lower courts by the public as a whole.[74] The qualifications of those who are appointed to the bench deserve serious concern if we are to maintain the integrity and stability of courts. As the late President Quezon said, "...independence is not the only objective of a good judiciary. Equally, if not more, is its integrity....The administration of justice cannot be expected to rise higher than the moral and intellectual standards of the men who dispense it."[75] Justice Wilkes of the Tennessee Supreme Court once gave this enlightening piece of advice, to wit—

> "...The departments of the government should work in harmony, as component parts of one homogenous whole; and if each will accord to the other party of motive, and an earnest desire to enhance and conserve the public welfare, there will be that co-operation and singleness of purpose which will redound to the highest good of the people."[76]

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[69] PHIL. CONST., Art. VIII, sec. 9.

[70] Rep. Act No. 296, sec. 24, par. 2, June 17, 1948. The grounds and proceedings for impeachments are provided for in Art. IX of the Constitution.

[71] Rep. Act No. 296, sec. 67.

[72] *Id.*, sec. 97.

[73] Such was one of the proposals of the committee on judicial power during the framing of the Constitution.

[74] MALCOLM, FIRST MALAYAN REPUBLIC, 245 (1951).

[75] Inaugural Address, Nov. 15, 1935.

[76] See not 83 *supra*.

In that event, judicial independence remains with us, as it must remain with us, as a continuing reality. We could then join Justice Malcolm is saying it was such a conception of an independent judiciary which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.[77]

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[77] *Borromeo v. Mariano*, 41 Phil. 322, 330 (1921).