

THE LAWYER AND THE INDEPENDENCE OF OUR JUDICIARY •

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One of the greatest problems with which our Government is now confronted is that which refers to the administration of justice. This problem is important and far-reaching not only because it affects the property, the liberty and the life of the individual but because it transcends the community and affects the general welfare of the people. The administration of justice is deeply interwoven with the conditions of peace and order in a community. In a place where justice is wisely administered, where the people have faith and confidence in the honesty and integrity of the officials called upon to administer justice, there is peace and contentment, order, progress, and happiness. In a place where justice is unwisely administered, and where the officials called upon to administer it are corrupt and dishonest and do not have the faith and confidence of the people, there is discontent, dissatisfaction, disorder, chaos, confusion, and even revolution. This is what happened in many countries where the people rose up in arms against abuses and corruption and implanted a new government under the aegis of law, order, and justice.

It is for this reason that it has been truthfully said that justice should be the main concern of men on earth. As an American philosopher has said: "Justice is the ligament which holds all civilized beings and civilized nations together. Wherever her temple stands, and as long as it is highly honored, there is a foundation for social security, general happiness, and improvement and progress of the race." These are the ideals which underlie the administration of justice in the Philippines.

The Supreme Court is committed to the promotion of these ideals and is exerting every effort that they may be carried out to the full extent compatible with law and the Constitution. This is its sacred mission. To come short of it would be to betray the lofty purpose for which this institution has been established. How can it accomplish successfully this sacred mission? Only to surround it with such safeguards that would enable it to do its duty freely and untrammelled by any extraneous influence that may impair its independence.

The framers of our Constitution foresaw the need of such independence when they provided in that document certain safeguards that would protect our courts from any interference in the exercise of their functions. There are other factors that are brought to play in the

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realm of judicial deliberation which may also serve as a guarantee to judicial independence. These constitutional safeguards are the most important.

Our Constitution establishes three important safeguards to secure the independence of our judiciary: the immobility of our judges, the tenure of office, and the provision against any diminution of their salaries during their continuance in office. These safeguards—it is felt—are sufficient to accomplish this fundamental purpose if respected and maintained in the spirit in which they have been conceived. They have served their purpose in jurisdictions where they have been similarly adopted and it is hoped that they will achieve the same purpose in this jurisdiction. To keep and preserve them inviolate is the paramount task of the Supreme Court.

The precept of the immobility of judges is embodied in the following proviso: "No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court."¹ The consensus of the bench and the bar is that this precept precludes any measure which may wrest from the Supreme Court the privilege of determining the places to which judges may be assigned. The proposition to give this privilege to a representative of the Chief Executive has been assailed as violative of this constitutional provision. Such is the issue raised in a case decided by our Supreme Court.² Judge Borromeo, a district judge was offered a promotion to another district, but in so doing, his consent was not obtained. As he was ordered to move by the Secretary of Justice, he instituted quo warranto proceedings to test the validity of his transfer, and the Supreme Court upheld his stand. It was in the course of the decision that the Court in no uncertain terms condemned the obnoxious practice of "*rigodon de juecos*" which in a sense tends to undermine the independence of the judiciary. With such practice, the Court remarked, "A judge who had, by a decision, incurred the ill-will of an attorney, or official, could, by the insistence of the disgruntled party, be removed from one district, demoted and transferred to another district." He is placed at the mercy of the appointing power, and his only alternative "to maintain his self-respect would be to vacate the office and leave the service." Such practice should be avoided as it tends to destroy the independence of our inferior courts. Thus, this constitutional precept has been somewhat subverted with the establishment of the so-called judges at large or auxiliary judges who may be assigned to any district upon the designation of the Secretary of Justice, but our lawmakers, conscious of this subversion, have at last attempted to propose a remedy in the recent judiciary revamp.

¹ Art. VIII, Sec. 7, Constitution of the Philippines.

² *Borromeo v. Mariano*, 41 Phil. 328 (1921).

An interesting incident has arisen in connection with the concept regarding the tenure of office. This was brought about by the desire of Congress to eliminate the positions of judge at large and cadastral judges in the new judiciary revamp by converting their positions into district judges. The question that arose was: Can the incumbents be swept out of office, regardless of their tenure of office, simply because of the desire of Congress to reorganize our judiciary? The case involves a clash of two important provisions of our Constitution: one which gives to Congress the power to create, abolish, and reorganize our inferior courts, and the other which guarantees to the incumbents a definite tenure of office. The issue is of paramount importance, for, irrespective of its effect on the parties affected, it may mean the consecration of the principle which underlies the independence of the judiciary or the opening of the door to congressional interference which, no matter how lofty its purpose, may spell its destruction. These two provisions are apparently conflicting or contradictory, but because the prevalence of one may mean the repudiation of the other, it is the bounden duty of the Supreme Court to seek the way by which they could be harmonized and be given force and validity to accomplish the vital purpose which they intend to serve.

Three different theories have been advanced regarding the power of Congress to abolish an inferior court and terminate the tenure of office of the judge presiding over that court. Some American courts entertain the theory that Congress may abolish an inferior court because of the principle that the power to create carries with it the power to abolish, and that this power may be exercised without any restriction in the sense that, once the court is abolished, any unexpired term of the incumbent judge is deemed terminated.³

The second theory is that, although Congress may abolish an inferior court, it can not, however, do so when its effect is to terminate the tenure of office of the incumbent judge because such tenure is guaranteed by the Constitution.⁴

And the third theory entertains the view that Congress may abolish a court and terminate the unexpired term of the judge provided that the abolition of the court is done in good faith. "If immediately after the office is abolished another office is created with substantially the same duties and a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will intervene."⁵

Which of these theories should be adopted by our Tribunal?

³ *Cherokee County v. Savage*, 32 So. 2d., 803 (1947).

⁴ *Commonwealth v. Gamble*, 62 Pa. 343.

⁵ *Garvey v. Lowell*, 199 Mass 47, 85 N.E. 182, 127 A.L.R. 468 (1908); *State v. Edwards* 40 Mont. 287, 106 Pac. 695, 19 R.C.L. 236 (1910).

The first theory is unsound because it destroys the independence of the judiciary and constitutes a direct attack against the tenure of office guaranteed by our Constitution. It is obnoxious because it places statutory courts at the mercy of Congress. This theory subverts the foundation stone on which the stability of a constitutional form of government is based. It would spell the doom of democracy and mark the rise of oligarchy or other tyrannical forms of government. As Chief Justice Snodgrass has aptly said, "The only argument for the preservation of the (judicial) system is its constitutional establishment over and against the power of the legislature to abolish it, when established, during the existence of any term. It is not a question of trusting the legislature not to do it; it is a question of its power to do it, against the positive provision that those courts must exist by the preservative clause vesting in them the jurisdiction when created. No other conclusion meets this difficulty, and no argument has been made or could be made which obviates it."⁶

The second theory, while it respects the tenure of office clause, however suffers from the infirmity that Congress cannot abolish a court even if unnecessary, or its purpose has been accomplished, simply because of the barrier planted by the tenure of office. This is inimical to a sound and practical government for it would completely tie up the hands of Congress against constructive legislation. This is contrary to the principle that "where there is no court there cannot be any such office as judge of such court,"⁷ because the right to hold an office depends upon the existence of that office. This principle admits of no argument. It is axiomatic. In such a case, tenure of office would only be available as a defense if it is shown that the abolition of the office has been made for personal or political reasons. This would bring us to the consideration of the third theory.

This theory holds that the office of a judge may be abolished, but that the abolition be made in good faith. This is the middle ground between the two theories. While it allows the termination of the term of office even if guaranteed by the Constitution, it however warns that that can only be done in good faith, or when necessary because the purpose of the office has ceased to exist. At times this step may be found necessary in the interest of good government, as in the cases of the Court of Appeals and the People's Court. These courts were created to fill an imperative need and when this was met, they were abolished and the incumbent judges swept out of office. No one has lifted a finger pointing to the unconstitutionality of such action. These are instances of abolition of an office or a judge for a good and sound purpose. This power of Congress has been impliedly recognized in the case

⁶ *McCulley v. State*, 102 Tenn., 509, 53 So., 184, diss. op.

⁷ *Perkins v. Corbin*, 45 Ala., 102.

of *Zandueata v. De la Costa*,⁸ wherein, although the majority opinion did not pass squarely upon the constitutionality of the Act reorganizing the courts of first instance, however, the concurring opinion of Justice Laurel categorically upheld the constitutionality of said reorganization act. Which of these theories should be adopted is an issue which the Supreme Court is now called upon to determine in the important case now before it.⁹

The provision against diminution of the salary of judges during their continuance in office has been the subject of interesting debates on the part of members of the bar and bench. The extent and scope of this provision have been brought to the fore in important cases in this jurisdiction and elsewhere, and one can see that while it has been originally conceived as a safeguard against any attempt to encroach on the independence of the judiciary, yet it has been assailed many a time under the cloak of financial necessity by placing judges on the same footing as ordinary citizens and, testing their sense of patriotism, by making them share their proportionate burden in the expense of the Government.

The first attempt was made in July, 1862 when a statute was passed subjecting the salaries of civil officers of the United States to an income tax of 3 per cent which revenue officers construed as including the compensation of judges. Chief Justice Taney protested against such an attempt invoking the principle of separation of powers and the independence of the judiciary. The protest remained unheeded until in 1869 when Attorney General Hoar rendered an opinion agreeing with the Chief Justice. For half a century thereafter, the salary of judges was not taxed as income.

In 1919, the attempt recurred when the Federal Income Tax Act was approved providing therein that taxable income shall include the compensation of all judges. Under such Act, Walter Evans, a United States judge, was taxed and he sued to recover the tax paid under protest. This gave rise to an epoch-making decision wherein for the first time it was explained the purpose, history and meaning of the Constitution forbidding the impairment of judicial salaries even by way of income tax.¹⁰

The issues that were posed before the court were:

"With what purpose does the Constitution provide that the compensation of the judges shall not be diminished during their continuance in office? Is it primarily to benefit the judges, or rather to promote the public weal by giving them independence which makes for an impartial and courageous discharge of the judicial function? Does the provision merely forbid direct diminution, such as expressly

⁸ 66 Phil. 615, (1938).

⁹ The Supreme Court has ruled on the question. See Recent Documents section of this issue.—*Editor's note.*

¹⁰ *Evans v. Gore*, 253 U.S. 245 (1920).

reducing the compensation from a greater to a less sum per year, and thereby leave the way open for indirect, yet effective, diminution, such as withholding or calling back a part as a tax on the whole? Or does it mean that the judges shall have a sure and continuing right to the compensation, whereon he confidently may rely for his support during his continuance in office, not that he may need have no apprehension lest his situation in this regard may be changed to his disadvantage?"

The particular need for making the judiciary independent was pointed out elaborately by Alexander Hamilton in the *Federalist*, No. 78, from which we quote:

"At a later period John Marshall, whose rich experience as lawyer, legislator, and chief justice, tersely said: 'Our courts are the balance wheel of our whole constitutional system; and ours is the only constitutional system so balanced and controlled. Other constitutional systems lack complete poise and certainty of operation because they lack the support and interpretation of authoritative undisputable courts of law. It is clear beyond all need of exposition that for the definite maintenance of constitutional understanding it is indispensable, alike for the preservation of the liberty of the individual and for the preservation of the integrity of the powers of the government, that there should be some non-political forum in which those understanding can be impartially debated and determined. That forum our courts supply. There the individual may challenge the legality of governmental action and have it adjudged by the test of the fundamental principles, and that the test the government must abide; there the government can check the too aggressive self-assertion of the individual and establish its power upon lines which all can comprehend and heed. The constitutional powers of the courts constitute the ultimate safeguard alike of individual privilege and of governmental prerogative. It is in this sense that our judiciary is the balance wheel of our entire system; it is meant to maintain that nice adjustment between individual rights and governmental powers which constitutes political liberty.'"

These considerations make it plain that the primary purpose of the prohibition against diminution was not to benefit the judges but, but like the clause in respect of tenure, to attract good and competent men to the bench, and to promote that independence of action and judgment which is essential to the continuance of the guaranties, limitations, and pervading principles of the Constitution, and the administration of justice without respect to persons, and with equal concern for the poor and the rich. The independence of the judiciary was upheld once more.¹¹

In 1939, foiled in their previous attempts, the revenue men persisted and succeeded in including in the Revenue Act of 1932 a clause taxing the salary of judges taking office after June 6, 1932. This attempt was made in the salary of Judge Joseph W. Woodrough. This time, the attempt of the revenue men succeeded for the Supreme Court

¹¹ *Ibid.*

of the United States ruled against the judge, declaring that Congress had the power to adopt the law.¹² The Court said:

"To suggest that it makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Article 3, Section 1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering."

That was the situation in the United States when in 1947 our own Collector of Internal Revenue required the late Justice Gregorio Perfecto to pay income tax upon his salary as member of the Supreme Court. As a law abiding citizen, he paid the tax, but brought suit for its recovery. The demise of Justice Perfecto relieved his fellow members of the embarrassment of passing upon a claim of a colleague, yet adjudication may not be declined even if he had survived because there is no other tribunal which may be called upon to make the adjudication.¹³ Precedents are not wanting in the United States where the Supreme Court has decided similar disputes affecting some members of the judiciary. The Supreme Court faced the issue frontally and courageously citing historical precedents and because of the O'Malley decision it was thought that the case might be easy and the result could be taken for granted, but our Court did not toe the line; instead, it chose to stick to the doctrine long sanctified as a preservative measure of judicial independence by declaring that the O'Malley case did not cover the situation of judges already in office but only of those who would assume office after the approval of the law. This was declared to be within the power of Congress, and in upholding for the first time the immunity of judges from income tax, our Supreme Court said:

"Judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminshable character of judicial salaries is not a mere privilege of judges—personal and therefore waivable—but a basic limitation upon legislative or executive action imposed in the public interest."

Because of this veiled pronouncement that Congress may validly declare by law that salaries of judges appointed thereafter are taxable as income, Congress approved a law declaring in an unequivocal manner that it is the desire of Congress to legalize the collection of income tax on the salaries of judicial officers, and that the payment thereof is not to be considered a diminution of their compensation as fixed by law or

¹² *O'Malley v. Woodrough*, 59 S. Ct. 838.

¹³ *Perfecto v. Meer*, G.R. L-2348, Feb. 27, 1950.

by the Constitution. And armed with this new weapon, the Collector of Internal Revenue proceeded to collect income tax on the salaries of two justices of our appellate court. As is to be expected, these two unassuming judicial officers came to the Supreme Court for aid and its decision was not to be long awaited. It declared the law void and unconstitutional not only because it is an invasion of the well-defined and established province and jurisdiction of the judiciary but a flagrant encroachment on the provision of the Constitution which protects the salaries of judges against diminution during their continuance in office.¹⁴

Our Court made this terse pronouncement: "We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the legislative department. If the Legislature may declare what a law means, or what specific portion of the Constitution means, especially after the courts have in an actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. x x x That would be neither wise nor desirable, besides clearly violative of the fundamental principles of our constitutional system of government, particularly those covering the separation of powers."

Judges had been assailed as lacking in patriotism because of their defiance of the law removing this exemption from income tax using—so they say—the Constitution as a shield. But the exemption is not enjoyed by the members of the Supreme Court alone but also extended to other constitutional officers like the President of the Republic, the Auditor General, the members of the Commission on Elections, and possibly the members of the Board of Tax Appeals, Public Service Commission, and Court of Industrial Relations. This exemption is also enjoyed by judges of first instance, municipal judges, and justices of the peace. Considering exemption in the abstract, there is nothing unusual or foreign in it, as long as it is based on public policy and social interest. And as to tax exemption, there are not a few who enjoy this exemption. Persons, natural or juridical, are exempted from taxes on their lands, buildings and improvements when used exclusively for educational purposes. Holders of governmental bonds are exempted from tax on the income or interest they receive therefrom. Payments of any income received by any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration are exempted from taxation. Funds received by officers and enlisted men of the Philippine Army who served in the Armed

¹⁴ *Endencia v. David*, G.R. Nos. L-6355 & 6356, Aug. 31, 1953; 49 O.G. (11), 482.

Forces of the United States are exempted from taxation for a certain number of years. In other words, for reasons of public policy and social interest, a citizen may, justifiably, by constitutional provision or statute, be exempted from his ordinary obligation of paying taxes on his income. Under the same public policy, and perhaps for the same if not higher consideration, the framers of the Constitution deemed it wise and necessary to exempt judicial officers from paying taxes on their salaries so as not to decrease their compensation, thereby insuring the independence of the judiciary. And so judicial independence once more triumphed in this jurisdiction.

What can the lawyers do to maintain and preserve inviolate this independence of the judiciary? A lawyer is not only a public officer within the statutory meaning of the term, but an officer of the court exercising a privilege or a franchise. His office is indispensable to the administration of justice and he holds a peculiar relation to the well-being of the court. The obligation of a lawyer when he is admitted to the bar is not simply to be obedient to the Constitution and laws, but to maintain at all times the respect due to the courts of justice and to judicial officers. The rules of court make it the duty of a lawyer "to maintain the respect due to the courts of justice and judicial officers."¹⁵ While the lawyer owes entire devotion to his client, his duty to the courts is no less sacred, and can only be maintained by rendering such service which would accord to it high respect and utmost consideration. As an officer of the court, it is his sworn and moral duty to help build the high esteem and respect towards the courts so essential to the proper administration of justice.

The Canons of Professional Ethics contain the following resumé of the duties of the lawyer to the courts: It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.¹⁶

The task of our judges in maintaining an unsullied and independent judiciary is pregnant with unpleasant experiences. Theirs is an ordeal which requires patience and endurance. They are placed in a predicament where they are called upon to listen to an array of conflicting witnesses bent on impressing them with their testimony whether true or fabricated. They need the wisdom of Solomon to discern the truth

¹⁵ Rule 127, Sec. 19 (b).

from the fake and in this task they have to muster all their reservoir of knowledge and experience. They are even subjected, much to their discomfort, to the ordeal of listening to a tedious and vexatious cross-examination. But they suffer all this with patience and perseverance even at the peril of their health because of their earnest desire to find out the truth. And when they pass judgment upon the controversy the losing party who cannot see eye to eye with the Judge can still find reason to impute an unholy motive to his situation. It seems natural for a litigant to feel distressed in the face of adversity, but it is unkind for him to disparage against the Judge. Much of this unpleasant experience can be assuaged through counsel and enlightenment on the part of the members of the bar.

Judges are human and may err in their appreciation of the evidence and in the application of the law. This is unavoidable in the mass of legal and human problems that are presented before them for determination. This shortcoming is but the result of human frailties and the multifarious vicissitudes confronting our judges. But while judges may err in their actuations, litigants are not justified in criticising them because their remedy is to appeal from their decisions. Judges are presumed to have acted in good faith and in accordance with their conscience and their conviction, and the litigant who disputes their character and probity should bring them to the corresponding authorities for official investigation. But they are not justified in criticising them, much less exposing them to public contempt and ridicule. Sound rules of ethics do not sanction such a step as it would only tend to undermine the faith of the people in the administration of justice.

Judges should not begrudge any criticism of their decision after they had become final provided it is made in the proper spirit and within the bounds of propriety. Sound and constructive criticism should be welcomed, for that is conducive to a sound administration of justice, but the criticism should not be contemptuous nor cast aspersion on the integrity and character of the judge. The members of the bar would do well in keeping in mind this line of distinction to avoid unpleasant incidents as the one which was recently brought before the Supreme Court for determination.

Of late, there seems to be a tendency on the part not only of regular newspapers, but also of those published in the tabloid form, to criticize decisions of courts regardless of whether they are still pending or have not yet reached their final stage, which either place the parties in some embarrassing situation or cast an unsavory reflection against the judge who has rendered them. Such newspaper criticisms are not allowed by the rules of ethics because they may interfere with a fair trial and due administration of justice. Generally, they are condemned or looked at with disfavor. "It is true that the constitutional guarantee

of freedom of speech and the press must be protected to its fullest extent, but license of abuse or liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen, is the maintenance of the independence of the judiciary."¹⁶

The same attitude should be observed in connection with the conduct of bar examinations by our Supreme Court. As you well know, a committee of examiners is constituted every year, under the chairmanship of a member of the Supreme Court, to conduct the examination. The selection is made by the Court itself from a list of distinguished members of the bar. The selection is made with utmost care and circumspection, and yet during or immediately after the examinations you now and then come across with some notorious headlines exposing, with or without ground or evidence, or merely based on rumors or gossips, the commission of some irregularities. Naturally, such publication causes alarm or creates in the mind of the readers an adverse reaction to the cleanliness or regularity in the conduct of examinations and, in the last analysis, the victim is the Supreme Court for it is its prestige that is placed on trial at the bar of public opinion. And yet, when the case is investigated, the publisher would merely come across with the flimsy excuse that under the Sotto law¹⁷ he cannot be compelled to reveal the source of his information. Such is not the way of a barrister worthy of his name. A barrister should not sacrifice truth for technicality. Publications of this nature, even if their purpose is to serve the interest of the paper, should be avoided because they are not only unfair and unjust but tend to undermine the faith and confidence of the people in the Supreme Court as regards the conduct of bar examinations. Members of the bar should rally behind the Court when it is unjustifiably assailed to the end that its name may be preserved and the court may remain always as the "citadel of public justice and public security," and the last bulwark of democracy in our country.

I will close with the following warning of a great jurist: "If our constitutional form of government is to survive and the fundamental rights of the people are to prevail, there must be support and respect for the judiciary on the part of the people and the government, and it must be kept firm and strong so that it may withstand the most severe assaults of passion or malevolence and thus preserve sacred and inviolate those rights and liberties without which life is not worth living."

¹⁶ *In re Sotto*, 46 O.G., (6), 2574.

¹⁷ R.A. No. 53.