THE JUDICIARY REORGANIZATION ACT — A QUESTION OF NECESSITY

DANIEL C. GUTIERREZ*

> We are pleased to think of judges as of the type of the erudite Coke who, three centuries ago, was removed from office because when asked "if in the future he would delay a case at the King's order," replied: "I will do what becomes me as a judge."
> —JUSTICE GEORGE MALCOLM[1]

AN AGE-OLD PROBLEM

Throughout history, an endemic dissatisfaction with the administration of justice has plagued mankind. From the early days of primitive communal life, with its simple problems of food gathering and shelter, to today's bustling complex life in the megapolises, there has been a universal complaint centering on society's apparent inability to satisfactorily solve the age-old moral and legal problem of according justice. Even the very term itself has been the subject of controversy and debate as to its meaning, while at the same time serving as a keynote, a basic foundation for all societies. Indeed, any society that claims that it is a good and beneficial one invariably anchors its daily processes on the concept of affording justice.

THE PARAMOUNT HUMAN VALUE

Justice is a key word for any society that lays any claim at all to being a good society. It is commonly used in the two primary senses of giving every man his due and of the setting right of wrong whether by compensating the victim of wrong or by punishing the doer of it.[2] The affordance of justice in society partakes no solitary character, but is somewhat all encompassing in the sense that it permeates the entire life process. If it is supposed that what is due to a man is merely because he is a man, then the justice in question may be called natural. If what is due to him is so by virtue of some rule which happens to be generally accepted in his community, then the justice is conventional. If it is due to him by virtue

* *Member*, Student Editorial Board, Philippine Law Journal.

1 Borromeo v. Mariano, 41 Phil. 333 (1921).

2 MENDOZA, *The Administration of Justice*, in LAW AND SOCIETY 39 (1978). Hereinafter referred to as MENDOZA.

of a rule the breach of which makes the breaker answerable for his action to some public authority, then the justice is legal.[3]

Justice as commonly contemplated in today's complex society invariably partakes the nature of the third kind. The human population has increased tremendously since the early days of primitive communal living and with it have come developments in science and technology that brought about modern day society. Society is so ordered today that people are in almost constant contact with one another. The relative freedom and isolation enjoyed in the days of yore have given way to new social relationships based on inter-action, production specialization and interdependence.[4] Today, one must constantly work and plan his life in relation to that of others based on certain basic rules which society has laid down.

THE NEW URGENCY OF THE PROBLEM

Consequently, therefore, the problem of according justice partakes a new urgency. The close inter-dependency of individuals in society necessitates a more effective machinery for administering the rules that individuals in society lay down among themselves in their contract with one another. Invariably, the breakdown or lack of such a mechanism for the redress of wrongs gives rise to much dissatisfaction.

Proposals for judicial reform are essentially the result of such dissatisfaction. Complaints against the administration of justice are as old as the attempts to enforce legal rights.[5] The volume and intensity of such complaints are greater than that against other human institutions and are constant despite frequent reforms.[6]

The Judiciary Reorganization Act of 1981[7] was essentially brought about by such a persistence of complaints. It should be viewed not as an isolated case of governmental reorganization, nor of parliamentary gymnastics but as a necessary product brought about by reaction to persistent public clamor. Dissatisfaction with the present system of dispensing justice has reached new heights in recent years. Effective administration of justice can be possible only as a result of the strict observance of certain procedural and substantive precepts of law and in the smooth working by those primarily charged with enforcement and adjudication. The more important of these would necessarily be the courts of justice: the arbiters of the law in contemporary society. When and if such a machinery breaks down or is totally lacking, it would of necessity lead to unrest and turmoil. This has been the Philippine experience.

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3 *Ibid.*

4 *See* STALIN, DIALECTICAL AND HISTORICAL MATERIALISM (1979) reprint.

5 SEAGLE, Administration of Justci,e VIII ENCYCLOPEDIA OF THE SOCIAL SCIENCES 515 (1951).

6 *Ibid.*

7 Batas Pambansa Blg. 129 (1981).

PROBLEM OF INADEQUACY

Essentially, public anger centers on the inadequacy of the judicial organization. The problem in recent years has been made manifest by the presence of large backlogs, congested dockets, cumbersome and expensive procedures, and worse, of charges against judicial competence and integrity.

Delays in the adjudication of civil suits have been a perennial complaint, with cases more often than not unsettled despite years, even decades, of tedious and expensive litigation. In many cases, the original parties to a suit pre-decease its adjudication or worse, the winning party oftentimes has to content himself with a pyrrhic legal victory, since his judgment debtor in the long subsequent years of litigation has died or gone bankrupt.

In the administration of criminal justice, attention has been directed to manipulated convictions and the escape of wealthy and powerful malefactors.[8] It has become just as easy for innocent small fry to be convicted as justice for all has been, too often, honored more in breach than in practice.[9]

HEAVY JUDICIAL BACKLOGS

The problems are of common knowledge and notice.

Judicial backlogs and clogged dockets have noticeably grown in recent years. Percentagewise they may be categorized thus: 2.09% in 1973; 11.36% in 1974; 9.24% in 1975; 17.85% in 1976; 14.96% in 1977; 5.30% in 1978; 0.91% in 1979 and 2.59% in 1980. As of July 30, 1981 when a Committee on Judicial Reorganization was established by President Marcos, there were close to 450,000 pending cases.[10] Broken down they consist of 275,707 for municipal and city courts, 145,228 for Courts of First Instance and Circuit Criminal Courts, 12,726 for the Court of Appeals, 7,464 for the Juvenile and Domestic Relations Court, 480 for the Court of Tax Appeals, 8,188 cases for the Court of Agrarian Relations, 1,958 for the sandiganbayan and 4,189 for the Supreme Court.

DELAYS IN LITIGATION

The delay in the disposition of cases is the most common complaint against the judicial system.[11] The congestion of court dockets is the natural result of new cases being filed more rapidly than old ones can be disposed of.[12] The delay become larger as the cases pile-up since obviously only one case can be acted on at a time. The impact of modern civilization and

[8] CLUTARIO, PROPOSED REFORMS IN THE ORGANIZATION AND PROCEDURE OF THE JUDICIARY 1 (1966). Hereinafter referred to as CLUTARIO.

[9] MENDOZA, *supra*, note 2.

[10] Report of the Committee on Judicial Reorganization 5-6 (Oct. 17, 1980).

[11] VANDERBILT, THE CHALLENGE OF LAW REFORM 76 (1955).

[12] MACDONALD, STATE AND LOCAL GOVERNMENT IN THE UNITED STATES 171 (1955). Hereinafter referred to as MACDONALD.

its almost natural tendency of increased litigations shows the inadequate and sorry state of the judicial system.

Then Solictor-General Edilberto Barot in 1961 pointed out the ironies brought about by delay in the judicial process[13] — "the complaints of litigants about the delay in the hearing and disposal of their cases are not altogether unfounded. There are cases involving the right to public office which are decided long after the term to the disputed office expires. Ironically, sometimes, the court holds finally that the incumbent had no legal right to the office and was a usurper. In other cases a property owner succeeds in ejecting squatters on his property only after years of costly litigation. In the meantime, the property owner pays the taxes on his property while the squatters freely enjoys the use of the property. There are even instances where decisions are rendered after the cases have become moot. No wonder there is a common dissatisfaction in the manner justice is dispensed in the Philippines."

IS DELAY INEVITABLE?

The problem of backlogs has been so ingrained in the judicial machinery that many judges tend to honestly believe that the problem is inherent in courts and litigation.[14] They cite as reasons the inevitable delay that occurs in the sense that many things must be done in the preparation of the case. Facts must be ascertained, witnesses listed and subpoenaed, evidence assembled and the case set for trial.[15]

Still, this syndrome is but a mere manifestation of the greater disease—that of inadequacy. The failure to handle civil suits and criminal prosecutions more expeditiously is largely due to the fact that the courts are not properly organized to handle the large and increasing volume of business imposed upon them by the complexities of modern civilization.[16] It is not at all surprising that a judicial system designed in an earlier day to meet the requirements of a simple mode of life should be unsuited to the tremendous task of dispensing justice swiftly and surely in the modern world.[17]

Verily, the staggering volume of cases renders impossible any compliance with the statutory and constitutional limits in the adjudication and disposition of cases.[18] The slowness of the proceedings are further aggravated by the existence of somewhat long and tedious, not to mention expensive procedures not only in the trial, but also in the appellate level of adjudication.

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[13] *Our Clogged Dockets and Some Urgent Reform*, 26 LAW J. 99 (1961).
[14] Solidum, *The Clogging of Cases* 33 PHIL. L. J. 347 (1958).
[15] CLUTARIO, *supra*, note 8 at 26.
[16] *Ibid.*
[17] MACDONALD, *supra*, note 12.
[18] CONST., Art. X, sec. 11; *See* also Department of Justice Adm. Order No. 10 (Jan. 27, 1948).

THE PROBLEM OF QUALITY

Apart from quantitative problems, there is widespread disapprobation on the quality itself of the justice being dispensed, so much so that the Committee on Judicial Reorganization warned that "there are problems both grave and pressing that call for remedial measures. The felt necessities of the time, to borrow a phrase from Holmes, admit of no delay, for if no step be taken and at the earliest opportunity, it is not too much to say that the people's faith in the administration of justice be shaken."[19] They go on to say that "the *rectitude and the fairness* in the way the Courts operate must be manifest to the members of the community and particularly to those whose interests are affected by the exercise of their functions."

INTEGRITY AS AN ASPECT OF QUALITY

Judicial efficiency as a concept does not merely partake the character of speed in adjudication. More importantly it also considers the quality of the justice being dispensed. Edmund Burke's aphorism on the "cold neutrality of an impartial judge" is as much of an ideal that is sought to be attained today as it was then. The problem therefore partakes in reality the nature of proper judicial selection. The most important problem in the judiciary will ultimately boil down to the manner in which judges are selected. The effectiveness of any judicial organization, no matter how well planned, will suffer if it is unable to get honest and competent judges.

The late Chief Justice Arthur Vanderbilt of the New Jersey Supreme Court puts the problem thus: "the need for the selection of good judges lies in its being the basis for the improvement of judicial organization and court procedure since the effective administration of justice calls for their supervision by an able judiciary.[20]

A good judge must necessarily have legal training, capacity for disinterested judgment, honesty, courage, industry, statesmanship, practical experience, and understanding.[21]

THE COURTS UNDER ATTACK

The judiciary has been under constant attack. In a position paper[22] on Cabinet Bill No. 42 that subsequently became the Judiciary Reorganization Act, the University of the Philippines Law Center said: "the stupendous magnitude of the problems that have long beset the administration of justice in the country—a persistently staggering backlog, large-scale presence of lazy, incompetent and corrupt members, cumbersome procedures, and

19 Report of Committee on Judicial Reorganization 1 (Oct. 17, 1980).

20 JUDGES AND JURORS: THEIR FUNCTIONS, QUALIFICATIONS AND SELECTION 3 (1956).

21 Custodio, et al., *An Appraisal of the Judicial Fitness and of the Present System of Judicial Selection*, 29 PHIL. L. J. 590-592 (1954).

22 It was prepared by Professor Esteban B. Bautista, Head of the Division of Research and Law Reform.

dilatory practices, to mention a few—dictate the adoption and measures that must go to the roots, and not just scratch the surface, of our judicial system."

Speaking before a testimonial dinner in his honor on his retirement, Supreme Court Justice Felix Q. Antonio urged the modernization of the country's judicial system to speed up the slow wheels of justice. He cited the people's demand for a "more effective, efficient and equitable distribution of judicial services." Antonio said that he realized the urgent need of reviewing the operations, systems and management in the delivery of judicial services."[23]

POSITION OF THE INTEGRATED BAR

The Integrated Bar has also been vociferous in its attack on the judiciary. In a speech before Manila Rotarians, then IBP President Edgardo J. Angara characterized the Philippines as having the most antiquated court system in South-East Asia.[24] This was preceded by an earlier speech before the same group wherein he called for court modernization.[25]

Writing a series of columes for a major newspaper, Angara continually espoused the IBP position, writing on such topics as "Professionalizing the Judiciary",[26] "Judicial Revamp",[27] "Procedural Reform".[28]

LAWYERS STAND BEFORE AND NOW

This position of the Integrated Bar is a sharp contrast to the position and stance usually taken by the legal profession vis-a-vis the judicial system. During the early days of the Macapagal Presidency, the bar was united in its defense of the integrity of the judiciary. During that period, President Macapagal was so incensed by the unfavorable decision (to him) in *Garcia v. Salcedo*.[29] If we remember, President Macapagal tried to replace Paulino Garcia as chairman of the National Science and Development Board with Juan Salcedo. The Supreme Court turned him down and upheld the *quo warranto* suit brought by Garcia. What so incensed President Macapagal was the statement in the concurring opinion of Justice Jose B.L. Reyes, to wit: "the attitude of the President, who is to be the ultimate arbiter to decide the administrative case against the petitioner, in pre-judging the case against the latter in connection with one of the principal charges, is difficult to reconcile with the open mind, soberness and restraint to be expected of an impartial judge."

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[23] IBP Newsletter, June 1980, p. 1, col. 1.
[24] Daily Express, Nov. 21, 1980, p. 1, col. 1.
[25] Bulletin Today, Nov. 12, 1980, p. 5, col. 7.
[26] Bulletin Today, Oct. 19, 1980, p. 7, col. 1.
[27] Bulletin Today, Aug. 10, 1980, p. 7, col. 1.
[28] Bulletin Today, Oct. 12, 1980, p. 7, col. 1.
[29] G.R. No. 19748, September 13, 1962, 6 SCRA 1 (1962).

President Macapagal subsequently rebuked Justice Reyes saying "that any justice who unduly attacks the President of the Republic detracts from the prestige of the Supreme Court which should be held high at all times." He made allusions to the "extraordinary association between Justice Reyes and Paulino Garcia, whom he characterized as long-standing and ideological colleagues in the Civil Liberties Union.[30]

The reaction of the bar was pro-Court. In an editorial, the Lawyer's Journal in referring to the Supreme Court said "it is heartening and refreshing to realize that it dispensed justice as it deemed fit, without fear or favor, and without regard to the known desires of the most powerful elective officials of the land. . . . There is no question but that the Supreme Court will continue to resolve cases in the spirit of courage and independence. . . . It continues to proclaim the glory of courageous thought and independent action."[31]

The battle between Macapagal and the organized bar did not end there. It once again exploded when then Secretary of Justice Liwag made a speech wherein he characterized the Supreme Court as a body of men with feelings, affected by prejudices, possessed of caprices and susceptible to other frailties of human nature, whose imperfections are often reflected wittingly or unwittingly in their judicial pronouncements.[32] The lawyers again defended the Court, claiming that even at that late time, Macapagal was still bitter over the *Garcia* case.[33] They said that the thesis of the President that he is the supreme authority and only the people can censure and crucify him at the polls and that the Court acting under the doctrine of checks and balances has no right or power to pass judgment on the reasonableness of his acts, leads to dictatorship.

ADMONITION TO THE PROFESSION

The recent case of *Fortun v. Labang*[34] censured the precipitate haste and unfounded allegations of misconduct against Judge Willelmo Fortun. The Court in this case pointed out the danger presented by the facts of the case, "the sad and lamentable spectacle . . . a judge being subjected to harassment and humiliation, . . . can diminish public confidence in the courts." The Court laid stress on the failure of the respondents to abide by a Resolution of the Integrated Bar stressing that precisely integration could shield "the judiciary which traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence."

30 27 LAW J. 258 (1962).
31 27 LAW J. 257 (1962).
32 28 LAW J. 3 (1963).
33 28 LAW J. 1 (1963). *See* also Vera, *The Supreme Court: Guardian of the Constitution,* 28 LAW J. 3 (1963); and Valmonte, *The Secretary of Justice and the Supreme Court,* 28 LAW J. 6 (1963).
34 G.R. No. 38383, May 27, 1981.

The Court through Chief Justice Fernando opined that the respondents should display "a greater sense of responsibility, not to say a more adequate grasp of the cardinal requirements of due process.... They did not even make any effort to dispute the accuracy of the imputation of being disgruntled members of the bar with a record for losing cases.... They paid no attention to the norm of conduct that lawyers should observe as officers of the Court."

The *Fortun* case, while fortunately not typical however, manifests the low credibility of judges. Where in former times such cases as those against Judge Fortun were totally unheard of, there has been a considerable increase in recent years.

REACTION OF MEDIA

The reaction of media to the idea of reorganization has been unequivocal. The 1980 and 1981 issues of the daily papers, since the idea of judicial reorganization was broached have been filled not only with news articles but commentaries on the matter. The leading daily columnists have a common theme — that there is an urgent and pressing need for reform in the judiciary.[35] The management of the dailies themselves were unanimous in their demand for a revamp as reflected in the editorials that came out on the subject.[36]

The above circumstances point out one indubitable fact — that the public believes that the credibility and efficiency of the judiciary has sunk to a new low.

The low public esteem may reflect unrest in society and the current fad of tearing down established institutions, including heroes. It is of everyone's notice that there is today, a persistent climate of rebellion and unrest as well as an uncommon penchant for attacking institutions identified with the ruling social order.

THE LESSONS OF THE PAST

THE AMERICAN EXPERIENCE

Criticisms Against the American Judiciary

In the United States, there existed and still exists a considerable number who believe that the power of the judges is basically a denial of the majority rule. This is made more stark by the occasions when the Supreme Court has overruled certain acts of the Executive and of Congress as being invalid and not in conformity with the Constitution.

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[35] *See* the Bulletin Today columns (page 6 & 7) Apolonio Batalla on Aug. 12, 1981, Jesus Bigornia on March 3, 1981, and Nick Enciso on Oct. 3, 1980, as well as Times Journal editorials of Aug. 10, 1980 and Aug. 31, 1981; Bulletin Today editorial of Aug. 11, 1980.

[36] Times Journal, editorial, Aug. 10, 1980.

In fact, throughout the existence of the United States, there has been a somewhat persistent clamor against what some would consider judicial high handedness. Thomas Jefferson, who was president when the Court first fully used its power of judicial review exploded. "Our Constitution... intending to establish three departments, coordinate and independent, that they may check and balance one another ... has given, to one of them alone the right to prescribe rules for the government of others, and to that one, too, which is unelected by and independent of the nation."[37]

There have been indeed criticisms as regards the Supreme Court which one author characterized as "powerful, irresponsible and human." "Its members holding office for life if they choose, are completely irresponsible to anyone or anything but themselves and their own consciences." "Ours may be for puffing purposes, a 'government of checks and balances', but there is no check at all on what the Supreme Court does — save only there that are as petty in theory as they are pointless in practice."[38]

Even a member of the Court, Justice Stone exclaimed that "the only check upon our own exercise of power is our own sense of self restraint... Courts are not the only agency of government that must be assumed to have the capacity to govern."[39]

Public Reaction for the Judiciary

The majority of the Supreme Court in 1935 were conservatives and they tended to oppose President Franklin D. Roosevelt's New Deal. The worst fears of Roosevelt were confirmed when in a series of cases[40] involving the National Industrial Recovery Act and other New Deal legislation, the Supreme Court consistently invalidated their operation. Roosevelt castigated the decisions as a backward step. Speaking of the *Schechter* decision he said that "we have been relegated to the horse and buggy definition of interstate commerce."[41]

Faced with a hostile Court, Roosevelt unfolded what is now known as the court-packing plan. This recommendation was for a retirement plan for aged justices which would allow them to retire on pension, and if "worn-

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[37] RODELL, THE NINE MEN: POLITICAL HISTORY OF THE SUPREME COURT FROM 1790-1955 3 (1955). Jefferson was reacting to the opinion of Chief Justice Marshall in Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803) which, aside from criticizing the actions of the anti-Federalist Jefferson Administration, declared that "it is emphatically the province and the duty of the judicial department to say what the law is", and held as unconstitutional the legislative enactment that authorized the Supreme Court to issue writs of mandamus.

[38] *Ibid.*, p. 5, *See* also FREUND, ON LAW AND JUSTICE 51-59 (1968), for his views on the Supreme Court under attack.

[39] *Ibid.*, p. 6.

[40] Panama Refining Co. v. Ryan, 293 U.S. 502 (1934); Norman v. Baltimore, 294 U.S. 240 (1935); Perry v. US, 294 U.S. 330 (1935); Railroad Retirement Board v. Alton R. Co., 295 U.S. 330 (1935); Schechter Poultry Corp. v. US, 295 U.S. 495 (1935).

[41] GERHART, AMERICA'S ADVOCATE: ROBERT H. JACKSON 100-101 (1958).

out" Justices failed to retire, the President could appoint another judge in his place who would have precedence over him.[42]

Public reaction against the court packing plan of Roosevelt was tremendous. The people deeply resented the indirection of the attack and the camouflaging of the real purpose of the bill. It was obvious to most people and even then Attorney General Jackson was forced to admit that the success of Roosevelt's New Deal depended on the men in the Court. The real reason for the bill reorganizing the judiciary was obvious — to pack the judiciary with men sympathetic to the Roosevelt cause.[43]

The American Bar Association came out explicitly against the bill and presented a large amount of evidence in the Congressional records in refutation. Newspapers made various unflattering characterizations of the act most notably "government by deception", "devious method of approach", "a deceptive course and a devious remedy".[44]

In the face of tremendous public pressure, Congress finally decided to kill the bill. Later on, Jackson in the last book that he wrote, the *Supreme Court in the American System of Government* said "the people have seemed to feel that the Supreme Court, whatever its defects, is still the most detached, dispassionate, and trustworthy custodian that our system affords for the translation of abstract into concrete constitutional commands."[45]

U.S. Precedents on Reorganization

There are cases which show that the legislative power to create courts carry with it the power to organize and re-organize them. *Tumey v. Ohio*[46] opined that the state may provide such system of courts as it chooses. There are also several cases, notably *Devening v. Bartholomew*,[47] and *Aikman v. Edwards*[48] which are authority for the view that the legislature is vested with the power of reorganizing courts. The power to abolish courts is usually coextensive with the power to create them. *Russell v. Gardner*,[49] *Herndon v. Imperial F. Ins. Co.*,[50] *McCulley v. State*[51] opine that the power to create includes the power to increase or diminish their number, subject to constitutional limitations, such as the fact that a court created by the constitution cannot be abolished by mere legislative enactment.[52]

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[42] *Id.* at 105. *See* also JACKSON, THE STRUGGLE FOR JUDICIAL SUPREMACY (1941), which contains a comprehensive analysis of the events, the political and the judicial personalities of this period, and the resultant crisis in American power politics.

[43] *Id.* at 111.

[44] *Id.* at 112.

[45] *Id.* at 121.

[46] 273 U.S. 510 (1927).

[47] 176 Ind. 182, 95 N.E. 417 (1911).

[48] 55 Kan. 751, 42 p. 366 (1895).

[49] 218 Mo. App. 217, 265 S.W. 996 (1924).

[50] 111 N.C. 384, 16 S.E. 465 (1892).

[51] 102 Tenn. 509, 53 S.W. 134 (1899).

[52] Stevenson v. Milwaukee, 140 Wis. 14, 121 N.W. 654 (1909).

The perusal of the above cited cases shows that while the power to abolish is generally taken for granted as existing, still safeguards must constantly be followed to ensure that there is not arbitrary and capricious abolition, such as when brought about by political considerations. The criteria or standard in abolition still necessarily partakes the nature of strict constitutional norms designed to safeguard the independence of the courts. And public reaction strongly supports this view.

THE PHILIPPINE SETTING

Past Reorganizations

Philippine history is not lacking in instances of judicial reformation. There were many instances of judicial reorganization throughout the entire length of the Spanish regime,[53] but essentially we trace the current trend of revamp to events during the years of American occupation.

Originally, judges in the Philippines had an unlimited term of office. This practice, however, was cut short by the passage of Act 3107[54] which provided that 65 years in the age limit for justices of the peace and their auxiliaries to hold office.[55]

The first Judiciary Act[56] was enacted in June 1901 and was amended by two laws, the first of which reorganized the Courts of First Instance and the Cadastral Courts in 1914.[57] Then came the 1932 Reorganization law[58] which was somewhat more embracing as it dealt with the whole government.

Under Commonwealth Act No. 145,[59] there was a reorganization of the various Courts of First Instance, and a subsequent redistricting that was followed by the appointments of their incumbents. The validity of this law was challenged in *Zandueta v. De la Costa.*[60] Judge Zandueta was extended an ad-interim appointment under this act but the Commission on Appointments turned him down and subsequently, De la Costa was appointed. The Supreme Court dismissed the *quo warranto* petition on estoppel while at the same time opining that in case there is an abolition, nothing remains of that office after abolition.

In 1948, the Judiciary Act[61] was passed and in the present law we have today pending completion of the reorganization. The law has been subjected to several amendments, most significant of which is Republic Act

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[53] BLAIR AND ROBERTSON (eds.), THE PHILIPPINE ISLANDS (1493-1803) V 276 (1907). *See* also U.S. Bureau of the Census, I CENSUS OF THE PHILIPPINE ISLANDS 1903) 389 (1905).

[54] March 17, 1923.

[55] *See* Ortiz-Airoso v. De Guzman 49 Phil. 371 (1926).

[56] Act No. 136 (1901).

[57] Act No. 2347 (1914).

[58] Act No. 4007 (1932).

[59] Nov. 7, 1936.

[60] 66 Phil. 615 (1938).

[61] Rep. Act No. 296 (1948).

1186 which took effect without Presidential approval on June 30, 1954. The most controversial portion of that act was the section abolishing the "existing positions of Judges-at-Large and Cadastral Judges". The section was assailed in a petition for mandamus to reinstate Judge Ocampo. *Ocampo v. Secretary of Justice Tuason*[62] was dismissed by the Supreme Court due to insufficient votes to invalidate the challenged provision. Notably, seven out of eleven members of the Court viewed the statute as unconstitutional.

The Court of Appeals was also the subject of reshuffling. Pleading the lack of funds immediately following the war, President Sergio Osmeña abolished it under his wartime granted emergency power to legislate. It was subsequently re-established in the Judiciary Act and its membership increased several times.[63]

AN INDEPENDENT JUDICIARY

The need for an independent judiciary is best espoused by a statement by Solicitor-General Mendoza, as he was quoting Alexander Hamilton,[64] to wit: "As Hamilton stated, judicial review does not suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. This may be sophistry but no better substitute has been found for judicial review in a democracy."

A retired jurist enunciates the need thus: "the position of the judiciary with independent-minded judges is of special significance in a free society. The strength of our attachment to the rule of law can only be guaranteed by an independent judiciary. Without such an independent judiciary there can be no freedom for the citizenry. Its independence . . . is the cornerstone of democracy and the bulwark of our freedom.[65]

The idea of an independent judiciary is lynchpinned on the doctrine of separation of powers. The underlying reason for this principle was the assumption that arbitrary rule and abuse of authority would invariably result from the concentration of the three powers of government in the same person, body of persons or organ.[66] "The doctrine of the separation of powers was adopted . . . not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but by means of the inevitable friction incident to the distribution of the government powers . . .

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[62] 51 O.G. 147 (Jan., 1955).

[63] Exec. Order No. 73 (1945). The membership was increased to 24 under RA 296 (1948), 36 under PD 289 (1973) and 45 under PD 1482 (1979).

[64] MENDOZA, *supra*, note 2 at 48.

[65] Regala, *The Need For An Independent Judiciary* in PHILCONSA READER ON CONSTITUTIONAL AND POLICY ISSUES 315-316 (1979).

[66] SINCO, PHILIPPINE POLITICAL LAW 128-130 (1962).

to save the people from autocracy."[67] Justice Douglas, concurring in *Youngstown Sheet and Tube Co. v. Sawyer*[68] said, "we pay a price for our system of checks and balances ... It is a price that today may seem exorbitant to many. Today, a kindly President uses the seizure power to effect a wage increase and to keep the steel furnaces in production. Yet tomorrow, another President might use the same power to prevent a wage increase, to curb trade unionists, to regiment labor as oppressively as industry thinks it has been regimented by this seizure."

Jurisprudence on an Independent Judiciary

There is sufficient jurisprudence on the independence of the judiciary.

Ocampo v. Cabangis[69] was of the opinion that in the absence of a constitutional requirement, no law may compel judges to write their decisions in a particular form. Such is constitutive of undue limitation on judicial discretion and authority. In *Borromeo v. Mariano*[70] Judge Borromeo was appointed judge of the 24th Judicial District, to which he duly qualified and assumed office. Later on, he was appointed judge to the 21st district and Mariano appointed to replace him. Borromeo refused to accept the latter appointment and filed the quo-warranto proceedings. Upholding Judge Borromeo, the Court through Justice Malcolm said that a judge may be made a judge of another district only with his consent. The law does not empower the Governor-General to force upon the judge of one district an appointment to another district against his will, thereby removing him from his former district. Upholding judicial independence, the Court opined "our conception of good judges has been and is of men who have a mastery of the principles of law, who discharge their duties in accordance with law; who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate to the other two departments of government."

Radiowealth v. Agregado[71] concerned itself with the disapproval by the Auditor-General of the payment to Radiowealth for intercom equipment for the Supreme Court. Upholding Radiowealth, the Court said "the prerogatives of the Supreme Court which the Constitution secures against interference includes not only the powers to adjudicate causes but all things that are reasonably necessary for the administration of justice.... Without the power to provide itself with appropriate instruments for the performance of its duties, the express powers with which the Constitution endows it would be useless. ... In the requisition for fixtures, equipment and supplies, both the executive and the judicial department are on the same footing.

[67] Justice Louis Brandeis in Myers v. US, 272 U.S. 52 (1926).
[68] 343 U.S. 579 (1951).
[69] 15 Phil. 626 (1910).
[70] 41 Phil. 322 (1921).
[71] 86 Phil. 429 (1950).

They derive their authority from the same source and represent the sovereignty in equal degree."

In *re Sotto*,[72] the Court punished lawyer Vicente Sotto with contempt of court for characterizing members of the Court as incompetent, narrow-minded and unjust. Explaining the contempt order, the Court said that "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." The charges of Sotto, said the court, tended to impair the impartiality of verdicts and obstructed justice. "The Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference. . . ." If the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos would be the result."

The need to maintain judicial independence by the rejection of non-judicial functions imposed on members was upheld in several cases. In *Meralco v. Pasay Transportation*[73] the Court refused to sit as a board of arbitrators for fixing transport rates for the use of Meralco lines and bridges. The Court said that a board of arbitrators is not a "court" in any proper sense of the term and possesses none of the jurisdiction contemplated to be exercised by the Supreme Court. The Supreme Court should not and cannot be required to exercise any power or to perform any trust, or to assume any duty not pertaining to or connected with the administering of judicial functions.

The Court in *Garcia v. Macaraig*[74] looked with disfavor at the practice of detailing judges at the Department of Justice, even if it were only to assist the Secretary with his work of exercising administrative authority over the courts. The line of what a judge may or may not do should always be kept clear so as to prevent erosion of the people's trust in the system. Judge Macaraig, in this case for lack of facilities at his sala and due to pressing needs at the Department was detailed by then Secretary Vicente Abad Santos to work under him.

The principle of having only one Supreme Court was upheld in *Vargas v. Rilloraza*.[75] The Court opined that the designation of "temporary Justices" under the People's Court Act is invalid. "What really matters is not the length or shortness of the alteration of the constitutional composition of the Court, but the very permanence and unalterability of that composition so long as the constitution which ordains it remains permanent and unaltered."

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[72] 82 Phil. 595 (1949).
[73] 57 Phil. 600 (1932).
[74] Adm. Case No. 198-J (May 31, 1971), 39 SCRA 106 (1971).
[75] 80 Phil. 297 (1948).

Safeguards in the Constitution

The Constitution provides several other safeguards to assure judicial independence. First is the concept that during the tenure of Justices and Judges there can be no decrease in their salary and emoluments.[76] Second is the guarantee of tenure to judges, during good behavior, up to age 70, unless they become incapacitated to discharge the duties of their office.[77]

It is likewise an accepted principle in the law on public officers that no civil action can be sustained against a judicial officer for the recovery of damages by one claiming to have been injured by the officer's judicial action within his jurisdiction.[78] The New Civil Code under Article 32 enunciates the present rule in this regard that a judge shall be liable only when his act or omission constitutes a violation of the Penal Code or other penal statute. It is believed that such immunity tends to protect the prestige and stature of the judiciary and maintain its credibility with our people so very much needed, if judicial decisions are to partake practical effect.

Judicial Review and Independence

The very nature of judicial review demands and assures judicial independence. To be impartial, a judge must necessarily be free from any external pressure, either from private parties or from the other branches of the government. Being necessarily human, his needs must be adequately provided for as to leave him less susceptible to temptation, or control of other parties.

The rule of procedure and other rituals adopted by Courts not only serve as a means for the facilitation of cases but also serve or are intended to dignify the bench. Thus, while criticism of courts is welcome, it should not step out of bounds for then it becomes an instrument that erodes public confidence in the judicial system and therefore becomes an obstruction to the orderly administration of justice. The Court in *In re: Almacen*[79] laid down the different standard for criticism of the court. "It is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is a misconduct that subjects a lawyer to disciplinary action."

The Constitutional Role of the Supreme Court

The 1973 Constitution transferred the administrative supervision of courts from the Department of Justice where they were formerly lodged,

[76] CONST., Art X, sec. 10.
[77] CONST., Art. X, sec. 7.
[78] GONZALES, ADMINISTRATIVE LAW AND THE LAW ON PUBLIC OFFICERS 297-298 (1972).
[79] G.R. No. 27604, February 18, 1970, 31 SCRA 562 (1970).

with the Supreme Court.[80] The change was brought about by the desire to isolate or immunize the courts from political considerations. Supervision by a department of the Executive branch leaves the door open to possible undue influence on the part of the judicial supervisor, enough perhaps to color the outcome of litigation pending before certain specific courts. With the transfer to the Supreme Court, there at least was achieved a modicum of judicial independence, and added prestige and credibility to the somewhat tottering judicial set-up.

Has the Supreme Court failed in its job of effectively administering courts? This is a very subjective question that cannot partake of any definite or clear-cut answer since there is as yet insufficient time and experience to judge the Court. The past eight years were extraordinary in the sense that we were living under emergency rule, and to judge the Supreme Court in the light of such unsettled conditions could be unfair. Nor can an effective assessment be based on statistics on disciplinary procedures in relation to charges filed. The suspension or removal of judges and court personnel which has considerably increased the last few months cannot have a rational bearing on the Court's effectivity. The *Fortun v. Labang*[81] case shares with us the lesson, or the growing practice of instituting harassment suits against members of the judiciary. That few members of the bench are removed cannot be an indication of administrative inefficiency since even the Supreme Court is bound by the rules of procedural and substantive due process.

The Supreme Court Ignored

While the creation of courts is admittedly a legislative prerogative, still, the question arises as to whether the Supreme Court is correctly ignored in the current reorganization. It is true that the Committee on Judicial Reorganization established by the President was chaired by the Chief Justice and had two Associate Justices as members, but it takes little to perceive the fact that the Report they submitted to the President on October 17, 1980 was almost totally ignored when Cabinet Bill 42 was drafted and submitted to the Batasan for approval. The Cabinet Bill which subsequently became Batas Pambansa 129 was a radical departure from any of the recommendations of the Committee. Quite ironic, in view of the fact that the main proponent of the Cabinet Bill, the Minister of Justice himself co-chaired the Judicial Reorganization Committee.

The fact that it is the Supreme Court that has administrative supervision over all inferior courts, should have given it a greater role in the current reorganization process. For who is better qualified to diagnose and prescribe except the very body that his direct supervision and almost daily contact with it?

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[80] CONST., Art. X, sec. 6.
[81] *Supra*, note 34.

Legality of Batas Pambansa 129

There is at present a suit pending before the Supreme Court questioning the validity of Batas Pambansa Blg. 129. Filed by Olongapo City Judge La Llana and several other practitioners in that city, it attacks the law as violative of the security of tenure guaranteed by the Constitution.

Under the Constitution,[82] ten votes are required in order to declare a treaty, executive agreement or law unconstitutional. Considering that the present composition of the Court is only eleven, there is justification for a little concern and trepidation lest the lessons of *Ocampo v. Secretary*[83] be repeated. In this case, Cadastral Judge Ocampo questioned the validity of a statute that while providing for an increase in the number of district judges abolished the positions of cadastral judges and judges at large. Seven of the eleven members of the Court voted to nullify the section abolishing the positions of the petitioners on the ground that it violated the tenure constitutionally guaranteed them. The petition failed and the minority of four prevailed because of the 8 votes rule then required (now 10) in order to invalidate a law.

The existence of vacancies in the Court may well lead to another *Ocampo* case wherein the minority view prevailed due to lack of votes. Decisions of such type find it difficult to gain public acceptance especially in relation to the question of the technical quirks or even peculiarities in voting within the Court.

Presumption of Validity

The Court in *Mitra, et al. v. Commission on Elections*[84] explained the significance of judicial review and why doubts on the validity of statutes are resolved in favor of the presumption of validity. These may be true as regards most legislation but should the grounds for the presumption of validity and the extraordinary vote of ten apply where the statute appears to strike at the very independence of the judiciary and when the majority of the Court believes the statute invalid?

A Genuine Reorganization?

The reorganization contemplated by the new law must be genuine and not merely for form or show.

In examining and comparing the structure of the old Court of Appeals and the new Intermediate Appellate Court[85] we see that the old groupings of justices have been changed. Where formerly they used to sit in divisions of three for the purposes of adjudication and called for two additional members in case of disagreement, the new law groups them in divisions of

[82] CONST., Art. X, sec. 2, par. 2.
[83] *Supra*, note 62.
[84] G.R. No. 56503, April 4, 1981.
[85] Batas Pambansa Blg. 129, secs. 4 and 8, and Rep. Act No. 296, sec. 24.

five which operate with a quorum of three members. Where formerly, there was no specialization, the new appellate court groups the divisions into the Civil Cases Divisions, Criminal Cases Divisions, and Special Cases Divisions.

The Same Old Situation

What can be criticized under the new set-up is that it apparently does not insure the speedy disposition of cases but in actuality may establish pitfalls that can cause more delay. The statistics from the raffle section of the Court of Appeals[86] show that on the average no more than five dissenting opinions are penned in a month to necessitate the calling of a special division of five. The low number of dissenting opinions militates much against the groupings into five members each instead of three since obviously, three members can do the job faster.

The groupings of divisions may also lead to the overburdening of some justices while others have no cases left pending. It is an established fact that the Court of Appeals has no significant criminal case backlog and its special case backlog has not yet reached alarming proportions.[87] In case there is specialization and in view of the different nature of such cases (criminal cases are as a general rule easier to dispose of than civil or special civil ones) there may come a time when the Criminal Cases Divisions have nothing more to do while the two other groupings are overburdened with work. Since under the law the appointment of a Justice carries with it the designation as to his specialization[88] then perforce he will be unable, unless with previous authority from the Supreme Court and for a limited time, to help out his colleagues, as is being done today by Justices who have already erased their backlogs. Instead of speedy disposition, it can, therefore, give rise to bigger backlogs and delay.

Changes in Jurisdiction

Comparing the extent of the jurisdiction[89] exercised by the new appellate tribunal, it can be readily seen that there has been no substantial or radical change from the old jurisdiction enjoyed by the Court of Appeals except for a few possible cases that may be transferred from the dockets of the Supreme Court, especially vis-a-vis decisions of the Regional trial courts and quasi-judicial bodies; and in the issuance of special writs and processes in its original jurisdiction. Under the new law, such may issue whether or not in aid of its appellate jurisdiction. A new innovation is the power granted to the appellate court to try cases, conduct hearings, and receive evidence to resolve factual issues falling within its original and appellate

[86] The author is an employee of the Court of Appeals, serving as private secretary to Justice H.E. Gutierrez, Jr. and is supplied with copies of the daily raffle report.

[87] *See* NAVARRO, *Congestion and Delay in the Court of Appeals: Extent, Causes and Remedies* (1978) for an intensive discussion of the problems plaguing the appellate tribunal.

[88] Batas Pambansa Blg. 129, sec. 8.

[89] *Ibid.*, sec. 9.

jurisdiction, including the power to grant and conduct new trials. Under the old system no evidence can be additionally received without returning the case to the trial court from where it came.

The new power while seemingly innovative can be a double-edged sword. While the reception of evidence may perforce be faster without need of remanding the case, still such power wreaks havoc on the settled principle that the appellate court shall as a rule respect the findings of fact of the lower court, unless clearly erroneous, and also the requirements set by the "new evidence" doctrine in motions for new trial. And of course, changes of jurisdiction can be effected by an improved Judiciary Act. There is no need to abolish almost all courts to achieve this.

Mobility of Judges

Under the new act, the Courts of First Instance, the Circuit Criminal Court, the Juvenile and Domestic Relations Court and the Court of Agrarian Relations were abolished and in their place are established Regional Trial Courts, grouped into thirteen judicial regions which also replaced the sixteen judicial districts. Appointment to the Regional Trial Court is by region increasing the mobility of judges and facilitating the transfer of judges from one station to another within the region to remedy inequalities of case loads in the trial courts.[90]

The change is indeed for the better, provided that there be instituted sufficient safeguards to ensure that the power to transfer is not abused and made as an instrument to punish judges who incur the ire of the powers that be. A region is a pretty big area, and a judge who is suddenly transferred from a branch in an urban area to a place in the hinterlands of the region, may actually see it as exile and punishment. Within a region transfer is not necessarily temporary.

Abolition of Special Jurisdiction Courts

The law also provides for the merger of the courts of special jurisdiction into the regional trial courts. This according to the Justice Minister[91] allows the re-channelling of cases for flexibility in their assignment from one congested docket to another less congested one. The reason behind the law is a little ironic considering that the reason given by the earlier proponents of the specialized courts was that it was necessary to engage in specialization precisely in order to speed up disposition especially of these special cases. It is also noteworthy that according to the report of the Committee on Judicial Reorganization, the special courts themselves have congested dockets. Furthermore specialization was proposed for the Court of Appeals to enable faster adjudication of cases.

[90] Speech of Minister Ricardo Puno at the JUCRA officers Induction, August 22, 1981, Makati. Refer to Batas Pambansa Blg. 129, sec. 17.

[91] *Ibid.*

Changes in Procedure

Aside from certain procedural changes such as the elevation of the record and the abolition of the "record on appeal", the major remaining change concerns itself with the abolition of concurrent jurisdiction among trial courts. This certainly will put an end to the confusion commonly experienced by lawyers (who should have known better, had they devoted more time and effort to their legal training) in the filing of cases and in the exercise of the jurisdiction of trial courts of various levels.

An analysis of the above innovations brings to mind the question — was there necessity to abolish the entire judiciary below the Supreme Court to bring them about?

Could the changes have been brought about by mere amendment of existing laws or was it necessary to abolish the entire system? Abolition brought with it a host of problems, especially judicial, and public anxiety over the tenure of judges and court employees. It also brought about charges of unconstitutionality and interference in the otherwise independent nature of the judiciary. Could not the above be achieved by legislation without uprooting the basic set-up?

The Bona Fide Rule

The Judiciary Reorganization Act must also comply with the *bona fide* rule in the abolition of public office.

The creation of all courts inferior to the Supreme Court is vested in the Batasang Pambansa,[92] and it is a settled rule of public officers that the power to create carries with it the power to abolish and reorganize.[93]

However, the power of the legislature to reorganize or abolish inferior courts will be held violative of the constitutional security of tenure when the legislative power of abolition or reorganization is used to cloak an unconstitutional and evil purpose and the violation of the constitutional security is palpable and plain.[94]

There are cases showing that where the intent is to get rid of the employees, the abolition is invalid. In *Cruz v. Primicias*[95] the court held the dismissal of petitioners due to the alleged abolition as invalid. It was found by the Court that the justification advanced for the abolition were but subterfuges resorted to for disguising an illegal removal of permanent civil service employees. In *State Prison v. Day*[96] it was held that there was no valid abolition of the office of superintendent of prisons because Act 1899

92 CONST., Art. X, sec. 1.

93 Ocampo v. Duque, 63 O.G. 9914, G.R. No. 23812, April 30, 1966, 16 SCRA 962 (1966), Castillo v. Pajo, 103 Phil. 515 (1958).

94 GONZALES, *supra*, note 78 at 330, citing Zandueta v. De la Costa, 66 Phil. 115 (1938).

95 G.R. No. 28573, June 13, 1968, 23 SCRA 998 (1968).

96 124 N.C. 362, 32 S.E. 748 (1899).

purporting to abolish it also required a performance of all the duties previously performed by the incumbent. The move was found by the North Carolina Court to be merely an attempt to replace Day with someone else. This rule was subsequently upheld in this jurisdiction in the case of *Velasco v. Court of Appeals.*[97]

The Functions of the Integrity Committee

The foregoing discussion is important in the light of the establishment by the President of an integrity committee. The question that should be raised relative to its creation is whether it screens corrupt and inefficient judges to remove them, or is it screening able and honest judges for appointment to the new courts? The answer to this question is important for the intent and approach is material. If the integrity committee partakes the character of the former, then doubt is cast as to the purpose of the new law, whether it is really intended for a judicial revamp and organization or only to ease out erring judges.

The Rule of Reason

A usual standard followed by courts in adjudicating on the validity of a law is that such must meet the requirements of reasonableness and necessity.

One of the more basic reasons for the revamp is the low public credibility of judges. There is an expressed opinion that there is widespread graft and corruption within their ranks. Despite such allegations however, it is suprising to note that there are no reliable figures on the extent of corruption and inefficiency in the system. Even the Committee Report failed to discuss it, except for certain cryptic statements about the "rectitude and fairness" of the courts.

If there are no reliable, provable figures, was it warranted then to abolish the entire inferior court system (except Sandiganbayan)?

It would have caused lesser apprehension and a much greater coloration of validity had the restructuring of the judiciary and the dismissal of suspect judges been effected under Section 9, Article XVII, Transitory Provisions of the 1973 Constitution. Reorganization would have been through constitutional fiat and not mere legislative authority. Under the Transitory Provisions, the incumbent President could have decreed the termination of the terms of groups of judges or simply appointed new judges to specific *salas* whereupon the incumbents would have been deemed to have vacated their respective offices. Appointees afterwards could have been screened thoroughly for competence and integrity. The lifting of martial law did not have to be tainted with an act ordinarily not in keeping with normalization.

[97] 108 Phil. 449 (1960).

Other Causes for Backlogs

The problem of huge backlogs and delay have been earlier discussed. But is the existence of such only premised on judicial inefficiency or are there other possible reasons? The delay in the disposition of cases after they are filed may be due to causes not necessarily related to the efficiency of the judge. There are cases which by their very nature have to be considerably delayed in their final disposition. A good example is the case of guardianship which is necessarily delayed due to legal requirements. Guardianship proceedings cannot be terminated until the relation of guardianship ceases to exist by reason of specified legal causes.[98] Similarly criminal cases involving minors or insane persons are also necessarily delayed by their very nature. Under Article 80 of the Penal Code the criminal case against a minor is suspended during his minority or while he stays in a training institution, or is otherwise under custody.

Delay may also be caused by the lackluster performance of other agencies aside from the judges involved in the administration of justice. This group involves the sheriffs, the police and the public prosecutors.[99]

In civil cases, the service of summons may be delayed by the failure to pay sheriff's fees and the reluctance of many sheriffs to serve pleadings unless such is paid. Trials of criminal cases are also delayed by the non-apprehension of the accused as well as the failure of the chief of police to serve or return notices of hearing in criminal cases.

The fiscal may fail to take immediate action in cases endorsed to him after they have undergone preliimnary investigations in the municipal courts.[100]

Equally guilty at times are the parties themselves and their lawyers due to the common practice of postponing the hearing of cases and delay in the submission of pleadings.

Even the postal system can be equally at guilt, since the service by mail of pleadings and orders are considerably delayed by postal inefficiency.

The Unfilled Salas and Vacancies

A major reason that has apparently been overlooked is the fact that despite the existence of a large number of judicial *salas*, a considerable number remain unfilled for one reason or another.[101] The streamlining of procedures can be accomplished by overhauling the Judiciary Act and the Rules of Court without having to abolish almost the whole judicial system.

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98 CLUTARIO, *supra*, note 8 at 29.
99 *Ibid.* at 30.
100 ABELLERA, THE ADMINISTRATION OF JUSTICE IN THE PHILIPPINES 53-54 (1962).
101 MENDOZA, *supra*, note 2 at 41-46.

The question that crops up is — Will the provisions of Batas Pambansa Blg. 129 — minus the increase in judges insure solutions to these problems? Will not the increase of judges under the present system, the filling up of judicial vacancies insure better solutions to the problems of backlogs? We must take note that under the present system, there is specialization of tasks in the trial level to ensure the speedy disposition of urgent cases like agrarian, juvenile, and criminal cases. Will not the merger tend to relegate them into the background together with the rest? With the increase or filling up of vacancies, there will obviously be easier workloads, judges can breathe easier and dispose of cases faster. This is equally true in the appellate level as we discussed earlier since even the Court of Appeals is plagued with vacancies. Must there be specialization on the appellate level? If the reason for the removal of specialization in the trial level was for flexibility, then why are we instituting it in the appellate tribunal? And finally, if an increase in judges and justices will solve the the problem of backlogs, why does the judiciary have to be abolished?

Ocampo Re-examined

The validity of Batas Pambansa Blg. 129 is now pending with the Supreme Court. It may be premature to venture definite opinions on the issue especially if a unanimous Court happens to promulgate a strong decision flatly negating or contradicting our apprehensions.

At the same time, we cannot help but note that in *Ocampo v. Secretary,* there was a genuine abolition of two kinds of existing courts, not a mere restructuring disguised as abolition. There was also an element of undesirability in the status of judges at large and cadastral judges being transferred around as the executive saw fit. Notwithstanding the greater tint of validity in *Ocampo,* there was only one vote short to supply the constitutional majority needed for its nullification.

Because of the foregoing considerations, it becomes relevant to review the contradicting opinions in *Ocampo.*

The majority view which did not prevail was premised on certain arguments as espoused by Justice Bengzon, in brief they are:

A. The offices of judges-at-large and cadastral judges do not contravene the Constitution [the Solicitor-General alleged that anyway the statute creating them was void].

B. The legislature's *express* power to establish courts inferior to the Supreme Court *implies* power to abolish courts so created.

C. Such implied power, however, may not be used to abridge the tenure of incumbent judges, except in certain cases.

D. Even granting that the power to abolish Courts implies the power to abridge the tenure of judges during normal times, where no court is

abolished or the number of judges is not decreased, the Constitutional tenure is violated by the abolition of some judge's offices and their removal.

E. As Republic Act 1186 did not abolish any Court and did not reduce the number of judges, section 3 of the Act easing out the petitioners is unconstitutional.

Judicial Independence

Also voting to invalidate the law was Justice Montemayor who emphasized judicial independence and made a distinction between the abolition of a judicial from an executive position. Justice Bautista Angelo believed that while the office of a judge may be abolished by the abolition of the court, this can only be possible if made in good faith. The latter quality he found lacking in the proceedings.

The majority opinion is therefore buttressed on the nature of judicial independence and the guarantee under the 1935 Constitution (Art. VIII, Sec. 9) of security of tenure up to age 70.

Justice Bengzon in his opinion said "a careful analysis will perceive that whereas petitioners invoke an *express* guaranty or positive definition of their term of office, the respondents rely on *implied* authority to abolish courts and the positions of the respective judges. Accurately stated, respondents' defense rest on a second inference deduced from such implied power, because they reason out thusly: Congress has express power to establish courts; therefore, it has implicit power to abolish courts and the positions of judges of such abolished courts: and therefore (second inference) congress likewise has power to eject the judges holding such positions. Resultant juridical situation: the implied authority invoked by respondents collides with the express guaranty of tenure protecting the petitioners .... But the collision may be and should be avoided, and both sections given validity ... In other words, under the Constitution the Congress may abolish existing courts, provided it does not thereby remove the incumbent judges; such abolition to take effect upon the termination of their incumbency."

The opinion argued that the Constitution aimed to preserve the independence of the judiciary, that it assured judges that so long as they behave, they cannot be removed from office until they reach 70 or become incapacitated. To complete their independence from political control or pressure, it further assures them that their salaries cannot be diminished during their incumbency. Hence, the opinion asks — of what consequence is the assurance of salary non-diminution, if anyway judges could be legislated out through a court re-organization?

The Winning Minority View

The minority view which ultimately prevailed buttressed its stand on basic public law principles. Led by Chief Justice Paras, the minority said

that the power of Congress to create inferior courts and to apportion their jurisdiction includes the power to abolish them. Second, that the constitutional guarantee of tenure applies only as long as his position exists and that the abolition was a corrective measure since the positions of those judges who were not assigned to any particular district and could be transferred at the pleasure of the Executive branch was repugnant to the Constitution.

Chief Justice Paras cited American decisions to buttress his stance. "If the framers of the Constitution intended to leave it to the legislature to establish and abolish courts as the public necessities demanded, this was not qualified or limited by the clause as to the judge's term of office. (McCulley v. State, 53 S.W. 134); "A constitutional provision that judges of a certain court shall hold their offices for five years must yield to another provision that the legislature may alter or abolish the court and therefore the legislature may reduce the number of judges by fixing an end to the term of certain of them although within five years after they took office" (Kenny v. Hudspeth, 59 N.J.L. 504, 37 Atl. 67, [1896]).

The opinion stated "for all practical purposes and to all constitutional intents, a judge of first instance is on the same footing as an officer or employee in the civil service insofar as the permanence of tenure is concerned, because whereas the judge is to serve during good behavior, an officer or employee in the civil service may not be removed or suspended except for cause as provided by law. In both cases the office is statutory, and it is fundamental and elementary that a statute cannot be irrepealable."

Relevance of Ocampo Today

The problem posed by the ruling in *Ocampo* is as relevant today as it was then. The factual circumstances though different have distinct similarities and if one analyzes the reasons for both re-organization bills, they are essentially the same, to get rid of court congestion and to remove the deadwood in the judicial system.

We have today a constitutional dilemma, a problem of balancing of interests. There is no doubt an urgent need for a streamlining of the judicial organization and the adjudicative process. On the other hand, there is also a felt necessity to maintain the status of the judiciary as an independent branch of government, especially in this period when our people have just undergone an almost decade-long emergency rule of martial rule.

It is undisputed that under martial law, there had been many shortcuts which cannot be legally justified during a period of normalcy, with grave legal and political problems arising as an aftermath of its being lifted.[102]

[102] For an intensive discussion on the implications of the lifting of martial law, *See* Tan, *The Philippines After the Lifting of Martial Law: A Lingering Authoritarianism*, 55 PHIL. L. J. 418 (1980) and Carag, *The Legal Implications of the Lifting of Martial Law in the Philippines*, 55 PHIL. L. J. 449 (1980).

In view of the uncertainties of these problems, the disparate character of the persons in the administration and opposition, and the need not to add potentially explosive increments to the already intolerable burdens of a restless citizenry, we look to the courts since they are the only agency today that can provide a legal, orderly, and just resolution to the problems spawned.[103]

The power of judicial review includes the legitimating function. Acts of government, especially in times of disunity and turmoil must be accepted as valid and legitimate. Only the courts can somehow state with authority that actions detested and deplored by some are authorized and legitimate. The people are the final judges of what is valid and what will be obeyed but in our system of government, it is the judiciary which has the sensitive task of bringing about an acceptance of even that which might be otherwise resented. Whichever directions the present post-martial law government may veer, the judiciary should constantly maintain and recreate the feeling of legitimacy so essential for the continuing life of our democratic polity.[104]

Consequently, there is a need for an institution that shall attempt to rise above petty politics and provide an adequate and impartial machinery for the dispensation of justice. With the merging of executive and legislative functions under our present system, the need for judicial independence and security becomes more indispensable and weighty.

CONCLUSIONS

The situation before us today is that we have a new Judiciary Act that is somewhat but not in very substantial ways different from the old one. As of this writing, though passed, it has not yet been implemented, no judges have been removed or appointed under its provisions.

From the foregoing discussions the impression that comes to mind is that somehow, the new act fails to provide adequate solutions to the problems confronting the judicial system. The solution offered by the new act is to institute a face-lifting, a minor shuffle limited to form and structure without really going deep in the roots of the problem of why there are backlogs and incompetent judges. The problems plaguing the judiciary today are not merely a question of structure; rather, they partake the nature of, and reflect socio-political and economic crises that plague Philippine society. The problem is not merely solved by the machine gun disposition of cases; the greater probelm lies in the quality and impartiality of the decisions that must be made.

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103 Gutierrez, *Dismounting from the Tiger: Legal Problems Incident to the Lifting of Martial Law*, 3 (1980), unpublished.

104 *Ibid.* at 4. *See* also Feliciano, *On the Functions of Judicial Review and the Doctrine of Political Questions*, 39 PHIL. L. J. 444 (1964), and the opinion of Justice Laurel in Angara v. Electoral Commission, 63 Phil. 139 (1936).

The new law made suggestions to speed up the disposition of cases. It was not, however, necessary that the courts be abolished, and the tenure and subsequently the independence of the judiciary be endangered. Reform within the existing set-up would have sufficed if that merely was the purpose.

The increase in the number of judges contemplated in the new law will undoubtedly increase the output of decisions. There are only twenty-seven incumbent Justices in the Court of Appeals. The appointment of twenty-three new members to bring the total members to fifty under the new law should almost double the membership of the court and the disposition of cases should increase by a similar proportion. But was there a need to abolish the entire Court of Appeals, introduce innovations which appear counter-productive and causative of delay, if the production could double simply by doubling the number of active members? Only rarely were the thirty-six slots in the court ever fully filled in the past. The same thing is true of the changes in jurisdiction, elimination of overlapping concurrent jurisdictions of trial courts, and increased jurisdiction of the appellate court. Abolition is irrelevant to these changes. They could just as well or even better have been achieved without abolition of existing courts. But if the purpose was to finally provide a speedy, honest and adequate machinery for the redress of wrongs, then the new law is sitll found wanting. The basic inequities brought about by disparate social conditions still plague the administration of justice as reformed. Worse, the new law has led to the creation of misapprehension among the ranks of the judiciary—led them to fear the possibility of their being removed from office. It is true that there are bad eggs in the system, but was it necessary to condemn the whole lot?

The proponents of the new law are all motivated by the best of intentions. Nonetheless, it is a legitimate question to ask whether or not the same kind of judges now sought to be removed will merely come into the system in even greater numbers because of the many vacancies — all inferior courts in all parts of the country — that have to be filled in such a short time. The three-day seminars proposed for applicants are not reassuring for what can a judge learn in a three-day lecture session. Education in the law is a continuing lifetime process, not an injection of learning only when one aspires for an appointment. There can be greater care and more circumspect attention to the qualifications of an appointee if only one appointment is being considered at one time. When several hundred judges have to be appointed at one time, a situation somewhat similar to the midnight appointments of 1961 arises. There is no spacing which affords some assurance of deliberate action and consideration for the appointee's qualifications. The procedure contemplated in the new law, instead of achieving the cleansing and upgrading of the judiciary, may

bring about an opposite and undesirable result. In which event the people's faith in our system of justice will really disappear.

The questions that lie before us today are still as relevant as when the new law was still in its conceptual stage — will it solve the problems of delay, backlogs and unjust decisions penned by partial judges? What is the role to be played by the ordinary citizen in this revamp? There can be effective administration of justice if the people, in general, feel a sense of responsibility for it and are willing to sacrifice for it.[105] Indeed, where the people have abdicated their responsibility, their society can in no case be saved by any court.[106]

[105] *Id.* at 40.
[106] *Ibid.*