REMEDIAL MEASURES FOR THE PRESERVATION OF THE INDEPENDENCE OF THE JUDICIARY *

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OF the three great branches of the government, the judiciary is the weakest and the most susceptible to abuse by the political branches. And once the executive and legislative departments encroach upon the independence of the judiciary, and interfere with its freedom of action, the impartial administration of justice is immediately imperiled, and the rights and liberties of the people exposed to quick annihilation.

The judiciary is the last bulwark of the people's freedoms, the last hope of oppressed minorities for salvation from the political tyranny of selfish majorities, and the last sanctuary of the helpless individual from official abuse. From time to time, the faith of the people in the political organs of our government may be shattered completely because of corruption, incompetence, and persecution; but as long as there is an independent and assertive judiciary which upholds the great objectives of the Constitution, and applies the inalterable principles of justice and equity, all hope in our democratic institutions can never be totally lost. It is, therefore, of paramount importance that all measures possible should be taken to safeguard the independence and integrity of the judiciary. It is true that the Constitution contains some guarantees of judicial independence—like security of tenure and of compensation—but these are not enough. In the light of actual experience and possibilities, more safeguards are imperative. Some of these may require constitutional amendment.

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Courts and judges must be removed as far as possible from the baneful influence of politics and political pressure. The first step towards this direction is to reduce to the absolute minimum the intervention of executive and legislative officials in the appointments to the judiciary. Under the present set-up, the President can give a judicial position to a political lameduck as a reward for political services rendered; such an appointee on the bench can hardly be expected to be completely immune from the influence or pressure which may later be exerted upon him by the chief executive in a case wherein the President or his political henchmen may be interested. Judicial positions can likewise be dispensed by the President as a disguised bribe to remove political enemies from the political arena.

All appointments to the judiciary should be vested in the Supreme Court.[1] The present membership of the Supreme Court could be kept, and all future appointments to the bench should be made by that Court. Even vacancies to the Supreme Court itself should be filled through election by the remaining members.[2] This will make the judicial branch of the government truly separate from the executive and legislative branches. In the selection of the officials in the legislative and executive branches, the judiciary has no say; if there is to be real separation and independence of the branches of government from each other, there is no reason why executive and legislative officials should make and confirm the appointments to the judiciary.

With the total elimination of intervention of the President and the Commission on Appointments in appointments to the judiciary, political considerations can hardly enter into the selection of the members of the bench. At the

[1] Judge Conrado Sanchez proposed that the selection of members of the judiciary be made through competitive examination. Congressman Tolentino agreed that this might be adopted as a detail in the determination of the qualifications of appointees to the Bench.

[2] Former Justice Manuel Lim, interpellating Congressman Tolentino, expressed the fear that the judiciary might develop into an oligarchy. Congressman Tolentino answered that this would be a lesser evil than political interference.

same time, officials in the political branches of the government, knowing that they have no hand in the appointment of judges, would feel a sense of restraint and would be discouraged to make attempts at influencing members of the judiciary.

Hand in hand with this reduction of political intervention in appointments to the judiciary, there must be a total elimination of executive supervision over the inferior courts. Under the present arrangement, the President, through the Secretary of Justice, has administrative supervision over all courts below the Supreme Court. The Secretary of Justice is a Presidential appointee, actually holding office at the pleasure of the President. There is, therefore, a constant danger that a Secretary of Justice who desires to cling to his Cabinet position may degenerate into a mere tool of the President in influencing the action of judges. In many cases, it will be difficult to determine where executive supervision ends and where judicial independence begins. If a judge-at-large is trying a particular case, and it is becoming obvious from the evidence that a decision adverse to a party under Malacañan protection is possible, but to avoid the promulgation of such a decision the judge trying the case is suddenly assigned by the Secretary of Justice to another district, and a judge more responsive to the suggestions of the powers that be is sent to finish the case, we can seriously ask: Is this executive supervision or an impairment of judicial independence? A change in the present set-up will avoid having to raise such questions and prevent hair-splitting technical and subtle distinctions. I am one of those who propose to transfer the supervision of the inferior courts to the Supreme Court. [3] This will enhance the independence of the judiciary, and make it a complete unit in itself.

Within this judicial unit, there should be no distinctions among judges of the court of first instance: the judges-at-large and the cadastral judges should disappear from the picture, and all judges should have the same category, with

[3] Asked by Justice Lim whether the transfer of administrative supervision of courts to the Supreme Court would not hamper judicial work of the Supreme Court, Congressman Tolentino said that if the Secretary of Justice—only one man—can do this, the Supreme Court with several members can certainly do the work. He proposed to abolish the Department of Justice and transfer the necessary personnel to the Supreme Court.

the same compensation and the same privileges. The judge-at-large who can be especially assigned to any place to hear a particular case, is perhaps the weakest link in our judicial system. He represents the most vulnerable point which enables the executive to encroach upon the independence of the judiciary. Picture with me a criminal case which arises within the jurisdiction of a particular court of first instance. The case is full of political implications, and the President is interested personally in its outcome. Instead of allowing the judge of the district to try the case, the Secretary of Justice designates a judge-at-large to try it. However impartial such judge-at-large may be, however honest he may be, there will always be that human tendency to please the President, who can appoint him as a district judge in Manila. This exposes him to influence, and may becloud his judicial vision in the appreciation of the evidence before him. Besides, this special designation demoralizes the district judge who has jurisdiction of the case, for it is a reflection upon his competence and efficiency. Finally, it shakes and weakens the faith of the people in the judiciary. Therefore, the judge-at-large must go. Only one kind of judge of first instance must be left on our judicial horizon.

The judges of first instance must be assigned to particular districts, but they should not be allowed to stay for such a length of time that they may develop associations and ties which may sooner or later be used to influence them. There should be a periodic change of assignments—this may be once every five years. [4] The change, however, must be by lot, so as to give every judge an equal chance to be in what may be called desirable assignments. This will enhance the feeling of equality among the judges. This will prevent the unwholesome spectacle of judges fawning in the offices and residences of powerful politicians in order to secure or retain an appointment or assignment to coveted districts like Manila and its environs.

This last change suggested will, of course, prove to be

[4] Judge Ramon San Jose observed that this rotation by lot might kill the initiative of judges to work hard in order to be promoted to better districts. Congressman Tolentino countered that the promotion sought by a judge must be always to a higher court, not to a better district. All districts should be regarded as of the same category.

inconvenient to judges, because it will involve changes of residence from time to time. It is my humble belief, however, that this will serve to impress more deeply the idea that judgeship should be a career, and not just held for convenience; it will stress the point that holding a judicial office involves oblivion of self and a complete dedication to the cause of untrammelled justice.

However, the next change I should like to propose will perhaps more than offset the inconvenience that may be occasioned by the system of rotation of judges by lot. I refer to the increase in the compensation of judicial officials. Judges of the first instance should be paid not less than ₱15,000 a year; and the Justices of the appellate courts should have a corresponding increase in their compensation. Financial security is one of the best guarantees of independence of mind. A moderate degree of comfort in life creates an atmosphere conducive to clear thinking, which is essential to correct decisions.

I have thus in broad terms outlined the changes which can be effected, by constitutional amendment and legislation, to secure and preserve the independence of the judiciary. It is obvious that under our system of government, it is not possible to attain absolute and complete independence of the judiciary from the two other branches of the government. The judiciary must depend upon the executive department for the enforcement and execution of its judgments. It must also depend upon the Congress, which has the power to appropriate the funds for the operation of all branches of the government. If the executive should refuse to enforce the judgments of courts, and if the Congress should withhold the necessary funds for the operation of our tribunals of justice, the judiciary can be reduced to complete impotence. If this should come to pass, however, it would not be necessary to talk of separation of powers, of co-equal departments of the government, and of independence of the judiciary, for by then all government shall have failed and democracy shall have collapsed in this country. It is, therefore, on the assumption that democracy will not be aborted here that I have ventured to make these suggestions.

As in all human institutions, however, we cannot overlook the men who fill judicial offices. We can surround

their offices with all the constitutional statutory guarantees to preserve their independence; but if they themselves voluntarily surrender that independence, no amount of legislation can preserve it for them. The Constitution and the laws can only ward off attacks from outside upon the judiciary; they cannot guarantee against the internal decay of the judicial structure due to inferior human material. Ultimately, therefore, even if reforms are enacted, we will have to fall back upon the moral fortitude and the intellectual integrity of those who occupy our Bench. It is my sincere belief that in this they are not wanting. The adoption of the suggested reforms, however, will serve to strengthen in them that inner dynamic force essential to the assertion of judicial independence and which constitutes the basis of the people's faith and the surest guaranty of the respect of the other branches of the government for the judiciary.