94 Phil. 534

[Resolution. March 18, 1954]

IN THE MATTER OF THE PETITIONS FOR ADMISSION TO THE BAR OF UNSUCCESSFUL CANDIDATES OF 1946 TO 1953; ALBINO CUNANAN ET AL., PETITIONERS.

R E S O L U T I O N

DIOKNO, J.:

In recent years few controversial issues have aroused so much public interest and concern as Republic Act No. 972, popularly known as the "Bar Flunkers' Act of 1953." Under the Rules of Court governing admission to the bar, "in order that a candidate (for admission to the Bar) may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject." (Rule 127, sec. 14, Rules of Court). Nevertheless, considering the varying difficulties of the different bar examinations held since 1946 and the varying degree of strictness with which the examination papers were graded, this court passed and admitted to the bar those candidates who had obtained an average of only 72 per cent in 1946, 69 per cent in 1947, 70 per cent in 1948, and 74 per cent in 1949. In 1950 to 1953, the 74 per cent was raised to 75 per cent.

Believing themselves as fully qualified to practice law as those reconsidered and passed by this court, and feeling conscious of having been discriminated against (See Explanatory Note to R. A. No. 972), unsuccessful candidates who obtained averages of a few percentage lower than those admitted to the Bar agitated in Congress for, and secured in 1951 the passage of Senate Bill No. 12 which, among others, reduced the passing general average in bar examinations to 70 per cent effective since 1946. The President requested the views of this court on the bill. Complying with that request, seven members of the court subscribed to and submitted written comments adverse thereto, and shortly thereafter the President vetoed it. Congress did not override the veto. Instead, it approved Senate Bill No. 371, embodying substantially the provisions of the vetoed bill. Although the members of this

court reiterated their unfavorable views on the matter, the President allowed the bill to become a law on June 21, 1953 without his signature. The law, which incidentally was enacted in an election year, reads in full as follows:

Republic Act No. 972

AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM NINETEEN HUNDRED AND FORTY-SIX UP TO AND INCLUDING NINETEEN HUNDRED AND FIFTY-FIVE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Notwithstanding the provisions of section fourteen, Rule numbered one hundred twenty-seven of the Rules of Court, any bar candidate who obtained a general average of seventy per cent in any bar examinations after July fourth, nineteen hundred and forty-six up to the August nineteen hundred and fifty-one bar examinations; seventy-one per cent in the nineteen hundred and fifty-two bar examinations; seventy-two per cent in the nineteen hundred and fifty-three bar examinations; seventy-three per cent in the nineteen hundred and fifty-four bar examinations; seventy-four per cent in the nineteen hundred and fifty-five bar examinations without a candidate obtaining a grade below fifty per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar: *Provided, however*, That for the purpose of this Act, any exact one-half or more of a fraction, shall be considered as one and included as part of the next whole number.

Sec. 2. Any bar candidate who obtained a grade of seventy-five per cent in any

subject in any bar examination after July fourth, nineteen hundred and forty-six shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general average that said candidate may obtain in any subsequent examinations that he may take.

Sec. 3. This Act shall take effect upon its approval.

Enacted on June 21, 1953, without the Executive approval.

After its approval, many, of the unsuccessful postwar candidates filed petitions for: admission to the bar invoking its provisions, while others whose motions for the revision of their examination papers were still pending also invoked the aforesaid law as an additional ground for admission. There are also others who have sought simply the reconsideration of their grades without, however, invoking the. law in question. To avoid injustice to individual petitioners, the court first reviewed the motions for reconsideration, irrespective of whether or not they had invoked Republic Act No. 972. Unfortunately, the court has found no reason to revise their grades. If they are to be admitted to the bar, it must be pursuant to Republic Act No. 972 which, if declared valid, should be applied equally to all concerned whether they have filed petitions or not. A complete list of the petitioners, properly classified, affected by this decision, as well as a more detailed account of the history of Republic Act No. 972, are appended to this decision as Annexes I and II, And to realize more readily the effects of the law, the following statistical data are set forth:

1946 (August)	206	121	18
1946 (November)	477	228	43
1947	749	340	0
1948	899	409	11
1949	1,218	532	164
1950	1,316	893	26
1951	2,068	879	196
1952	2,738	1,033	426
1953	2,555	986	284
Total.....	12,230	5,421	1,168

Of the aforesaid 1,168 candidates, 92 have passed in subsequent examination, and only 586 have filed either motions for admission to the bar pursuant to said Republic Act, or mere motions for reconsideration.

(2) In addition, some other 10 unsuccessful candidates are to be benefited by section 2 of said Republic Act. These candidates had each taken from two to five different examinations, but failed to obtain a passing average in any of them. Consolidating, however, their highest grades in different subjects in previous examinations, with their latest marks, they would be sufficient to reach the passing average as provided for by Republic Act 972.

(3) The total number of candidates to be benefited by this Republic Acts is therefore 1,094, of which only 604 have filed petitions. Of these 604 petitioners, 33 who failed in 1946 to 1951 had individually presented motions for reconsideration which were denied, while 125 unsuccessful candidates of 1952, and 56 of 1953, had presented similar motions, which are still pending because they could be favorably affected by Republic Act No. 972,—although as has been already stated, this tribunal finds no sufficient reasons to reconsider their grades.

UNCONSTITUTIONALITY OF REPUBLIC ACT NO. 972

Having been called upon to enforce a law of far-reaching effects on the practice of the legal profession and the administration of justice, and because some doubts have been expressed as to its validity, the court set the hearing of the aforementioned petitions for admission on the sole question of whether or not Republic Act No. 972 is constitutional.

We have been enlightened in the study of this question by the brilliant assistance of the members of the bar who have' amply argued, orally and in writing, on the various aspects in which the question may be gleaned. The valuable studies of Messrs. E. Voltaire Garcia, Vicente J. Francisco, Vicente Pelaez and Buenaventura Evangelista, in favor of the validity of the law, and of the U.P. Women Lawyers' Circle, the Solicitor General, Messrs. Arturo A. Alafriz, Enrique M. Fernando, Vicente Abad Santos, Carlos A. Barrios, Vicente del Rosario, Juan de Blancaflor, Mamerto V. Gonzales, and Roman Ozaeta against it, aside from the memoranda of counsel for'.'petitioners, Messrs. Jose M. Aruego, M. H. de Joya, Miguel R. Cornejo and Antonio Enrile Inton, and of petitioners Cabrera, Macasaet and Galema, themselves, has greatly helped us in this task. The legal researchers of the court have exhausted almost all Philippine and American jurisprudence on the matter. The question has been the object of intense deliberation for a long time by the Tribunal, and finally, after the voting, the preparation of the majority opinion was assigned to a new member in order to place it as humanly as possible above all suspicion of prejudice or partiality.

Republic Act No. 972 has for its object, according to its author, to admit to the Bar, those candidates who suffered from insufficiency of reading materials and inadequate preparation. Quoting a portion of the Explanatory Note of the proposed bill, its author Honorable Senator Pablo Angeles David stated:

> "The reason for relaxing the standard 75 per cent passing grade is the tremendous handicap which students during the years immediately after the Japanese occupation has to overcome such as the insufficiency of reading materials and the inadequacy of the preparation of students who took up law soon after the liberation."

Of the 9,675 candidates who took the examinations from 1946 to 1952, 5,236 passed. And now it is claimed that in addition 604 candidates be admitted (which in reality total 1,094), because they suffered from "insufficiency of reading materials" and of "inadequacy of preparation."

By its declared objective, the law is contrary to public interest because it qualifies 1,094 law graduates who confessedly had inadequate preparation for the practice of the profession, as was exactly found by this Tribunal in the aforesaid examinations. The public interest demands of legal profession adequate preparation and efficiency, precisely more so as legal problem evolved by the times become more difficult. An adequate legal preparation is one of the vital requisites for the practice of law that should be developed constantly and maintained firmly. To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of those inadequately prepared individuals to dedicate themselves to such a delicate mission is to create a serious social danger. Moreover, the statement that there was an insufficiency of legal reading materials is grossly exaggerated. There were abundant materials. Decisions of this court alone in mimeographed copies were made available to the public during those years and private enterprises had also published them in monthly magazines and annual digests. The *Official Gazette* has been published continuously. Books and magazines published abroad have entered without restriction since 1945. Many law books, some even with, revised and enlarged editions have been printed locally during those periods. A new set of Philippine Reports began to be published since 1946, which continued to be supplemented by the addition of new volumes. Those are facts of public knowledge.

Notwithstanding all these, if the law in question is valid, it has to be enforced.

The question is not new in its fundamental aspect or from the point of view of applicable principles, but the resolution of the question would have been easier had an identical case of similar background been picked out from the jurisprudence we daily consult. Is there any precedent in the long Anglo-Saxon

legal history, from which has been directly derived the judicial system established here with its lofty ideals by the Congress of the United States, and which we have preserved and attempted to improve, or in our contemporaneous juridical history of more than half a century? From the citations of those defending the law, we can not find a case in which the validity oí a similar law had been sustained, while those against its validity cite, among others, the cases of Day (In re Day, 54 NE 646), of Cannon (State *vs*. Cannon, 240 NW, 441), the opinion of the Supreme Court of Massachusetts in 1932 (81 ALR 1061), of Guariña (24 Phil., 37), aside from the opinion of the President which is expressed in his vote of the original bill and which the proponent of the contested law respects.

This law has no precedent in its favor. When similar laws in other countries had been promulgated, the judiciary immediately declared them without force or effect. It is not within our power to offer a precedent to uphold the disputed law.

To be exact, we ought to state here that we have examined carefully the case that has been cited to us as a favorable precedent of the law—that of Cooper (22 NY, 81), where the Court of Appeals of New York revoked the decision of the Supreme Court of that State, denying the petition of Cooper to be admitted to the practice of law under the provisions of a statute concerning the school of law of Columbia College promulgated on April 7, 1860, which was declared by the Court of Appeals to be consistent with the Constitution of the state of New York.

It appears that the Constitution of New York at that time provided:

> "They (*i.e.*, the judges) shall not hold any other office of public trust. All votes for either of them for any elective office except that of the

> Court of Appeals, given by the Legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State." (p. 93).

According to the Court of Appeals, the object of the constitutional precept is as follows:

> "Attorneys, solicitors, etc., were public officers; the power of appointing them had previously rested with the judges, and this was the principal appointing power which they possessed. The convention was evidently dissatisfied with the manner in which this power had been exercised, and with the restrictions which the judges had imposed upon admission to practice before them. The prohibitory clause in the section quoted was aimed directly at this power, and the insertion of the provision respecting the admission of attorneys, in this particular section of the Constitution, evidently arose from its connection with the object of this prohibitory clause. There is nothing indicative of confidence in the courts or of a disposition to preserve any portion of their power over this subject, unless the Supreme Court is right in the inference it draws from the use of the word 'admission' in the action referred to. it is urged that the admission spoken of must be by the court; that to admit means to grant leave, and that the power of granting necessarily implies the 'power of refusing, and of course the right of determining whether the applicant possesses the requisite qualifications to entitle him to admission.

> "These positions may all be conceded, without affecting the validity of the act." (p. 93.)

Now, with respect to the law of April 7, 1860, the decision seems to indicate that it provided that the possession of a diploma of the school of law of Columbia College conferring the degree of Bachelor of Laws was evidence of the legal qualifications that the constitution required of applicants for admission to the Bar. The decision does not however quote the text of the law, which we cannot find in any public or accessible private library in the country.

In the case of Cooper, *supra*, to make the law consistent with the Constitution of New York, the Court of Appeals said of the object of the law:

> "The motive for passing the act in question is apparent. Columbia College being an institution of established reputation, and having a law department under the charge of able professors, the students in which department were not only subjected to a formal examination by the law committee of the institution, but to a certain definite period of study before being entitled to a diploma as graduates, the Legislature evidently, and no doubt justly, considered this examination, together with the preliminary study required by the act, as fully equivalent as a test of legal requirements, to the ordinary examination by the court; and as rendering the latter examination, to which no definite period of preliminary study was essential, unnecessary and burdensome.

> "The act was obviously passed with reference to the learning and ability of the applicant, and for the mere purpose of substituting the examination by the law committee of the college for that of the court. It could have had no other object, and hence no greater scope should be given to its provisions. We cannot suppose that the Legislature designed entirely to dispense with the plain and explicit requirements of the Constitution; and the act contains nothing whatever to indicate an intention that the authorities of the college should inquire as to the age, citizenship, etc., of the students before granting a diploma. The only rational interpretation of which the act admits is, that it was intended to make the college diploma competent evidence as to the legal attainments of the applicant, and nothing else. To this extent alone it operates as a modification of preexisting statutes, and it is to be read in connection with these statutes and with the Constitution itself in order to determine the present condition of the law on the subject." (p. 89)

* * * * * *

> "The Legislature has not taken from the court its jurisdiction over the question of admission, that has simply prescribed what shall be competent evidence in certain cases upon that question." (P. 93)

From the foregoing, the complete inapplicability of the case of Cooper with that at bar may be clearly seen. Please note only the following distinctions:

(1) The law of New York does not require that any candidate of Columbia College who failed in the bar examinations be admitted to the practice of law.

(2) The law of New York according to the very decision of Cooper, has not taken from the court its jurisdiction over the question of admission of attorney at law; in effect, it does not decree the admission of any lawyer.

(3) The Constitution of New York at that time and that of the Philippines are entirely different on the matter of admission to the practice of law.

In the judicial system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility. Because of this attribute, its continuous and zealous possession and exercise by the judicial power have been demonstrated during more than six centuries, which certainly "constitutes the most solid of titles." Even considering the power granted to Congress by our Constitution to repeal, alter and supplement the rules promulgated by this Court regarding the admission to the practice of law, to our judgment the proposition that the admission, suspension, disbarment and reinstatement of attorneys at law is a legislative function, properly belonging to Congress, is unacceptable. The function requires (1) previously established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles; in effect, a judicial function of the highest degree. And it becomes more undisputably judicial, and not legislative, if previous judicial resolutions on the petitions of

these same individuals, are attempted to be revoked or modified.

We have said that in the judicial system from which ours has been derived, the act of admitting, suspending, disbarring and reinstating attorneys at law in the practice of the profession is concededly judicial. A comprehensive and conscientious study of this matter had been undertaken in the case of State *vs*. Cannon (1932) 240 NW 441, in which the validity of a legislative enactment providing that Cannon be permitted to practice before the courts was discussed. From the text of this decision we quote the following paragraphs:

> "This statute presents an assertion of legislative power without parallel in the history of the English speaking people so far as we have been able to ascertain. There has been much uncertainty as to the extent of the power of the Legislature to prescribe the ultimate qualifications of attorneys at law, but in England and in every state of the Union the act of admitting an attorney at law has been expressly committed to the courts, and the act of admission has always been regarded as a judicial function. This act purports to constitute Mr. Cannon an attorney at law, and in this respect it stands alone as an assertion of legislative power, (p. 444)

> "No greater responsibility rests upon this court than that of preserving in form and substance the exact form of government set up by the people, (p. 444)

> "Under the Constitution all legislative power is vested in a Senate and Assembly. (Section 1, art. 4.) In so far as the prescribing of qualifications for admission to the bar are legislative in character, the

Legislature is acting within its constitutional authority when it sets up and prescribes such qualifications, (p. 444)

"But when the Legislature has prescribed those qualifications which in its judgment will serve the purpose of legitimate legislative solicitude, is the power of the court to impose other and further exactions and qualifications foreclosed or exhausted? (p. 444)

"Under our Constitution the judicial and legislative departments are distinct, independent, and coordinate branches of the government. Neither branch enjoys all the powers of sovereignty, hut each is supreme in that branch of sovereignty which properly belongs to its department. Neither department should so act as to embarrass the other in the discharge of its respective functions. That was the scheme and thought of the people setting upon the form of government under which we exist. State vs. Hastings, 10 Wis., 525; Attorney General ex rél. Bashford vs. Barstow, 4 Wis., 567. (p. 445)

"The judicial department of government is responsible for the plane upon which the administration of justice is maintained. Its responsibility in this respect is exclusive. By committing a portion of the powers of sovereignty to the judical department of our state government, under a scheme which it was supposed rendered it immune from embarrassment or interference by any other department of government, the courts cannot escape responsibility for the manner in which the powers of sovereignty thus committed to the judicial department are exercised, (p. 445)

"The relation of the bar to the courts is a peculiar and intimate relationship. The bar is an attache of the courts. The quality of justice

> dispensed by the courts depends in no small degree upon the integrity of its bar. An unfaithful bar may easily bring scandal and reproach to the administration of justice and bring the courts themselves into disrepute, (p. 445)

> "Through all time courts have exercised a direct and severe supervision over their bars, at least in the English speaking countries." (p. 445)

After explaining the history of the case, the Court ends thus:

> "Our conclusion may be epitomized as follows: For more than six centuries prior to the adoption of our Constitution, the courts of England, concededly subordinate to Parliament since the Revolution of 1688, had exercised the right of determining who should be admitted to the practice of law, which, as was said in Matter of the Sergeants at Law, 6 Bingham's New Cases 235, 'constitutes the most solid of all titles.' If the courts and the judicial power be regarded as an entity, the power to determine who should be admitted to practice law is a constituent element of that entity. It may be difficult to isolate that element and say with assurance that it is either a part of the inherent power of the court, or an essential element of the judicial power exercised by the court, but that it is a power belonging to the judicial entity cannot be denied. Our people borrowed from England this judicial entity and made of not only a sovereign institution, but made of it a separate independent, and coordinate branch of the government. They took this institution along with the power

traditionally exercised to determine who should constitute its attorneys at law. There is no express provision in the Constitution which indicates an intent that this traditional power of the judicial department should in any manner be subject to legislative control. Perhaps the dominant thought of the framers of our constitution was to make the three great departments of government separate and independent of one another. The idea that the Legislature might embarrass the judicial department by prescribing inadequate qualifications for attorneys at law is inconsistent with the dominant purpose of making the judicial independent of the legislative department, and such a purpose should not be inferred in the absence of express constitutional provision. While the Legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of the qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. When it does legislate fixing a standard of qualifications required of attorneys at law in order that public interests may be protected, such qualifications constitute only a minimum standard and limit the class from which the court must make its selection. Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the course for the proper administration of judicial functions. There is no legislative power to compel courts to admit to their bars persons deemed by them unfit to exercise the prerogatives of an attorney at law." (p. 450)

"Furthermore it is an unlawful attempt to exercise the power of appointment. It is quite likely true that the Legislature may exercise the power of appointment when it is in pursuance of a legislative functions. However, the authorities are well-nigh unanimous that the power to admit attorneys to the practice of law is a judicial function. In all of the states, except New Jersey (In re Reisch, 83 N. J. Eq. 82, 90 A. 12), so far as our investigation reveals, attorneys receive their formal license to practice law by their admission as members of the

> bar of the court so admitting. Cor. Jur. 572; Ex parte Secombe, 19 How. 9, 15 L. Ed. 565; Ex parte Garland, 4 Wall. 333, 18 L. Ed. 366; Randall *vs*. Brigham, 7 Wall. 52, 19 L. Ed. 285; Hanson *vs*. Grattan, 48 Kan, 843, 115 P. 646, 34 L.R.A. 519; Danforth *vs*. Egan, 23 S. D. 43, 119 N. W. 1021, 130 Am. St. Rep. 1030, 20 Ann. Cas. 413.
>
> "The power of admitting an attorney to practice having been perpetually exercised by the courts, it having been so generally held that the act of a court in admitting an attorney to practice is the judgment for the court, and an attempt as this on the part of the Legislature to confer such right upon any one being most exceedingly uncommon, it seems clear that the licensing of an attorney is and always has been a purely judicial function, no matter where the power to determine the qualifications may reside." (p. 451)

In that same year of 1932, the Supreme Court of Massachusetts, in answering a consultation of the Senate of that State, 180 NE 725, said:

> "It is indispensable to the administration of justice and to interpretation of the laws that there be members of the bar of sufficient ability, adequate learning and sound moral character. This arises from the need of enlightened assistance to the honest, and restraining authority over the knavish, litigant. It is highly important, also that the public be protected from incompetent and vicious practitioners, whose opportunity for doing mischief is wide. It was said by Cardoz, C. L., in People ex rel. Karlin *vs*. Culkin, 242 N. Y. 456, 470, 471, 162 N. E. 487, 489, 60 A. L. R. 851: 'Membership in the bar

> is a privilege burden with conditions.' One is admitted to the bar 'for something more than private gain.' He becomes 'an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His cooperation with the court is due 'whenever justice would be imperiled if cooperation was withheld." Without such attorneys at law the judicial department of government would be hampered in the performance of its duties. That has been the history of attorneys under the common law, both in this country and in England. Admission to practice as an attorney at law is almost without exception conceded to be a judicial function. Petition to that end is filed in courts, as are other proceedings invoking judicial action. Admission to the bar is accomplish and made open and notorious by a decision of the court entered upon its records. The establishment by the Constitution of the judicial department conferred authority necessary to the exercise of its powers as a coordinate department of government. It is an inherent power of such a department of government ultimately to determine the qualifications of those to be admitted to practice in its courts, for assisting in its work, and to protect itself in this respect from the unfit, those lacking in sufficient learning, and those not possessing good moral character. Chief Justice Taney stated succinctly and with finality in Ex parte Secombe, 19 How. 9, 13, 15 L. Ed. 565, 'It has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed.' " (p. 727)

In the case of Day and others who collectively filed a petition to secure license to practice the legal profession by virtue of a law of state (In re Day, 54 NE 646), the court said in part:

"In the case of Ex parte Garland, 4 Wall, 333, 18 L. Ed. 366, the court, holding the test oath for attorneys to be unconstitutional, explained the nature of the attorney's office as follows: "They are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character. It has always been the general practice in this country to obtain this evidence by an examination of the parties. In this court the fact of the admission of such officers in the highest court of the states to which they, respectively, belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. Ex parte Hoyfron, 7 How. (Miss. 127; Fletcher *vs*. Daingerfield, 20 Cal. 430. Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases. It was so held by the court of appeals of New York in the matter of the application of Cooper for admission. Re Cooper 22 N. Y. 81. 'Attorneys and Counsellors,' said that court, 'are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature; and hence their appointment may, with propriety, be intrusted to the court, and the latter, in performing his duty, may very justly considered as engaged in the exercise of their appropriate judicial functions." (pp. 650-651).

We quote from other cases, the following pertinent portions :

> "Admission to practice of law is almost without exception conceded everywhere to be the exercise of a judicial function, and this opinion need not be burdened with citations in this point. Admission to practice have also been held to be the exercise of one of the inherent powers of the court."—Re Bruen, 102 Wash. 472, 172 Pac. 906.

> "Admission to the practice of law is the exercise of a judicial function, and is an inherent power of the court."—A. C. Brydonjack, *vs*. State Bar of California, 281 Pac. 1018; See Annotation on Power of Legislature respecting admission to bar, 65, A. L. R. 1512.

On this matter there is certainly a clear distinction between the functions of the judicial and legislative departments of the government.

> "The distinction between the functions of the legislative and the judicial departments is that it is the province of the legislature to establish rules that shall regulate and govern

> in matters of transactions occurring subsequent to the legislative action, while the judiciary determines rights and obligations with reference to transactions that are past or conditions that exist at the time of the exercise of judicial power, and the distinction is a vital one and not subject to alteration or change either by legislative action or by judicial decrees.
>
> "The judiciary cannot consent that its province shall be invaded by either of the other departments of the government."—16 C. J. S., Constitutional Law, p. 229.
>
> "If the legislature cannot thus indirectly control the action of the courts by requiring of them construction of the law according to its own views, it is very plain it cannot do so directly, by settling aside their judgments, compelling them to grant new trials, ordering the discharge of offenders, or directing what particular steps shall be taken in the progress of a judicial inquiry."—Cooley's Constitutional Limitations, 192.

In decreeing that bar candidates who obtained in the bar examinations of 1946 to 1952, a general average of 70 per cent without falling below 50 per cent in any subject, be admitted in mass to the practice of law, the disputed law is not a legislation; it is a judgment—a judgment revoking those promulgated by this Court during the aforecited year affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for

justifiable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may be so. Any attempt on the part of any of these departments would be a clear usurpation of its functions, as is the case with the law in question.

That the Constitution has conferred on Congress the power to repeal, alter or supplement the rules promulgated by this Tribunal, concerning the admission to the practice of law, is no valid argument. Section 13, article VIII of the Constitution provides:

> "Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish.. increase or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."—Constitution of the Philippines, Art. VIII, sec. 13.

It will be noted that the Constitution has not conferred on Congress and this Tribunal equal responsibilities concerning the admission to the practice of law The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had Congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise

the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys at law is realized. They are powers which, exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and exacting necessities of the administration of justice.

The case of Guariña (1913) 24 Phil., 37, illustrates our criterion. Guariña took the examination and failed by a few points to obtain the general average. A recently enacted law provided that one who had been appointed to the position of Fiscal may be admitted to the practice of law without a previous examination. The Government appointed Guariña and he discharged the duties of Fiscal in a remote province. This Tribunal refused to give his license without previous examinations. The court said:

> "Relying upon the provisions of section 2 of Act No. 1597, the applicant in this case seeks admission to the bar, without taking the prescribed examination, on the ground that he holds the office of provincial fiscal for the Province of Batanes.
>
> Section 2 of Act No. 1597, enacted February 28, 1907, is as follows:
>
> "Sec. 2. Paragraph one of section thirteen of Act Numbered One Hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' is hereby amended to read as follows:
>
> "1. Those who have been duly licensed under the laws and orders of the Islands under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this code; *Provided*, That any person who, prior to the passage of this Act, or at any time thereafter, shall have held, under the authority of the United States,

the position of justice of the Supreme Court, judge of the Court of First Instance, or judge or associate judge of the Court of Land Registration, of the Philippine Islands, or the position of Attorney General, Solicitor General, Assistant Attorney General, assistant attorney in the office of the Attorney General, prosecuting attorney for the City of Manila, assistant prosecuting attorney for the City of Manila, city attorney of Manila, assistant city attorney of Manila, provincial fiscal, attorney for the Moro Province, or assistant attorney for the Moro Province, may be licensed to practice law in the courts of the Philippine Islands without an examination, upon motion before the Supreme Court and establishing such fact to the satisfaction of said court."

"The records of this court- disclose that on a former occasion this appellant took, and failed "to pass the prescribed examination. The report of the examining board, dated March 23, 1907, shows that he received an average of only 71 per cent in the various branches of legal learning upon which he was examined, thus falling four points short of the required percentage of 75. We would be delinquent in the performance of our duty to the public and to the bar, if, in the face of this affirmative indication of the deficiency of the applicant in the required qualifications of learning in the law at the time when he presented his former application for admission to the bar, we should grant him a license to practice law in the courts of these Islands, without first satisfying ourselves that despite his failure to pass the examination on that occassion, he now 'possesses the necessary qualifications of learning and ability.'

"But it is contended that under the provisions of the above-cited statute the applicant is entitled as of right to be admitted to the bar without taking the prescribed examination 'upon motion before the Supreme Court' accompanied by satisfactory proof that he has held and now holds the office of provincial fiscal of the Province of Batanes.

> It is urged that having in mind the object which the legislator apparently sought to attain in enacting the above-cited amendment to the earlier statute, and in view of the context generally and especially of the fact that the amendment was inserted as a proviso in that section of the original Act which specifically provides for the admission of certain candidates without examination, the clause may be licensed to practice law in the courts of the Philippine Islands without any examination.' It is contended that this mandatory construction is imperatively required in order to give effect to the apparent intention of the legislator, and to the candidate's claim *de jure* to have the power exercised."

And after copying article 9 of Act of July 1, 1902 of the Congress of the United States, articles 2, 16 and 17 of Act No. 136, and articles 13 to 16 of Act 190, the Court continued:

> "Manifestly, the jurisdiction thus conferred upon this court by the commission and confirmed to it by the Act of Congress would be limited and restricted, and in a case such as that under consideration wholly destroyed, by giving the word 'may,' as used in the above citation from Act No. 1597, a mandatory rather than a permissive effect. But any act of the commission which has the effect of setting at naught in whole or in part the Act of Congress of July 1, 1902, or of any Act of Congress prescribing, defining or limiting the power conferred upon the commission is to that extent invalid and void, as transcending its rightful limits and authority.

Speaking on the application of the law to those who were appointed to the positions enumerated, and with particular emphasis in the case of Guariña, the Court held:

> "In the various cases wherein applications for admission to the bar under the provisions of this statute have been considered heretofore, we have accepted the fact that such appointments had been made as satisfactory evidence of the qualifications of the applicant. But in all of those cases we had reason to believe that the applicants had been practicing attorneys prior to the date of their appointment.
>
> "In the case under consideration, however, it affirmatively appears that the applicant was not and never had been practicing attorney in this or any other jurisdiction prior to the date of his appointment as provincial fiscal, and it further affirmatively appears that he was deficient in the required qualifications at the time when he last applied for admission to the bar.
>
> "In the light of this affirmative proof of his deficiency on that occasion, we do not think that his appointment to the office of provincial fiscal is in itself satisfactory proof of his possession of the necessary qualifications of learning and ability. We conclude therefore that this application for license to practice in the courts of the Philippines, should be denied.
>
> "In view, however, of the fact that when he took the examination he

> fell only four points short of the necessary grade to entitle him to a license to practice; and in view also of the fact that since that time he has held the responsible office of the governor of the Province of Sorsogon and presumably gave evidence of such marked ability in the performance of the duties of that office that the Chief Executive, with the consent and approval of the Philippine Commission, sought to retain him in the Government service by appointing him to the office of provincial fiscal, we think we would be justified under the above-cited provisions of Act No. 1597 in waiving in his case the ordinary examination prescribed by general rule, provided he offers satisfactory evidence of his proficiency in a special examination which will be given him by a committee of the court upon his application therefor, without prejudice to his right, if he desires so to do, to present himself at any of the ordinary examinations prescribed by general rule."—(In re Guarifia, pp. 48-49.)

It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs exclusively to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license.

The law in question, like those in the case of Day and Cannon, has been found also to suffer from the fatal defect of being a class legislation, and that if it has intended to make a classification, it is arbitrary and unreasonable.

In the case of Day, a law enacted on February 21, 1899 required of the Supreme Court, until December 31 of that year, to grant license for the practice of law to those students who began studying before November 4, 1897, and had studied for two years and presented a diploma issued by a school of law, or to those who

had studied in a law office and would pass an examination, or to those who had studied for three years if they commenced their studies after the aforementioned date. The Supreme Court declared that this law was unconstitutional being, among others, a class legislation. The Court said:

> "This is an application to this court for admission to the bar of this state by virtue of diplomas from law schools issued to the applicants. The act of the general assembly passed in 1899, under which the application is made, is entitled 'An act to amend section 1 of an act entitled "An act to revise the law in relation to attorneys and counselors,' approved March 28, 1894, in force July 1, 1874.' The amendment, so far as it appears in the enacting clause, consists in the addition to the section of the following: 'And every applicant for a license who shall comply with the rules of the supreme court in regard to admission to the bar in force at the time such applicant commend the study of law, either in a law office or a law school or college, shall be granted a license under this act notwithstanding any subsequent changes in said rules'."—In re Day et al, 54 N. Y., p. 646.

> * * * "After said provision there is a double proviso, one branch of which is that up to December 31, 1899, this court shall grant a license of admittance to the bar to the holder of every diploma regularly issued by any law school regularly organized under the laws of this state, whose regular course of law studies is two years, and requiring an attendance by the student of at least 36 weeks in each of such years, and showing that the student began the study of law prior to November 4, 1897, and accompanied with the usual proofs of good moral character. The other branch of the proviso is that any student who has studied law for two years in a law office, or part of such time in a law office, 'and part in the aforesaid law school,' and whose course of study began prior to November 4, 1897, shall be admitted

upon a satisfactory examination by the examining board in the branches now required by the rules of this court. If the right to admission exists at all, it is by virtue of the proviso, which, it is claimed, confers substantial rights and privileges upon the persons named therein, and establishes rules of legislative creation for their admission to the bar." (p. 647.)

"Considering the proviso, however, as an enactment, it is clearly a special legislation, prohibited by the constitution, and invalid as such. If the legislature had any right to admit attorneys to practice in the courts and take part in the administration of justice, and could prescribe the character of evidence which should be received by the court as conclusive of the requisite learning and ability of persons to practice law, it could only be done by a general law, and not by granting special and exclusive privileges to certain persons' or classes of persons. Const, art 4, section 2. The right to practice law is a privilege, and a license for that purpose makes the holder an officer of the court, and confers upon him the right to appear for litigants, to argue causes, and to collect fees therefor, and creates certain exemptions, such as from jury services and arrest on civil process while attending court. The law conferring such privileges must be general in its operation. No doubt the legislature, in framing an enactment for that purpose, may classify persons so long as the law establishing classes in general, and has some reasonable relation to the end sought. There must be some difference which furnishes a reasonable basis for different legislation as to the different classes, and not a purely arbitrary one, having no just relation to the subject of the legislation. Braceville Coal Co. *vs*. People, 147 111. 66, 35 N. E. 62; Eitchie *vs*. People, 155 III. 98, 40 N. E. 454; Railroad Co. *vs*. Ellis, 165 U. S. 150, 17 Sup. Ct. 255.

"The length of time a physician has practiced, and the skill acquired by experience, may furnish a basis for classification (Williams *vs*.

People 121 111. 48, II N. E. 881); but the place where such physician has resided and practiced his profession cannot furnish such basis, and is an arbitrary discrimination, making an enactment based upon it void (State *vs*. Pennyeor, 65 N. E. 113, 18 Atl. 878). Here the legislature undertakes to say what shall serve as a test of fitness for the profession of the law. and. plainly, any classification must have some reference to learning, character, or ability to engage in such practice. The proviso is limited, first, to a class of persons who began the study of law prior to November 4, 1897. This class is subdivided into two classes—First, those presenting diplomas issued :by any law school of this state before December 31, 1899; and, second, those who studied law for the period of two years in a law office, or part of the time in a law school and part in a law office, who are to be admitted upon examination in the subjects specified in the present rules of this court, and as to this latter subdivision there seems to be no limit of time for making application for admission. As to both classes, the conditions of the rules are dispensed "with, and as between the two different conditions and limits of time are fixed. No course of study is prescribed for the law school, but a diploma granted upon the completion of any sort of course its managers may prescribe is made all-sufficient. Can there be anything with relation to the qualifications or fitness of persons to practice law resting upon the mere date of November 4, 1897, which will furnish a basis of classification. Plainly not. Those who began the study of law November 4th could qualify themselves to practice in two years as well as those who began on the 3rd. The classes named in the proviso need spend only two years in study, while those who commenced the next day must spend three years, although they would complete two years before the time limit. The one who commenced on the 3d. If possessed of a diploma, is to be admitted without examination before December 31, 1899, and without any prescribed course of study, while as to the other the prescribed course must be pursued, and the diploma is utterly useless. Such classification cannot rest upon any natural reason, or bear any just relation to the subject sought, and none is suggested. The proviso is for the sole purpose of bestowing privileges upon certain defined persons, (pp. 647-648.)

In the case of Cannon above cited, State vs. Cannon, 240 N. W. 441, where the legislature attempted by law to reinstate Cannon to the practice of law, the court also held with regards to its aspect of being a class legislation:

> "But the statute is invalid for another reason. If it he granted that the legislature has power to prescribe ultimately and definitely the qualifications upon which courts must admit and license those applying as attorneys at law, that power can not be exercised in the manner here attempted. That power must be exercised through general laws which will apply to all alike and accord equal opportunity to all. Speaking of the right of the Legislature to exact qualifications of those desiring to pursue chosen callings, Mr. Justice Field in the case of Dent. vs. West Virginia, 129 U. S. 114, 121, 9 S. Ct. 232, 233, 32 L. Ed. 626, said: 'It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are all open to every one on like conditions. All may he pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the 'estate' acquired in them—that is, the right to continue their prosecution—is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. It is fundamental under our system of government that all similarly situated and possessing equal qualifications shall enjoy equal opportunities. Even statutes regulating the practice of medicine,

requiring examinations to establish the possession on the part of the application of his proper qualifications before he may be licensed to practice, have been challenged, and courts have seriously considered whether the exemption from such examinations of those practicing in the state at the time of the enactment of the law rendered such law unconstitutional because of infringement upon this general principle. State *vs*. Thomas Call, 121 N. C. 643, 28 S. E. 517; see, also, The State ex rel. Winkler *vs*. Rosenberg, 101 Wis. 172, 76 N. W. 345; State *vs*. Whitcom, 122 Wis. 110, 99 N. W. 468.

"This law singles out Mr. Cannon and assumes to confer upon him the right to practice law and to constitute him an officer of this Court as a mere matter of legislative grace or favor. It is not material that he had once established his right to practice law and that one time he possessed the requisite learning and other qualifications to entitle him to that right. That fact in no manner affect the power of the Legislature to select from the great body of the public an individual upon whom it would confer its favors.

"A statute of the state of Minnesota (Laws 1929, c. 424) commanded the Supreme Court to admit to the practice of law, without examination, all who had 'serve in the military or naval forces of the United States during the World War and received an honorable discharge therefrom and who (were disabled therein or thereby within the purview of the Act of Congress approved June 7th, 1924i known as 'World War Veteran's Act, 1924 and whose disability is rated at least ten per cent thereunder at the time of the passage of this Act." This Act was held unconstitutional on the ground that it clearly violated the quality clauses of the constitution of that state. In re Application of George W. Humphrey, 178 Minn. 331, 227 N. W. 179.

A good summary of a classification constitutional acceptable is explained in 1% Am. Jur. 151-153 as follows:

> "The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the person included in it and those excluded and, furthermore, must be based upon substantial distinctions. As the rule has sometimes avoided the constitutional prohibition, must be founded upon pertinent and real differences, as distinguished from irrelevant and artificial once. Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended. In other words, there must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of all other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason for the difference made in their liabilities and burdens and in their rights and privileges. A law is not general because it operates on all within a clause unless there is a substantial reason why it is made to operate on that class only, and not generally on all." (12 Am. Jur. pp. 151-153.)

Pursuant to the law in question, those who, without a grade below 50 per cent in any subject, have obtained a general average of 69.5 per cent in the bar examinations in 1946 to 1951, 70.5 per cent in 1952, 71.5 per cent in 1953, and those will obtain 72.5 per cent in 1954, and 73.5 per cent in 1955, will be

permitted to take and subscribe the corresponding oath of office as members of the Bar, notwithstanding that the rules require a minimum general average of 75 per cent, which has been invariably followed since 1950. Is there any motive of the nature indicated by the abovementioned authorities, for this classification? If there is none, and none has been given, then the classification is fatally defective.

It was indicated that those who failed in 1944, 1941 or the years before, with the general average indicated, were not included because the Tribunal has no record of the unsuccessful candidates of those years. This fact does not justify the unexplained classification of unsuccessful candidates by years, from 1946-1951, 1952, 1953, 1954, 1955. Neither is the exclusion of those who failed before said years under the same conditions justified. The fact that this Court has no record of examinations prior to 1946 does not signify that no one concerned may prove by some other means his right to an equal consideration.

To defend the disputed law from being declared unconstitutional on account of its retroactivity, it is argued that it is curative, and that in such form it is constitutional. What does Rep. Act 972 intend to cure? Only from 1946 to 1949 were there cases in which the Tribunal permitted admission to the bar of candidates who did not obtain the general average of 75 per cent: in 1946 those who obtained only 72 per cent; in the 1947 and those who had 69 per cent or more; in 1948, 70 per cent and in 1949, 74 per cent; and in 1950 to 1953, those who obtained 74 per cent, which was considered by the Court as equivalent’ to 75 per cent as prescribed by the Rules, by reason of circumstances deemed to be sufficiently justifiable. These changes in the passing averages during those years were all that could be objected to or criticized.. Now, is it desired to undo what had been done—cancel the license that was issued to those who did not obtain the prescribed 75 per cent? Certainly not. The disputed law clearly does not propose to do so. Concededly, it approves what has been done by this Tribunal. What Congress lamented is that the Court did not consider 69.5 per cent obtained by those candidates who failed in 1946 to 1952 as sufficient to qualify them to practice law. Hence, it is the lack of will or defect of judgment of the

Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954 and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgment of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary, to which such duty been confided.

Article 2 of the law in question permits partial passing of examinations, at indefinite intervals. The grave defect of this system is that it does not take into account that the laws and jurisprudence are not stationary, and when a candidate finally receives his certificate, it may happen that the existing laws and jurisprudence are already different, seriously affecting in this manner his usefulness. The system that the said law prescribes was used in the first bar examinations of this country, but was abandoned for this and other disadvantages. In this case, however, the fatal defect is that the article is not expressed in the title of the Act. While this law according to its title will have temporary effect only from 1946 to 1955, the text of article 2 establishes a permanent system for an indefinite time. This is contrary to Section 21(1), article VI of the Constitution, which vitiates and annuls article 2 completely; and because it is inseparable from article 1, it is obvious that its nullity affects the entire law.

Laws are unconstitutional on the following grounds: first, because they are not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, because they create or establish arbitrary methods or forms that infringe constitutional principles; and third, because their purposes or effects

violate the Constitution or its basic principles. As has already been seen, the contested law suffers from these fatal defects.

Summarizing, we are of the opinion and hereby declare that Republic Act No. 972 is unconstitutional and therefore, void, and without any force nor effect for the following reasons, to wit:

1. Because its declared purpose is to admit 810 candidates who failed in the bar examinations of 1946-1952, and who, it admits, are certainly inadequately prepared to practice law, as was exactly found by this Court in the aforesaid years. It decrees the admission to the Bar of these candidates, depriving this Tribunal of the opportunity to determine if they are at present already prepared to become members of the Bar. It obliges the Tribunal to perform something contrary to reason and in an arbitrary manner. This is a manifest encroachment on the constitutional responsibility of the Supreme Court.

2. Because it is, in effect, a judgment revoking the resolution of this Court on the petitions of these 810 candidates, without having examined their respective examination papers, and although it is admitted that this Tribunal may reconsider said resolution at any time for justifiable reasons, only this Court and no other may revise and alter them. In attempting to do it directly Republic Act No. 972 violated the Constitution.

3. By the disputed law, Congress has exceeded its legislative power to repeal, alter and supplement the rules on admission to the Bar. Such additional or amendatory rules are, as they ought to be, intended to

regulate acts subsequent to its promulgation and should tend to improve and elevate the practice of law, and this Tribunal shall consider these rules as minimum norms towards that end in the admission, suspension, disbarment and reinstatement of lawyers to the Bar, inasmuch as a good bar assists immensely in the daily performance of judicial functions and is essential to a worthy administration of justice. It is therefore the primary and inherent prerogative of the Supreme Court to render the ultimate decision on who may be admitted and may continue in the practice of law according to existing rules.

4. The reason advanced for the pretended classification of candidates, which the law makes, is contrary to facts which are of general knowledge- and does not justify the admission to the Bar of law students inadequately prepared. The pretended classification is arbitrary. It is undoubtedly a class legislation.

5. Article 2 of Republic Act No. 972 is not embraced in the title of the law, contrary to what the Constitution enjoins, and being inseparable from the provisions of article 1, the entire law is void.

6. Lacking in eight votes to declare the nullity of that part of article 1 referring to the examinations of 1953 to 1955, said part of article 1, insofar as it concerns the examinations in those years, shall continue in force.

RESOLUTION

Upon mature deliberation by this Court, after hearing and availing of the magnificent and impassioned discussion of the contested law by our Chief Justice at the opening and close of the debate among the members of the Court, and after hearing the judicious observations of two of our beloved colleagues who since the beginning have announced their decision not to take part in voting, we, the eight members of the Court who subscribe to this decision have voted and resolved, and have decided for the Court, and under the authority of the same:

> 1. That (a) the portion of article 1 of Republic Act No, 972 referring to the examinations of 1946 to 1952, and (b) all of article 2 of said law are unconstitutional and, therefore, void and without force and effect.

> 2. That, for lack of unanimity in the eight Justices, that part of article 1 which refers to the examinations subsequent to the approval of the law, that is from 1953 to 1955 inclusive, is valid and shall continue to be in force, in conformity with section 10, article VII of the Constitution.

Consequently, (1) all the above-mentioned petitions of the candidates who failed in the examinations of 1946 to 1952 inclusive are denied, and (2) all candidates who in the examinations of 1953 obtained a general average of 71.5 per cent or more, without having a grade below 50 per cent in any subject, are considered as having passed, whether they have filed petitions for admission or not. After this decision has become final, they shall be permitted to take and subscribe the

corresponding oath of office as members of the Bar on the date or dates that the Chief Justice may set. So ordered.

Bengzon, Montemayor, Jugo, Labrador, Pablo, Padilla, and *Reyes, JJ.*, concur.

(See Annex I Volume 94 Philippine Reports Pages 565-582)

The Enactment of Republic Act No. 972

As will be observed from Annex I, this Court reduced to 72 per cent the passing general average in the bar examination of August and November of 1946; 69 per cent in 1947; 70 per cent in 1948; 74 per cent in 1949; maintaining the prescribed 75 per cent since 1950, but raising to 75 per cent those who obtained 74 per cent since 1950. This caused the introduction in 1951, in the Senate of the Philippines of Bill No. 12 which was intended to amend Sections 5, 9, 12, 14 and 16 of Rule 127 of the Rules of Court, concerning the admission of attorneys-at-law to the practice of the profession. The amendments embrace many interesting matters, but those referring to sections 14 and 16 immediately concern us. The proposed amendment is as follows:

> "Sec. 14. *Passing average.*—In order that a candidate may be deemed to have passed the examinations successfully, he must have obtained a general average of 70 per cent without falling below 50 per cent in any subject. In determining the average, the foregoing subjects shall be given the following relative weights: Civil Law, 20 per cent; Land Registration and Mortgages, 5 per cent; Mercantile Law, 15 per cent; Criminal Law, 10 per cent; Political Law, 10 per cent; International

> Law, 5 per cent; Remedial Law, 20 per cent; Legal Ethics and Practical Exercises, 5 per cent; Social Legislation, 5 per cent; Taxation, 5 per cent. Unsuccessful candidates shall not be required to take another examination in any subject in which they have obtained a rating of 70 per cent or higher and such rating shall be taken into account in determining their general average in any subsequent examinations: *Provided, however*, That if the candidate fails to get a general average of 70 per cent in his third examination, he shall lose the benefit of having already passed some subjects and shall be required, to the examination in all the subjects.
>
> "Sec. 16. *Admission and oath of successful applicants.*—Any applicant who has obtained a general average of 70 per cent in all subjects without falling below 50 per cent in any examination held after the 4th day of July, 1946, or who has been otherwise found to be entitled to admission to the bar, shall be allowed to take and subscribe before the Supreme Court the corresponding oath of office. (Arts. 4 and 5, 8, No. 12).

With the bill was an Explanatory Note, the portion pertinent to the matter before us being:

> "It seems to be unfair that unsuccessful candidates at bar examinations should be compelled to repeat even those subjects which they have previously passed. This is not the case in any other government examination. The Rules of Court have therefore been amended in this measure to give a candidate due credit for any

> subject which he has previously passed with a rating of 75 per cent or higher."

Senate Bill No. 12 having been approved by Congress on May 3, 1951, the President requested the comments of this Tribunal before acting on the same. The comment was signed by seven Justices while three chose to refrain from making any and one took no part. With regards to the matter that interests us, the Court said:

> "The next amendment is of section 14 of Rule 127. One part of this amendment provides that if a bar candidate obtains 70 per cent or higher in any subject, although failing to pass the examination, he need not be examined in said subject in his next examination. This is a sort of passing the Bar Examination on the installment plan, one or two or three subjects at a time. The trouble with this proposed system is that although it makes it easier and more convenient for the candidate because he may in an examination prepare himself on only one or two subjects so as to insure passing them, by the time that he has passed the last required subject, which may be several years away from the time that he reviewed and passed the first subjects, he shall have forgotten the principles and theories contained in those subjects' and remembers only those of the one or two subjects that he had last reviewed and passed. This is highly possible because there is nothing in the law which requires a candidate to continue taking the Bar examinations every year in succession. The only condition imposed is that a candidate, on this plan, must pass the examination in no more than three installments; but there is no limitation as to the time or number of years intervening between each examination taken. This

would defeat the object and the requirements of the law and the Court in admitting persons to the practice of law. When a person is so admitted, it is to be presumed and presupposed that he possesses the knowledge and proficiency in the law and the knowledge of all law subjects required in bar examinations, so as presently to be able to practice the legal profession and adequately render the legal service required by prospective clients. But this would not hold true of the candidates who may have obtained a passing grade on any five subjects eight years ago, another three subjects one year later, and the last two subjects the present year. We believe that the present system of requiring a candidate to obtain a passing general average with no grade in any subject below 50 per cent is more desirable and satisfactory. It requires one to be all around, and prepared in all required legal subjects at the time of admission to the practice of law.

* * * * * * *

"We now come to the last amendment, that of section 16 of Rule 127. This amendment provides that any applicant who has obtained a general average of 70 per cent in all subjects without failing below 50 per cent in any subject in any examination held after the 4th day of July, 1946, shall be allowed to take and subscribe the corresponding oath of office. In other words, Bar candidates who obtained not less than 70 per cent in any examination since the year 1946 without failing below 50 per cent in any subject, despite their non-admission to the Bar by the Supreme Court because they failed to obtain a passing general average in any of those years, will be admitted to the Bar. This provision is not only prospective but retroactive in its effects.

"We have already stated in our comment on the next preceding amendment that we are not exactly in favor of reducing the passing general average from 75 per cent to 70′ per cent to govern even in the

future. As to the validity of making such reduction retroactive, we have serious legal doubts. We should not lose sight of the fact that after every bar examinations, the Supreme Court passes the corresponding resolution not only admitting to the Bar those who have obtained a passing general average grade, but also rejecting and denying the petitions for reconsideration of those who have failed. The present amendment would have the effect of repudiating, reversing and revoking the Supreme Court's resolution denying and rejecting the petitions of those who may have obtained an average of 70 per cent or more but less than the general passing average fixed for that year. It is clear that this question involves legal implications, and this phase of the amendment if finally enacted into law might have to go thru a legal test. As one member of the Court remarked during the discussion, when a court renders a decision or promulgate a resolution or order on the basis of and in accordance with a certain law or rule then in force, the subsequent amendment or even repeal of said law or rule may not affect the final decision, order, or resolution already promulgated, in the sense of revoking or rendering it void and of no effect.

"Another aspect of this question to be considered is the fact that members of the bar are officers of the courts, including the Supreme Court. When a Bar candidate is admitted to the Bar, the Supreme Court impliedly regards him as a person fit, competent and qualified to be its officer. Conversely, when it refused and denied admission to the Bar to a candidate who in any year since 1946 may have obtained a general average of 70 per cent but less than that required for that year in order to pass, the Supreme Court equally and impliedly considered and declared that he was not prepared, ready, competent and qualified to be its officer. The present amendment giving retroactivity to the reduction of the passing general average runs counter to all these acts and resolutions of the Supreme Court and practically and in effect says that a candidate not accepted, and even rejected by the Court to be its officer because he was unprepared, undeserving and unqualified, nevertheless and in spite of all, must be

admitted and allowed by this Court to serve as its officer. We repeat, that this is another important' aspect of the question to be carefully and seriously considered."

The President vetoed the bill on June 16, 1951, stating the following:

"I am fully in accord with the avowed objection of the bill, namely, to elevate the standard of the legal profession and maintain it on a high level. This is not achieved, however, by admitting to practice precisely a special class who have failed in the bar examination. Moreover, the bill contains provisions to which I find serious fundamental objections.

"Section 5 provides that any applicant who has obtained a general average of 70 per cent in all subjects without failing below 50 per cent in any subject in any examination held after the 4th day of July, 1946, shall be allowed to take and subscribed the corresponding oath of office. This provision constitutes class legislation, benefiting as it does specifically one group of persons, namely, the unsuccessful candidates in the 1946, 1947, 1948, 1949 and 1950 bar examinations.

"The same provision undertakes to revoke or set aside final resolutions of the Supreme Court made in accordance with the law then in force. It should be noted that after every bar examination the Supreme Court passes the corresponding resolution not only admitting to the Bar those who have obtained a passing general average but also rejecting and denying the petitions for

reconsideration of those who have failed. The provision under consideration would have the effect of revoking the Supreme Court's resolution denying and rejecting the petitions of those who may have failed to obtain the passing average fixed for that year. Said provision also sets a bad precedent in that the Government would be morally obliged to grant a similar privilege to those who have failed in the examinations for admission to other professions such as medicine, engineering, architecture and certified public accountancy."

Consequently, the bill was returned to the Congress of the Philippines, but it was not repassed by 2/3 vote of each House as prescribed by section 20, article VI of the Constitution. Instead Bill No. 371 was presented in the Senate. It reads as follows:

AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM 1946 UP TO AND INCLUDING 1953

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Notwithstanding the provisions of section 14, Rule 127 of the Rules of Court, any bar candidate who obtained a general average of 70 per cent in any bar examnations after July 4, 1946 up to the August 1951 bar examinations; 71 per cent in the 1952 bar examinations; 72 per cent in the 1953 bar examinations; 73 per cent in the 1954 bar examinations; 74 per cent in 1955 bar examinations

without a candidate obtaining a grade below 50 per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar: Provided, however, That 75 per cent passing general average shall be restored in all succeeding examinations; and Provided, finally, That for the purpose of this Act, any exact one-half or more of a fraction, shall be considered as one and included as part of the next whole number.

Sec. 2. Any bar candidate who obtained a grade of 75 per cent in any subject in any bar examination after July 4, 1946 shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing' general average that said candidate may obtain in any subsequent examinations that he may take.

Sec. 3. This bill shall take effect upon its approval.

With the following explanatory note:

"This is a revised Bar bill to meet the objections of the President and to afford another opportunity to those who feel themselves discriminated by the Supreme Court from 1946 to 1951 when those who would otherwise have passed the bar examination but were arbitrarily not so considered by altering its previous decisions of the passing mark. The Supreme Court has been altering the passing mark from 69 in 1947 to 74 in 1951. In order to cure the apparent arbitrary

fixing of passing grades and to give satisfaction to all parties concerned, it is proposed in this bill a gradual increase in the general averages for passing the bar examinations as follows; For 1946 to 1951 bar examinations, 70 per cent; for 1952 bar examination, 71 per cent; for 1953 bar examination, 72 per cent; for 1954 bar examination, 73 percent; and for 1955 bar examination, 74 per cent. Thus in 1956 the passing mark will be restored with the condition that the candidate shall not obtain n any subject a grade of below 50 per cent. The reason for relaxing the standard 75 per cent passing grade, is the tremendous handicap which students during the years immediately after the Japanese occupation has to overcome such as the insufficiency of reading materials and the inadequacy of the preparation of students who took up law soon after the liberation. It is believed that by 1956 the preparation of our students as well as the available reading material's will be under normal conditions, if not improved from those years preceding the last world war.

In this bill we eliminated altogether the idea of having our Supreme Court assumed the supervision as well as the administration of the study of law which was objected to by the President in the Bar Bill of 1951.

"The President in vetoing the Bar Bill last year stated among his objections that the bill would admit to the practice of law 'a special class who failed in the bar examination'. He considered the bill a class legislation. This contention, however, is not, in good conscience, correct because Congress is merely supplementing what the Supreme Court have already established as precedent by making as low as 69 per cent the passing mark of those who took the Bar examination in 1947. These bar candidates for whom this bill should be enacted, considered themselves as having passed the bar examination on the strength of the established precedent of our Supreme Court and were fully aware of the insurmountable difficulties and handicaps which

> they were unavoidably placed. We believe that such precedent cannot or could not have been altered, constitutionally, by the Supreme Court, without giving due consideration to the rights already accrued or vested in the bar candidates who took the examination when the precedent was not yet altered, or in effect, was still enforced and without being inconsistent with the principles of their previous resolutions.

“If this bill would be enacted, it shall be considered as a simple curative act or corrective statute which Congress has the power to enact. The requirement of a ‘valid classification’ as against class legislation, is very expressed in the following American Jurisprudence :

> ” ‘A valid classification must include all who naturally belong to the class, all who possess a common disability, attribute, or classification, and there must be a “natural” and substantial differentiation between those included in the class and those it leaves untouched. When a class is accepted by the Court as “natural” it cannot be again split and then have the diservered factions of the original unit designated with different rules established for each.'” (Fountain Park Co. vs. Rensier, 199 Ind. 95, N. E. 465 (1926).

> ‘”Another case penned by Justice Cardozo: “Time with its tides brings new conditions which must be cared for by new laws. Sometimes the new conditions affect the members of a class. If so, the correcting statute must apply to all alike. Sometimes the condition affect only a few. If so, the correcting statute may be as narrow as the mischief.

> The constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which the general laws are incompetent to cope. The special public purpose will sustain the special form. * *, * The problem in the last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in the case of plain abuse will there be revision by the court. (In Williams *vs*. Mayor and City Council of Baltimore, 286 U.S. 36, 77 L. Ed. 1015, 53 Sup. Ct. 431). (1932)

> "This bill has all the earmarks of a corrective statute which always retroacts to the extent of the care or correction only as in this case from 1946 when the Supreme Court first deviated from the rule of 75 per cent in the Rules of Court.

> "For the foregoing purposes the approval of this bill is earnestly recommended.

> (Sgd.) "Pablo Angeles David
> "Senator"

Without much debate, the revised bill was passed by Congress as above transcribed. The President again asked the comments of this Court, which endorsed the following:

> Respectfully returned to the Honorable, the Acting Executive Secretary, Manila, with the information that, with respect to Senate Bill No. 371, the 'members of the Court are taking- the same views they expressed on Senate Bill No. 12 passed by Congress in May, 1951, contained in the first indorsement of the undersigned dated June 5, 1951, to the Assistant Executive Secretary.
>
> (Sgd.) Ricardo Paras

The President allowed the period within which the bill should be signed to pass without vetoing it, by virtue of which it became a law on June 21, 1953 (Sec. 20, Art. VI, Constitution) numbered 972 (many times erroneously cited as No. 974).

It may be mentioned in passing that 1953 was an election year, and that both the President and the author of the Bill were candidates for re-election, together, however, they lost in the polls.

CONCURRING AND DISSENTING OPINION

Labrador, J.:

The right to admit members to the Bar is, and has always been, the exclusive privilege of this Court, because lawyers are members of the Court and only this

Court should be allowed to determine admission thereto in the interest of the principle of the separation of powers. The power to admit is judicial in the sense that discretion is used in its exercise. This power should be distinguished from the power to promulgate rules Which regulate admission. It is only this power (to promulgate amendments to the rules) that is given in the Constitution to the Congress, not the exercise of the discretion to admit or not to admit. Thus the rules on the holding of examination, the qualifications of applicants, the passing grades, etc. are within the scope, of the legislative power. But the power to determine when a candidate has made or has not made the required grade is judicial, and lies completely with this Court.

I hold that the act under consideration is an exercise of the judicial function, and lies beyond the scope of the congressional prerogative of amending the rules. To say that candidates who obtain a general average of 72 per cent in 1953, 73 per cent in 1954, and 74 per cent in 1955 should be considered as having passed the examination, is to mean exercise of the privilege and discretion judged in this Court. It is a mandate to the tribunal to pass candidates for different years with grades lower than the passing mark. No reasoning is necessary to show that it is an arrogation of the Court's judicial authority and discretion. It is furthermore objectionable as discriminatory. Why should those taking the examinations in 1953, 1954 and 1955 be allowed to have the privilege of a lower passing grade, while those taking earlier or later are not?

I vote that the act *in toto* be declared unconstitutional, because it is not embraced within the rule-making power of Congress, because it is an undue interference with the power of this Court to admit members thereof, and because it is discriminatory.

DISSENTING OPINION

Paras, C.J.:

Under section 14 of Rule of Court No. 127, in order that a bar candidate "may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject." This passing mark has always been adhered to, with certain exception presently to be specified.

With reference to the bar examinations given in August, 1946, the original list of successful candidates included only those who obtained a general average of 75 per cent or more. Upon motion for reconsideration, however, 12 candidates with general averages ranging from 72 to 73 per cent were raised to 75 per cent by resolution of December 18, 1946. In the examinations of November, 1946 the list first released containing the names of successful candidates covered only those who obtained a general average of 75 per cent or more; but, upon motion for reconsideration, 19 candidates with a general average of 72 per cent were raised to 75 per cent by resolution of March 31, 1947. This would indicate that in the original list of successful candidates those having a general average of 73 per cent or more but below 75 per cent were included. After the original list of 1947 successful bar candidates had been released, and on motion, for reconsideration, all candidates with a general average of 69 per cent were allowed to pass by resolution of July 15, 1948. With respect to the bar examinations held in August, 1948, in addition to the original list of successful bar candidates, all those who obtained a general average of 70 per cent or more, irrespective of the grades in any one subject and irrespective of whether they filed petitions for reconsideration, were allowed to pass by resolution of April 28, 1949. Thus, for the year 1947 the Court in effect made 69 per cent as the passing average, and for the year 1948, 70 per cent; and this amounted, without being noticed perhaps, to an amendment of section 14 of Rule 127.

Numerous flunkers in the bar examinatons held subsequent to 1948, whose general averages mostly ranged from 69 to 73 per cent, filed motions for reconsideration, invoking the precedents set by this Court in 1947 and 1948, but said motions were uniformly denied.

In the year 1951, the Congress, after public hearings where law deans and professors, practising attorneys, presidents of bar associations, and law graduates appeared and argued lengthily *pro* or *con*, approved a bill providing, among others, for the reduction of the passing general average from 75 per cent to 70 per cent, retroactive to any bar examination held after July 4, 1946. This bill was vetoed by the President mainly in view of an unfavorable comment of Justices Padilla, Tuason, Montemayor, Reyes, Bautista and Jugo. In 1953, the Congress passed another bill similar to the previous bill vetoed by the President, with the important difference that in the later bill the provisions in the first bill regarding (1) the supervision and regulation by the Supreme Court of the study of law, (2) the inclusion of Social Legislation and Taxation as new bar subjects, (3) the publication of names of the bar examiners before the holding of the examinations, and (4) the equal division among the examiners of all the admission fees paid by bar applicants, were eliminated. This second bill was allowed to become a law, Republic Act No. 972, by the President by merely not signing it within the required period; and in doing so the President gave due respect to the will of the Congress which, speaking for the people, chose to repass the bill first vetoed by him.

Under Republic Act No. 972, any bar candidates who obtained a general average of 70 per cent in any examinations after July 4, 1946 up to August 1951; 71 per cent in the 1952 bar examinations; 72 per cent in 1953 bar examinations; 73 per cent in the 1954 bar examinations; and 74 per cent in the 1955 bar examinations, without obtaining a grade below 50 per cent in any subject, shall be allowed to pass. Said Act also provides that any bar candidate who obtained a grade of 75 per cent in any subject in any examination after July 4, 1946, shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing in any subsequent examinations.

Numerous candidates who had taken the bar examinations previous to the approval of Republic Act No. 972 and failed to obtain the necessary passing average, filed with this Court mass or separate petitions, praying that they be admitted to the practice of law under and by virtue of said Act, upon the allegation that they have obtained the general averages prescribed therein. In virtue of the resolution of July 6, 1953, this Court held on July 11, 1953 a hearing on said petitions, and members of the bar, especially authorized representatives of bar associations, were invited to argue or submit memoranda as *amici curiae*, the reason alleged for said hearing being that some doubt had "been expressed on the constitutionality of Republic Act No. 972 in so far as it affects past bar examinations and the matter" involved "a new question of public interest."

All discussions in support of the proposition that the power to regulate the admission to the practice of law is inherently judicial, are immaterial, because the subject is now governed by the Constitution which in Article VII, section 13, provides as follows:

> "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in ail courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify substantive right. The existing laws on pleading, practice, and procedure are hereby repealed as statutes and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."

Under this constitutional provision, while the Supreme Court has the power to promulgate rules concerning the admission to the practice of law, the Congress has the power to repeal, alter or supplement said rules. Little intelligence is necessary to see that the power of the Supreme Court and the Congress to regulate the admission to the practice of law is concurrent.

The opponents of Republic Act No. 972 argue that this Act, in so far as it covers bar examinations held prior to its approval, is unconstitutional, because it sets aside the final resolutions of the Supreme Court refusing to admit to the practice of law the various petitioners, thereby resulting in a legislative encroachment upon the judicial power. In my opinion this view is erroneous. In the first place, resolutions on the rejection of bar candidates do not have the finality of decisions in justiciable cases where the Rules of Court expressly fix certain periods after which they become executory and unalterable. Resolutions on bar matters, specially on motions for reconsiderations filed by flunkers in any given year, are subject to revision by this Court at any time, regardless of the period within which the motions were filed, and this has been the practice heretofore. The obvious reason is that bar examinations and admission to the practice of law may be deemed as a judicial function only because said matters happen to be entrusted, under the Constitution and our Rules of Court, to the Supreme Court. There is no judicial function involved, in the strict and constitutional sense of the word, because bar examinations and the admission to the practice of law, unlike justiciable cases, do not affect opposing litigants. It is no more than the function of other examining boards. In the second place, retroactive laws are not prohibited by the Constitution, except only when they would be *ex post facto*, would impair obligations and contracts or vested rights or would deny due process and equal protection of the law. Republic Act No. 972 certainly is not an *ex post facto* enactment, does not impair any obligation and contract or vested rights, and denies to no one the right to due process and equal protection of the law. On the other hand, it is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by this Court of different passing general averages in certain years.

Neither can it be said that bar candidates prior to July 4, 1946, are being discriminated against, because we no longer have any record of those who might have failed before the war, apart from the circumstance that 75 per cent had always been the passing mark during said period. It may also be that there are no pre-war bar candidates similarly situated as those benefited by Republic Act No. 972. At any rate, in the matter of classification, the reasonableness must be determined by the legislative body. It is proper to recall that the Congress held public hearings, and we can fairly suppose that the classification adopted in the Act reflects good legislative judgment derived from the facts and circumstances then brought out.

As regards the alleged interference in or encroachment upon the judgment of this Court by the Legislative Department, it is sufficient to state that, if there is any interference at all, it is one expressly sanctioned by the Constitution. Besides, interference in judicial adjudication prohibited by the Constitution is essentially aimed at protecting rights of litigants that have already been vested or acquired in virtue of decisions of courts, not merely for the empty purpose of creating appearances of separation and equality among the three branches of the Government. Republic Act No. 972 has not produced a case involving two parties and decided by the Court in favor of one and against the other. Needless to say, the statute will not affect the previous resolutions passing bar candidates who had obtained the general average prescribed by section 14 of Rule 127. A law would be objectionable and unconstitutional if, for instance, it would provide that those who have been admitted to the bar after July 4, 1946, whose general average is below 80 per cent, will not be allowed to practice law, because said statute; would then destroy a right already acquired under previous resolutions of this Court, namely, the bar admission of those whose general averages were from 75 to 79 per cent.

Without fear of contradiction, I think the Supreme Court, in the exercise of its rule-making power conferred by the Constitution, may pass a resolution

amending section 14 of Rule 127 by reducing the passing average to 70 per cent, effective several years before the date of the resolution. Indeed, when this Court on July 15, 1948 allowed to pass all candidates who obtained a general average of 69 per cent or more and on April 28, 1949 those who obtained a general average of 70 per cent or more, irrespective of whether they filed petitions for reconsideration, it in effect amended section 14 of Rule 127 retroactively, because during the examinations held in August 1947 and August 1948, said section (fixing the general average at 75 per cent) was supposed to be in force. It stands to reason, if we are to admit that the Supreme Court and the Congress have concurrent power to regulate the admission to the practice of law, that the latter may validly pass a retroactive rule fixing the passing general average.

Republic Act No. 972 cannot be assailed on the ground that it is unreasonable, arbitrary or capricious, since this Court had already adopted as passing averages 69 per cent for the 1947 bar examinations and 70 per cent for the 1948 examinations. Anyway, we should not inquire into the wisdom of the law, since this is a matter that is addressed to the judgment of the legislators. This Court in many instances had doubted the propriety of legislative enactments, and yet it has consistently refrained from nullifying them solely on that ground.

To say that the admission of the bar candidates benefited under Republic Act 972 is against public interest, is to assume that the matter of whether said Act is beneficial or harmful to the general public was not considered by the Congress. As already stated, the Congress held public hearings, and we are bound to assume that the legislators, loyal, as do the members of this Court, to their oath of office, had taken all the circumstances into account before passing the Act. On the question of public interest I may observe that the Congress, representing the people who elected them, should be more qualified to make an appraisal. I am inclined to accept Republic Act No. 972 as an expression of the will of the people through their duly elected representatives.

I would, however, not go to the extent of admitting that the Congress, in the

exercise of its concurrent power to repeal, alter, or supplement the Rules of Court regarding the admission to the practice of law, may act in an arbitrary or capricious manner, in the same way that this Court may not do so. We are thus left in the situation, incidental to a democracy, where we can and should only hope that the. right men are put in the right places in our Government.

Wherefore, I hold that Republic Act No. 972 is constitutional and should therefore be given effect in its entirety.

Candidates who in 1953 obtained 71.5 per cent, without falling below 50 per cent on any subject, are considered passed.

Date created: March 24, 2015