

GUALBERTO J. DE LA LLANA, PRESIDING JUDGE, BRANCH II OF THE CITY COURT OF OLONGAPO, ESTANISLAO L. CESA, JR., FIDELA Y. VARGAS, BENJAMIN C. ESCOLANGO, JUANITO C. ATIENZA, MANUEL

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G.R. No. 57883. March 12, 1982

Ponente: FERNANDO, C.J.

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This Court, pursuant to its grave responsibility of passing upon the validity of any executive or legislative act in an appropriate case, has to resolve the crucial issue of the constitutionality of Batas Pambansa Blg. 129, entitled "An Act Reorganizing the Judiciary, Appropriating Funds Therefor and for Other Purposes." The task of judicial review, aptly characterized as exacting and delicate, is never more so than when a conceded legislative power, that of judicial reorganization,[1] may possibly collide with the time-honored principle of the independence of the judiciary[2] as protected and safeguarded by this constitutional provision: "The Members of the Supreme Court and judges of inferior courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court shall have the power to discipline judges of inferior courts and, by a vote of at least eight Members, order their dismissal." [3] For the assailed legislation mandates that Justices and judges of inferior courts from the Court of Appeals to municipal circuit courts, except the occupants of the Sandigan-bayan and the Court of Tax Appeals, unless appointed to the inferior courts established by such Act, would be considered separated from the judiciary. It is the termination of their incumbency that for petitioners justifies a suit of this character, it being alleged that thereby the security of tenure provision of the Constitution has been ignored and disregarded.

That is the fundamental issue raised in this proceeding, erroneously entitled Petition for Declaratory Relief and/or for Prohibition[4] considered by this Court as an action for prohibition, seeking to enjoin respondent Minister of the Budget, respondent Chairman of the Commission on Audit, and respondent Minister of Justice from taking any action implementing Batas Pambansa Blg. 129. Petitioners[5] sought to bolster their claim by imputing lack of good faith in its enactment and characterizing as an undue delegation of legislative power to the President his authority to fix the compensation and allowances of the Justices and judges thereafter appointed and the determination of the date when the reorganization shall be deemed completed. In the very comprehensive and scholarly Answer of Solicitor General Estelito P. Mendoza,[6] it was pointed out that there is no valid justification for the attack on the constitutionality of this statute, it being a legitimate exercise of the power vested in the Batasang Pambansa to reorganize the judiciary, the allegations of absence of good faith as well as the attack on the independence of the judiciary being unwarranted and devoid of any support in law. A Supplemental Answer was likewise filed on October 8, 1981, followed by a Reply of petitioners on October 13. After the hearing in the morning and afternoon of October 15, in which not only petitioners and respondents were heard through counsel but also the amici curiae,[7] and thereafter submission of the minutes of the proceeding on the debate on Batas Pambansa Blg. 129, this petition was deemed submitted for decision.

The importance of the crucial question raised called for intensive and rigorous study of all the legal aspects of the case. After such exhaustive deliberation in several sessions, the exchange of views being supplemented by memoranda from the members of the Court, it is our opinion and so hold that Batas Pambansa Blg. 129 is not unconstitutional.

1. The argument as to the lack of standing of petitioners is easily resolved. As far as Judge de la Llana is concerned, he certainly falls within the principle set forth in Justice Laurel's opinion in *People v. Vera*.^[8] Thus: "The unchallenged rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."^[9] The other petitioners as members of the bar and officers of the court cannot be considered as devoid of "any personal and substantial interest" on the matter. There is relevance to this excerpt from a separate opinion in *Aquino, Jr. v. Commission on Elections*:^[10] "Then there is the attack on the standing of petitioners, as vindi-cating at most what they consider a public right and not protecting their rights as individuals. This is to conjure the specter of the public right dogma as an inhibition to parties intent on keeping public officials staying on the path of constitutionalism. As was so well put by Jaffe: 'The protection of private rights is an essential constituent of public interest and, converse-ly, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in a substantive and procedural sense, aspects of the totality of the legal order.' Moreover, petitioners have convincingly shown that in their capacity as tax-payers, their standing to sue has been amply demonstrated. There would be a retreat from the liberal approach followed in *Pascual v. Secretary of Public Works*, foreshadowed by the very decision of *People v. Vera* where the doctrine was first fully discussed, if we act diffe-rently now. I do not think we are prepared to take that step. Respondents, however, would hark back to the American Supreme Court doctrine in *Mellon v. Frothing-ham*, with their claim that what petitioners possess 'is an interest which is shared in common by other people and is comparatively so minute and indeterminate as to afford any basis and assurance that the judicial process can act on it.' That is to speak in the language of a bygone era, even in the United States. For as Chief Justice Warren clearly pointed out in the later case of *Flast v. Cohen*, the barrier thus set up if not breached has definitely been lowered."^[11]

2. The imputation of arbitrariness to the legislative body in the enactment of Batas Pambansa Blg. 129 to demonstrate lack of good faith does manifest violence to the facts. Petitioners should have exercised greater care in informing themselves as to its antecedents. They have laid themselves open to the accusation of reckless disregard for the truth. On August 7, 1980, a Presidential Committee on Judicial Reorganization was organized.^[12] This Executive Order was later amended by Executive Order No. 619-A, dated September 5 of that year. It clearly specified the task assigned to it: "1. The Committee shall formulate plans on the reorgani-zation of the Judiciary which shall be submitted within seventy (70) days from August 7, 1980 to provide the President sufficient options for the reorganization of the entire Judiciary which shall embrace all lower courts, including the Court of Appeals, the Courts of First Instance, the City and Municipal Courts, and all Special Courts, but excluding the Sandiganbayan."^[13] On October 17, 1980, a Report was submitted by such Committee on Judicial Reorganization. It began with this paragraph: "The Committee on Judicial Reorganization has the honor to submit the following Report. It expresses at the outset its appreciation for the opportunity accorded it to study ways and means for what today is a basic and urgent need, nothing less than the restructuring of the judicial system. There are problems, both grave and pressing, that call for remedial measures. The felt necessities of the time, to borrow a phrase from Holmes, admit of no delay, for if no step be taken and at the earliest opportunity, it is not too much to say that the people's faith in the administration of justice could be shaken. It is imperative that there be a greater efficiency in the disposition of cases and that litigants, especially those of modest means – much more so, the poorest and the humblest – can vindicate their rights in an expeditious and inexpensive manner. The rectitude and the fairness in the way the courts operate must be manifest to all members of the community and particularly to those whose interests are affected by the exercise of their functions. It is to that task that the Committee addresses itself and hopes that the plans submitted could be a starting point for an institutional reform in the Philippine judiciary. The experience of the

Supreme Court, which since 1973 has been empowered to supervise inferior courts, from the Court of Appeals to the municipal courts, has proven that reliance on improved court management as well as training of judges for more efficient administration does not suffice. Hence, to repeat, there is need for a major reform in the judicial system. It is worth noting that it will be the first of its kind since the Judiciary Act became effective on June 16, 1901."^[14] It went on to say: "It does not admit of doubt that the last two decades of this century are likely to be attended with problems of even greater complexity and delicacy. New social interests are pressing for recognition in the courts. Groups long inarticulate, primarily those economically underprivileged, have found legal spokesmen and are asserting grievances previously ignored. Fortunately, the judiciary has not proved inattentive. Its task has thus become even more formidable. For so much grist is added to the mills of justice. Moreover, they are likely to be quite novel. The need for an innovative approach is thus apparent. The national leadership, as is well-known, has been constantly on the search for solutions that will prove to be both acceptable and satisfactory. Only thus may there be continued national progress."^[15] After which comes: "To be less abstract, the thrust is on development. That has been repeatedly stressed – and rightly so. All efforts are geared to its realization." Nor, unlike in the past, was it to be "considered as simply the movement towards economic progress and growth measured in terms of sustained increases in per capita income and Gross National Product (GNP)."^[16] For the New Society, its implication goes further than economic advance, extending to "the sharing, or more appropriately, the democratization of social and economic opportunities, the substantiation of the true meaning of social justice."^[17] This process of modernization and change compels the government to extend its field of activity and its scope of operations. The efforts towards reducing the gap between the wealthy and the poor elements in the nation call for more regulatory legislation. That way the social justice and protection to labor mandates of the Constitution could be effectively implemented."^[18] There is likelihood then "that some measures deemed inimical by interests adversely affected would be challenged in court on grounds of validity. Even if the question does not go that far, suits may be filed concerning their interpretation and application. * * * There could be pleas for injunction or restraining orders. Lack of success of such moves would not, even so, result in their prompt final disposition. Thus delay in the execution of the policies embodied in law could thus be reasonably expected. That is not conducive to progress in development."^[19] For, as mentioned in such Report, equally of vital concern is the problem of clogged dockets, which "as is well known, is one of the utmost gravity. Notwithstanding the most determined efforts exerted by the Supreme Court, through the leadership of both retired Chief Justice Querube Makalintal and the late Chief Justice Fred Ruiz Castro, from the time supervision of the courts was vested in it under the 1973 Constitution, the trend towards more and more cases has continued."^[20] It is understandable why. With the accelerated economic development, the growth of population, the increasing urbanization, and other similar factors, the judiciary is called upon much oftener to resolve controversies. Thus confronted with what appears to be a crisis situation that calls for a remedy, the Batasang Pambansa had no choice. It had to act, before the ailment became even worse. Time was of the essence, and yet it did not hesitate to be duly mindful, as it ought to be, of the extent of its coverage before enacting Batas Pambansa Blg. 129.

3. There is no denying, therefore, the need for "institutional reforms," characterized in the Report as "both pressing and urgent."^[21] It is worth noting, likewise, as therein pointed out, that a major reorganization of such scope, if it were to take place, would be the most thorough after four generations.^[22] The reference was to the basic Judiciary Act enacted in June of 1901,^[23] amended in a significant way, only twice previous to the Commonwealth. There was, of course, the creation of the Court of Appeals in 1935, originally composed "of a Presiding Judge and ten appellate Judges, who shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments of the National Assembly."^[24] It could "sit en banc, but it may sit in two divisions, one of six and another of five Judges, to transact business, and the two divisions may sit at the same time."^[25] Two years after the establishment of independence of the Republic of the Philippines, the Judiciary Act of 1948^[26] was passed. It continued the existing system of regular inferior courts, namely, the Court of Appeals, Courts of First Instance,^[27] the Municipal Courts, at present the City Courts, and the Justice of the Peace Courts, now the Municipal Circuit Courts and Municipal Courts. The membership of the Court of Appeals has been continuously increased.^[28] Under a 1978 Presidential Decree, there would be

forty-five members, a Presiding Justice and forty-four Associate Justices, with fifteen divisions.[29] Special courts were likewise created. The first was the Court of Tax Appeals in 1954,[30] next came the Court of Agrarian Relations in 1955,[31] and then in the same year a Court of the Juvenile and Domestic Relations for Manila in 1955,[32] subsequently followed by the creation of two other such courts for Iloilo and Quezon City in 1966.[33] In 1967, Circuit Criminal Courts were established, with the Judges having the same qualifications, rank, compensation, and privileges as judges of Courts of First Instance.[34]

4. After the submission of such Report, Cabinet Bill No. 42, which later became the basis of Batas Pambansa Blg. 129, was introduced. After setting forth the background as above narrated, its Explanatory Note continues: "Pursuant to the President's instructions, this proposed legislation has been drafted in accordance with the guidelines of that report with particular attention to certain objectives of the reorganization, to wit, the attainment of more efficiency in disposal of cases, a reallocation of jurisdiction, and a revision of procedures which do not tend to the proper meting out of justice. In consultation with, and upon a consensus of, the govern-mental and parliamentary leadership, however, it was felt that some options set forth in the Report be not availed of. Instead of the proposal to confine the jurisdiction of the intermediate appellate court merely to appellate adjudication, the preference has been opted to increase rather than diminish its jurisdiction in order to enable it to effectively assist the Supreme Court. This preference has been translated into one of the innovations in the proposed Bill." [35] In accordance with the parliamentary procedure, the Bill was sponsored by the Chairman of the Committee on Justice, Human Rights and Good Government to which it was referred. Thereafter, Committee Report No. 225 was submitted by such Committee to the Batasang Pambansa recommending the approval with some amendments. In the sponsorship speech of Minister Ricardo C. Puno, there was reference to the Presidential Committee on Judicial Reorganization. Thus: "On October 17, 1980, the Presidential Committee on Judicial Reorganization submitted its report to the President which contained the 'Proposed Guidelines for Judicial Reorganization.' Cabinet Bill No. 42 was drafted substantially in accordance with the options presented by these guidelines. Some options set forth in the aforesaid report were not availed of upon consultation with and upon consensus of the government and parliamentary leadership. Moreover, some amendments to the bill were adopted by the Committee on Justice, Human Rights and Good Government, to which the bill was referred, following the public hearings on the bill held in December of 1980. The hearings consisted of dialogues with the distinguished members of the bench and the bar who had submitted written proposals, suggestions, and position papers on the bill upon the invitation of the Committee on Justice, Human Rights and Good Government." [36] The sponsor stressed that the enactment of such Cabinet Bill would result in the attainment "of more efficiency in the disposal of cases [and] the improvement in the quality of justice dispensed by the courts" expected to follow from the dockets being less clogged, with the structural changes introduced in the bill, together with the reallocation of jurisdiction and the revision of the rules of procedure, [being] designated to suit the court system to the exigencies of the present day Philippine society, and hopefully, of the foreseeable future." [37] It may be observed that the volume containing the minutes of the proceedings of the Batasang Pambansa show that 590 pages were devoted to its discussion. It is quite obvious that it took considerable time and effort as well as exhaustive study before the act was signed by the President on August 14, 1981. With such a background, it becomes quite manifest how lacking in factual basis is the allegation that its enactment is tainted by the vice of arbitrariness. What appears undoubted and undeniable is the good faith that characterized its enactment from its inception to the affixing of the Presidential signature.

5. Nothing is better settled in our law than that the abolition of an office within the competence of a legitimate body if done in good faith suffers from no infirmity. The ponencia of Justice J.B.L. Reyes in *Cruz v. Primicias, Jr.* [38] reiterated such a doctrine: "We find this point urged by respondents, to be without merit. No removal or separation of petitioners from the service is here involved, but the validity of the abolition of their offices. This is a legal issue that is for the Courts to decide. It is well-known rule also that valid abolition of offices is neither removal nor separation of the incumbents. * * * And, of course, if the abolition is void, the incumbent is deemed never to have ceased to hold office. The preliminary question laid at rest, we pass to the merits of the case. As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its

incumbent is the principle that, in order to be valid, the abolition must be made in good faith."^[39] The above excerpt was quoted with approval in *Bendanillo, Sr. v. Provincial Governor*,^[40] two earlier cases enunciating a similar doctrine having preceded it.^[41] As with the offices in the other branches of the government, so it is with the judiciary. The test remains whether the abolition is in good faith. As that element is conspicuously present in the enactment of *Batas Pambansa Blg. 129*, then the lack of merit of this petition becomes even more apparent. The concurring opinion of Justice Laurel in *Zandueta v. De la Costa*^[42] cannot be any clearer. In this quo warranto proceeding, petitioner claimed that he, and not respondent, was entitled to the office of judge of the Fifth Branch of the Court of First Instance of Manila. The Judicial Reorganization Act of 1936,^[43] a year after the inauguration of the Commonwealth, amended the Administrative Code to organize courts of original jurisdiction likewise called, as was the case before, Courts of First Instance. Prior to such statute, petitioner was the incumbent of one such court. Thereafter, he received an ad interim appointment, this time to the Fourth Judicial District, under the new legislation. Unfortunately for him, the Commission on Appointments of the then National Assembly disapproved the same, with respondent being appointed in his place. He contested the validity of the Act insofar as it resulted in his being forced to vacate his position. This Court did not rule squarely on the matter. His petition was dismissed on the ground of estoppel. None-theless, the separate concurrence in the result of Justice Laurel, to repeat, reaffirms in no uncertain terms the standard of good faith as the test of the validity of an act abolishing an inferior court, and this too with due recognition of the security of tenure guarantee. Thus: "I am of the opinion that Commonwealth Act No. 145 in so far as it reorganizes, among other judicial districts, the Ninth Judicial District, and establishes an entirely new district comprising Manila and the provinces of Rizal and Palawan, is valid and constitutional. This conclusion flows from the fundamental proposition that the legislature may abolish courts inferior to the Supreme Court and therefore may reorganize them territorially or otherwise thereby necessitating new appointments and commissions. Section 2, Article VIII of the Constitution vests in the National Assembly the power to define, prescribe and apportion the jurisdiction of the various courts, subject to certain limitations in the case of the Supreme Court. It is admitted that section 9 of the same article of the Constitution provides for the security of tenure of all the judges. The principles embodied in these two sections of the same article of the Constitution must be coordinated and harmonized. A mere enunciation of a principle will not decide actual cases and controversies of every sort. (Justice Holmes in *Lochner vs. New York*, 198 U.S., 45; 49 Law. ed., 937)"^[44] Justice Laurel continued: "I am not insensible to the argument that the National Assembly may abuse its power and move deliberately to defeat the constitutional provision guaranteeing security of tenure to all judges. But, is this the case? One need not share the view of Story, Miller and Tucker on the one hand, or the opinion of Cooley, Watson and Baldwin on the other, to realize that the application of a legal or constitutional principle is necessarily factual and circumstantial and that fixity of principle is the rigidity of the dead and the un-progressive. I do say, and emphatically, however, that cases may arise where the violation of the constitutional provision regarding security of tenure is palpable and plain, and that legislative power of reorganization may be sought to cloak an unconstitutional and evil purpose. When a case of that kind arises, it will be the time to make the hammer fall and heavily. But not until then. I am satisfied that, as to the particular point here discussed, the purpose was the fulfillment of what was considered a great public need by the legislative department and that Commonwealth Act No. 145 was not enacted purposely to affect adversely the tenure of judges or of any particular judge. Under these circumstances, I am for sustaining the power of the legislative department under the Constitution. To be sure, there was greater necessity for reorganization consequent upon the establishment of the new government than at the time Acts Nos. 2347 and 4007 were approved by the defunct Philippine Legislature, and although in the case of these two Acts there was an express provision providing for the vacation by the judges of their offices whereas in the case of Commonwealth Act No. 145 doubt is engendered by its silence, this doubt should be resolved in favor of the valid exercise of the legislative power."^[45]

6. A few more words on the question of abolition. In the above-cited opinion of Justice Laurel in *Zandueta*, reference was made to Act No. 2347^[46] on the reorganization of the Courts of First Instance and to Act No. 4007^[47] on the reorganization of all branches of the government, including the courts of first instance. In both

of them, the then Courts of First Instance were replaced by new courts with the same appellation. As Justice Laurel pointed out, there was no question as to the fact of abolition. He was equally categorical as to Commonwealth Act No. 145, where also the system of the courts of first instance was provided for expressly. It was pointed out by Justice Laurel that the mere creation of an entirely new district of the same court is valid and constitutional, such conclusion flowing "from the fundamental proposition that the legislature may abolish courts inferior to the Supreme Court and therefore may reorganize them territorially or otherwise thereby necessitating new appointments and commissions." [48] The challenged statute creates an intermediate appellate court, [49] regional trial courts, [50] metropolitan trial courts of the national capital region, [51] and other metropolitan trial courts, [52] municipal trial courts in cities, [53] as well as in municipalities, [54] and municipal circuit trial courts. [55] There is even less reason then to doubt the fact that existing inferior courts were abolished. For the Batasang Pambansa, the establishment of such new inferior courts was the appropriate response to the grave and urgent problems that pressed for solution. Certainly, there could be differences of opinion as to the appropriate remedy. The choice, however, was for the Batasan to make, not for this Court, which deals only with the question of power. It bears mentioning that in *Brillo v. Enage* [56] this Court, in a unanimous opinion penned by the late Justice Diokno, citing *Zanduetta v. De la Costa*, ruled: "La segunda cuestion que el recurrido plantea es que la Carta de Tacloban ha abolido el puesto. Si efectivamente ha sido abolido el cargo, entonces ha quedado extinguido el derecho de recurrente a ocuparlo y a cobrar el salario correspondiente. *McCulley vs. State*, 46 LRA, 567. El derecho de un juez de desempeñarlo hasta los 70 años de edad o se incapacite no priva al Congreso de su facultad de abolir, fusionar o reorganizar juzgados no constitucionales." [57] Nonetheless, such well-established principle was not held applicable to the situation there obtaining, the Charter of Tacloban City creating a city court in place of the former justice of the peace court. Thus: "Pero en el caso de autos el Juzgado de Tacloban no ha sido abolido. Solo se le ha cambiado el nombre con el cambio de forma del gobierno local." [58] The present case is anything but that. Petitioners did not and could not prove that the challenged statute was not within the bounds of legislative authority.

7. This opinion then could very well stop at this point. The implementation of Batas Pambansa Blg. 129, concededly a task incumbent on the Executive, may give rise, however, to questions affecting a judiciary that should be kept independent. The all-embracing scope of the assailed legislation as far as all inferior courts from the Court of Appeals to municipal courts are concerned, with the exception solely of the Sandiganbayan and the Court of Tax Appeals, [59] gave rise, and understandably so, to misgivings as to its effect on such cherished ideal. The first paragraph of the section on the transitory provision reads: "The provisions of this Act shall be immediately carried out in accordance with an Executive Order to be issued by the President. The Court of Appeals, the Courts of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts shall continue to function as presently constituted and organized, until the completion of the reorganization provided in this Act as declared by the President. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office." [60] There is all the more reason then why this Court has no choice but to inquire further into the allegation by petitioners that the security of tenure provision, an assurance of a judiciary free from extraneous influences, is thereby reduced to a barren form of words. The amended Constitution adheres even more clearly to the long-established tradition of a strong executive that antedated the 1935 Charter. As noted in the work of former Vice-Governor Hayden, a noted political scientist, President Claro M. Recto of the 1934 Constitutional Convention stressed such a concept in his closing address. The 1935 Constitution, he stated, provided for "an Executive power which, subject to the fiscalization of the Assembly, and of public opinion, will not only know how to govern, but will actually govern, with a firm and steady hand, unembarrassed by vexatious interferences by other departments, or by unholy alliances with this and that social group." [61] The above excerpt was cited with approval by Justice Laurel in *Planas v. Gil*. [62] The 1981 Amendments embody the same philosophy, this notwithstanding that once again the principle of separation of powers, to quote from the same jurist as ponente in *Angara v. Electoral Commission*, [63] "obtains not through express provision but by actual division." [64] The President, under Article VII, "shall be the head of state and chief executive of the Republic

of the Philippines." [65] Moreover, all the powers he possessed under the 1935 Constitution are vested in him anew "unless the Batasang Pambansa provides otherwise." [66] Article VII of the 1935 Constitution speaks categorically: "The Executive power shall be vested in a President of the Philippines." [67] As originally framed, the 1973 Constitution created the position of President as the "symbolic head of state." [68] In addition, there was a provision for a Prime Minister as the head of government to exercise the executive power with the assistance of the Cabinet. [69] Clearly, a modified parliamentary system was established. In the light of the 1981 amendments though, this Court in *Free Telephone Workers Union v. Minister of Labor* [70] could state: "The adoption of certain aspects of a parliamentary system in the amended Constitution does not alter its essentially presidential character." [71] The retention, however, of the position of the Prime Minister with the Cabinet, a majority of the members of which shall come from the regional representatives of the Batasang Pambansa and the creation of an Executive Committee composed of the Prime Minister as Chairman and not more than fourteen other members at least half of whom shall be members of the Batasang Pambansa, clearly indicate the evolving nature of the system of government that is now operative. [72] What is equally apparent is that the strongest ties bind the executive and legislative departments. It is likewise undeniable that the Batasang Pambansa retains its full authority to enact whatever legislation may be necessary to carry out national policy as usually formulated in a caucus of the majority party. It is understandable then why in *Fortun v. Labang*, [73] it was stressed that with the provision transferring to the Supreme Court administrative supervision over the Judiciary, there is a greater need "to preserve unimpaired the independence of the judiciary, especially so at present, where to all intents and purposes, there is a fusion between the executive and the legislative branches." [74]

8. To be more specific, petitioners contend that the abolition of the existing inferior courts collides with the security of tenure enjoyed by incumbent Justices and judges under Article X, Section 7 of the Constitution. There was a similar provision in the 1935 Constitution. It did not, however, go as far as conferring on this Tribunal the power to supervise administratively inferior courts. [75] Moreover, this Court is empowered "to discipline judges of inferior courts and, by a vote of at least eight members, order their dismissal." [76] Thus it possesses the competence to remove judges. Under the Judiciary Act, it was the President who was vested with such power. [77] Removal is, of course, to be distinguished from termination by virtue of the abolition of the office. There can be no tenure to a non-existent office. After the abolition, there is in law no occupant. In case of removal, there is an office with an occupant who would thereby lose his position. It is in that sense that from the standpoint of strict law, the question of any impairment of security of tenure does not arise. Nonetheless, for the incumbents of inferior courts abolished, the effect is one of separation. As to its effect, no distinction exists between removal and the abolition of the office. Realistically, it is devoid of significance. He ceases to be a member of the judiciary. In the implementation of the assailed legislation, therefore, it would be in accordance with accepted principles of constitutional construction that as far as incumbent justices and judges are concerned, this Court be consulted and that its view be accorded the fullest consideration. No fear need be entertained that there is a failure to accord respect to the basic principle that this Court does not render advisory opinions. No question of law is involved. If such were the case, certainly this Court could not have its say prior to the action taken by either of the two departments. Even then, it could do so but only by way of deciding a case where the matter has been put in issue. Neither is there any intrusion into who shall be appointed to the vacant positions created by the reorganization. That remains in the hands of the Executive to whom it properly belongs. There is no de-parture therefore from the tried and tested ways of judicial power. Rather what is sought to be achieved by this liberal interpretation is to preclude any plausibility to the charge that in the exercise of the conceded power of reorganizing the inferior courts, the power of removal of the present incumbents vested in this Tribunal is ignored or disregarded. The challenged Act would thus be free from any unconstitutional taint, even one not readily discernible except to those predisposed to view it with distrust. Moreover, such a construction would be in accordance with the basic principle that in the choice of alternatives between one which would save and another which would invalidate a statute, the former is to be preferred. [78] There is an obvious way to do so. The principle that the Constitution enters into and forms part of every act to avoid any unconstitutional taint must be applied. *Nunez v. Sandiganbayan*, [79] promulgated last

January, has this relevant excerpt: "It is true that other Sections of the Decree could have been so worded as to avoid any constitutional objection. As of now, however, no ruling is called for. The view is given expression in the concurring and dissenting opinion of Justice Makasiar that in such a case to save the Decree from the dire fate of invalidity, they must be construed in such a way as to preclude any possible erosion on the powers vested in this Court by the Constitution. That is a proposition too plain to be contested. It commends itself for approval." [80] Nor would such a step be un-precedented. The Presidential Decree constituting Municipal Courts into Municipal Circuit Courts, specifically provides: "The Supreme Court shall carry out the provisions of this Decree through implementing orders, on a province-to-province basis." [81] It is true there is no such provision in this Act, but the spirit that informs it should not be ignored in the Executive Order contemplated under its Section 44. [82] Thus Batas Pambansa Blg. 129 could stand the most rigorous test of constitutionality. [83]

9. Nor is there anything novel in the concept that is Court is called upon to reconcile or harmonize constitutional provisions. To be specific, the Batasang Pambansa is expressly vested with the authority to reorganize inferior courts and in the process to abolish listing ones. As noted in the preceding paragraph, the termination of office of their occupants, as a necessary consequence of such abolition, is hardly distinguishable from the practical standpoint from removal, a power that is now vested in this Tribunal. It is of the essence of constitutionalism to assure that neither agency is precluded from acting within the boundaries of its conceded competence. That is why it has long been well-settled under the constitutional system we have adopted that this Court cannot, whenever appropriate, avoid the task of reconciliation. As Justice Laurel put it so well in the previously cited Angara decision, while in the main, "the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government, the over-lapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins." [84] It is well to recall another classic utterance from the same jurist, even more emphatic in its affirmation of such a view, moreover buttressed by one of those insights for which Holmes was so famous: "The classical separation of government powers, whether viewed in the light of the political philosophy of Aristotle, Locke, or Montesquieu, or of the postulations of Mabini, Madison, or Jefferson, is a relative theory of government. There is more truism and actuality in interdependence than in independence and separation of powers, for as observed by Justice Holmes in a case of Philippine origin, we cannot lay down 'with mathematical precision and divide the branches into water-tight compartments' not only because 'the great ordinances of the Constitution do not establish and divide fields of black and white' but also because 'even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other.'" [85] This too from Justice Tuazon, likewise expressing with force and clarity why the need for reconciliation or balancing is well-nigh unavoidable under the fundamental principle of separation of powers: "The constitutional structure is a complicated system, and overlappings of governmental functions are recognized, unavoidable, and inherent necessities of governmental coordination." [86] In the same way that the academe has noted the existence in constitutional litigation of right versus right, there are instances, and this is one of them, where, without this attempt at harmonizing the provisions in question, there could be a case of power against power. That we should avoid.

10. There are other objections raised but they pose no difficulty. Petitioners would characterize as an undue delegation of legislative power to the President the grant of authority to fix the compensation and the allowances of the Justices and judges thereafter appointed. A more careful reading of the challenged Batas Pambansa Blg. 129 ought to have cautioned them against raising such an issue. The language of the statute is quite clear. The questioned provision reads as follows: "Intermediate Appellate Justices, Regional Trial Judges, Metropolitan Trial Judges, Municipal Trial Judges, and Municipal Circuit Trial Judges shall receive such compensation and allowances as may be authorized by the President along the guidelines set forth in Letter of Implementation No. 93 pursuant to Presidential Decree No. 985, as amended by Presidential Decree No. 1597." [87] The existence of a standard is thus clear. The basic postulate that underlies the doctrine of non-delegation is that it is the legislative body which is entrusted with the competence to make laws and to alter and repeal them, the test being the completeness of the statute in all its terms and provisions when

enacted. As pointed out in *Edu v. Ericta*:^[88] "To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations. The standard may be either express or implied. If the former, the non-delegation objection is easily met. The standard though does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole."^[89] The undeniably strong links that bind the executive and legislative departments under the amended Constitution assure that the framing of policies as well as their implementation can be accomplished with unity, promptitude, and efficiency. There is accuracy, therefore, to this observation in the *Free Telephone Workers Union* decision: "There is accordingly more receptivity to laws leaving to administrative and executive agencies the adoption of such means as may be necessary to effectuate a valid legislative purpose. It is worth noting that a highly-respected legal scholar, Professor Jaffe, as early as 1947, could speak of delegation as the 'dynamo of modern government.'"^[90] He warned against a "restrictive approach" which could be "a deterrent factor to much-needed legislation."^[91] Further on this point from the same opinions: "The spectre of the non-delegation concept need not haunt, therefore, party caucuses, cabinet sessions or legislative chambers."^[92] Another objection based on the absence in the statute of what petitioners refer to as a "definite time frame limitation" is equally bereft of merit. They ignore the categorical language of this provision: "The Supreme Court shall submit to the President, within thirty (30) days from the date of the effectivity of this act, a staffing pattern for all courts constituted pursuant to this Act which shall be the basis of the implementing order to be issued by the President in accordance with the immediately succeeding section."^[93] The first sentence of the next Section is even more categorical: "The provisions of this Act shall be immediately carried out in accordance with an Executive Order to be issued by the President."^[94] Certainly, petitioners cannot be heard to argue that the President is insensible to his constitutional duty to take care that the laws be faithfully executed.^[95] In the meanwhile, the existing inferior courts affected continue functioning as before, "until the completion of the reorganization provided in this Act as declared by the President. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office."^[96] There is no ambiguity. The incumbents of the courts thus automatically abolished "shall cease to hold office." No fear need be entertained by incumbents whose length of service, quality of performance, and clean record justify their being named anew,^[97] in legal contemplation, without any interruption in the continuity of their service.^[98] It is equally reasonable to assume that from the ranks of lawyers, either in the government service, private practice, or law professors will come the new appointees. In the event that in certain cases, a little more time is necessary in the appraisal of whether or not certain incumbents deserve reappointment, it is not from their standpoint undesirable. Rather, it would be a reaffirmation of the good faith that will characterize its implementation by the Executive. There is pertinence to this observation of Justice Holmes that even acceptance of the generalization that courts ordinarily should not supply omissions in a law, a generalization qualified as earlier shown by the principle that to save a statute that could be done, "there is no canon against using common sense in construing laws as saying what they obviously mean."^[99] Where then is the unconstitutional flaw?

11. In the morning of the hearing of this petition on September 8, 1981, petitioners sought to have the writer of this opinion and Justices Ramon C. Aquino and Ameurfina Melencio-Herrera disqualified because the first-named was the Chairman and the other two, members of the Committee on Judicial Reorganization. At the hearing, the motion was denied. It was made clear then and there that not one of the three members of the Court had any hand in the framing or in the discussion of *Batas Pambansa Blg. 129*. They were not consulted. They did not testify. The challenged legislation is entirely the product of the efforts of the legislative body.^[100] Their work was limited, as set forth in the Executive Order, to submitting alternative plans for reorganization. That is more in the nature of scholarly studies. That they undertook. There could be no possible

objection to such activity. Ever since 1973, this Tribunal has had administrative supervision over inferior courts. It has had the opportunity to inform itself as to the way judicial business is conducted and how it may be improved. Even prior to the 1973 Constitution, it is the recollection of the writer of this opinion that either the then Chairman or members of the Committee on Justice of the then Senate of the Philippines^[101] consulted members of the Court in drafting proposed legislation affecting the judiciary. It is not inappropriate to cite this excerpt from an article in the 1975 Supreme Court Review: "In the twentieth century the Chief Justice of the United States has played a leading part in judicial reform. A variety of conditions have been responsible for the development of this role, and foremost among them has been the creation of explicit institutional structures designed to facilitate reform."^[102] Also: "Thus the Chief Justice cannot avoid exposure to and direct involvement in judicial reform at the federal level and, to the extent issues of judicial federalism arise, at the state level as well."^[103]

12. It is a cardinal article of faith of our constitutional regime that it is the people who are endowed with rights, to secure which a government is instituted. Acting as it does through public officials, it has to grant them either expressly or impliedly certain powers. Those they exercise not for their own benefit but for the body politic. The Constitution does not speak in the language of ambiguity: "A public office is a public trust."^[104] That is more than a moral adjuration. It is a legal imperative. The law may vest in a public official certain rights. It does so to enable them to perform his functions and fulfill his responsibilities more efficiently. It is from that standpoint that the security of tenure provision to assure judicial independence is to be viewed. It is an added guarantee that justices and judges can administer justice undeterred by any fear of reprisal or untoward consequence. Their judgments then are even more likely to be inspired solely by their knowledge of the law and the dictates of their conscience, free from the corrupting influence of base or unworthy motives. The independence of which they are assured is impressed with a significance transcending that of a purely personal right. As thus viewed, it is not solely for their welfare. The challenged legislation was thus subjected to the most rigorous scrutiny by this Tribunal, lest by lack of due care and circumspection, it allows the erosion of that ideal so firmly embedded in the national consciousness. There is this further thought to consider. Independence in thought and action necessarily is rooted in one's mind and heart. As emphasized by former Chief Justice Paras in *Ocampo v. Secretary of Justice*,^[105] "there is no surer guarantee of judicial independence than the God-given character and fitness of those appointed to the Bench. The judges may be guaranteed a fixed tenure of office during good behavior, but if they are of such stuff as allows them to be subservient to one administration after another, or to cater to the wishes of one litigant after another, the independence of the judiciary will be nothing more than a myth or an empty ideal. Our judges, we are confident, can be of the type of Lord Coke, regardless or in spite of the power of Congress—we do not say unlimited but as herein exercised – to reorganize inferior courts."^[106] That is to recall one of the greatest Common Law jurists, who at the cost of his office made clear that he would not just blindly obey the King's order but "will do what becomes [him] as a judge." So it was pointed out in the first leading case stressing the independence of the judiciary, *Borromeo v. Mariano*.^[107] The ponencia of Justice Malcolm identified good judges with "men who have a mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate to the other two departments of government."^[108] There is no reason to assume that the failure of this suit to annul *Batas Pambansa Blg. 129* would be attended with deleterious consequences to the administration of justice. It does not follow that the abolition in good faith of the existing inferior courts except the Sandiganbayan and the Court of Tax Appeals and the creation of new ones will result in a judiciary unable or unwilling to discharge with independence its solemn duty or one recreant to the trust reposed in it. Nor should there be any fear that less than good faith will attend the exercise of the appointing power vested in the Executive. It cannot be denied that an independent and efficient judiciary is something to the credit of any administration. Well and truly has it been said that the fundamental principle of separation of powers assumes, and justifiably so, that the three departments are as one in their determination to pursue the ideals and aspirations and to fulfill the hopes of the sovereign people as pressed in the Constitution. There is wisdom as well as validity to this

pronouncement of Justice Malcolm in *Manila Electric Co. v. Pasay Transportation Company*,^[109] a decision promulgated almost half a century ago: "Just as Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act."^[110] To that basic postulate underlying our constitutional system, this Court remains committed.

WHEREFORE, the unconstitutionality of Batas Pambansa Blg. 129 not having been shown, this petition is dismissed. No costs.

Escolin and Makasiar, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Barredo, J., concurs, his view being that "the Judiciary Reorganization Act of 1980, Batas Pambansa Blg. 129 is not unconstitutional as a whole nor in any of its parts." He submitted a separate opinion.

Aquino, J., concurs in the result in a separate opinion, reiterating his view that suit is premature, but affirming expressly that the abolition was in good faith emphasizing what was stated by the Court in the opinion that "the lawmaking body acted within the scope of its constitutional powers and prerogatives."

Concepcion, Jr., J., in the result, the abolition being in good faith.

Fernandez, J., see concurrence.

Guerrero, J., concur with a separate opinion.

Abad Santos, J., in a brief separate opinion.

De Castro, J., concurs except as qualified in his separate opinion.

Melencio-Herrera, J., concurring in a separate opinion.

Ericta, J., concur with the a quo expression of my views.

Plana, J., see qualified concurrence.

Fernandez, J., concur provided that in the task of implementation by the Executive as far as the present Justices and judges who may be separated from the service, it would be in accordance with the tenets of constitutionalism of this Court be consulted and that its view be respected.

[1] Article X, Section 1, first sentence of the Constitution reads: "The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

[2] Cf. *Borromeo v. Mariano*, 41 Phil. 322 (1921) and *People v. Vera*, 65 Phil. 56 (1937).

[3] Article X, Section 7 of the Constitution.

[4] It may be mentioned in passing that petitioners ignored the fact that an action for declaratory relief should be filed in a Court of First Instance and apparently are unaware that there is no such proceeding known in constitutional law to declare an act unconstitutional. So it has been authoritatively ruled even prior to the 1935 Constitution, and much more so after its effectivity and that of the present Constitution. That is the concept of judicial review as known in the Philippines, a principle that goes back to the epochal decision of Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch 137 (1803). This Court, then, as do lower courts, has the duty and the power to declare an act unconstitutional but only as an incident to its function of deciding cases. Cf. *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *People v. Vera*, 65 Phil. 56 (1937).

[5] Gualberto J. de la Llana is the Presiding Judge of Branch II of the City Court of Olongapo. The other petitioners are all members of the Philippine bar.

[6] He was assisted by Assistant Solicitor General Reynato S. Puno.

[7] The amici curiae who argued were Senator Lorenzo Sumulong, President, Philippine Constitution Association;

Dean Irene Cortes, former Dean, U.P. College of Law; Atty. Bellaflor Angara Castillo, President, U.P. Women Lawyers Circle; Atty. Paz Veto Planas, President, Women Lawyers Association; Atty. Raul Roco, Executive Vice-President, Integrated Bar of the Philippines; Atty. Enrique Syquia, President, Philippine Bar Association; Atty. Rafael G. Suntay, for the Trial Lawyers Association; and Senator Jose W. Diokno submitted memoranda. Atty. Raul Gonzales entered his appearance for petitioner and argued by way of rebuttal. Atty. Ambrosio Padilla likewise submitted a memorandum, which the Court allowed to stay in the records.

[8] 65 Phil. 56 (1937).

[9] Ibid, 89.

[10] L-40004, January 31, 1975, 62 SCRA 275.

[11] Ibid, 308.

[12] Executive Order No. 611. The writer of this opinion was designated as Chairman, and Minister Ricardo C. Puno as Co-Chairman. Two members of the Court, Justices Ramon C. Aquino and Ameurfina A. Melencio-Herrera, as well as a former member, retired Justice Felix Q. Antonio, were named to such body. Deputy Minister of Justice Jesus Borromeo completed the member-ship.

[13] Executive Order No. 619-A.

[14] Report of the Committee on Judicial Reorganization, 5-6.

[15] Ibid, 7.

[16] Ibid, citing the President's foreword to The Philippine Development Plan, 2.

[17] Ibid.

[18] Ibid, 8. The last sentence of this portion of the Report reads: "That is to achieve the democratization and humanization of justice in what has been felicitously referred to by the First Lady as a 'compassionate society.'"

[19] Ibid, 8-9.

[20] Ibid, 9-10.

[21] Ibid, 10.

[22] Ibid.

[23] Act No. 136. Cf. Act No. 2347 and 4007.

[24] Commonwealth Act No. 3.

[25] Ibid, Sec. 3, Under Commonwealth Act No. 259, the membership of the Court of Appeals was increased to fifteen, with one Presiding Justice and fourteen Associate Justices. Three divisions were created, five members in each division. The Act was approved on April 7, 1938. In 1945 after the lib-eration of the Philippines, it was abolished by Executive Order No. 37 of President Sergio Osmeña exercising his emergency powers under Commonwealth Act No. 671. It was established anew under Republic Act No. 52, which took effect on October 4, 1946.

[26] Republic Act No. 296.

[27] Section 53 of this Act provided: "In addition to the District Judges mentioned in section forty-nine hereof, there shall also be appointed eighteen Judges-at-large and fifteen Cadastral Judges who shall not be assigned

permanently to any judicial district; and who shall render duty in such district or province as may from time to time, be designated by the Department Head." This Section was repealed by Republic Act No. 1186 (1954).

[28] Cf. Republic Act No. 520 (1968) and Presidential Decree No. 289 (1973).

[29] Presidential Decree No. 1482.

[30] Republic Act No. 1125 (1954).

[31] Republic Act No. 1267. It was amended by Presidential Decree No. 946 (1976).

[32] Republic Act No. 1404. Subsequently, two more branches were added under Presidential Decree No. 1439 (1978).

[33] Republic Act Nos. 4834 and 4836. In 1978, there was a Presidential Decree providing for Juvenile and Domestic Relations Courts in thirteen provinces and twenty-seven other cities.

[34] Republic Act No. 5179.

[35] Explanatory Note, 5-6.

[36] Sponsorship Speech of Minister Puno, Volume Four, Third Regular Session, 1980-81, 2013.

[37] Ibid.

[38] L-28573, June 13, 1968, 23 SCRA 998.

[39] Ibid, 1003. Prior to such decision, the following cases had reaffirmed such a principle: *Manalang v. Quito-riano*, 94 Phil. 903 (1954); *Rodriguez v. Montinola*, 94 Phil. 964 (1954); *Gacho v. Osmeña Jr.*, 103 Phil. 837 (1958); *Briones v. Osmeña Jr.*, 105 Phil. 588 (1958); *Cuneta v. Court of Appeals*, 111 Phil. 249 (1961); *Facundo v. Hon. Pabalan*, 114 Phil. 307 (1962); *Alipio v. Rodriguez*, 119 Phil. 59 (1963); *Llanto v. Dimaporo*, 123 Phil. 413 (1966); *Ocampo v. Duque*, 123 Phil. 842 (1966); *Guillergan v. Ganzon*, 123 Phil. 1102 (1966); *Abanilla v. Ticao*, L-22271, July 26, 1966, 17 SCRA 652; *Cariño v. ACCFA*, L-19808, Sept. 29, 1966, 18 SCRA 183; *De la Maza v. Ochave*, L-22336, May 23, 1967, 20 SCRA 142; *Arao v. Luspo*, L-23982, July 21, 1967, 20 SCRA 722.

[40] L-28614, January 17, 1974, 55 SCRA 34.

[41] *Enciso v. Remo*, L-23670, September 30, 1969, 29 SCRA 580; *Roque v. Ericta*, L-30244, September 28, 1973, 53 SCRA 156. Cf. *City of Basilan v. Hechanova*, L-23841, August 30, 1974, 58 SCRA 711.

[42] 66 Phil. 615 (1938).

[43] Commonwealth Act No. 145.

[44] Ibid, 626.

[45] Ibid, 626-627.

[46] It likewise abolished the Court of Land Registration (1914).

[47] 1932.

[48] 66 Phil. 615, 626.

[49] *Batas Pambansa Blg. 129*, Sections 3-12. It may be stated that the writer of this opinion as the Chairman of the Committee on Reorganization, was for the establishment either of (1) a court of general jurisdiction with an

appellate as well as a trial division patterned after that of the system of judicature found in the United Kingdom and in many Commonwealth countries or, in the alternative, (2) of a circuit court of appeals. The Committee accepted such proposals and incorporated them in the guidelines. Candor compels the admission that he entertained doubts as to whether the intermediate court of appeals provided for is a new tribunal. It could be considered though as part of an integrated scheme for the judicial reorganization as contemplated by the Batasang Pambansa.

[50] Ibid, Sections 13-24.

[51] Ibid, Section 27.

[52] Ibid, Section 28.

[53] Ibid, Section 29.

[54] Ibid, Section 30.

[55] Ibid, Section 31.

[56] 94 Phil. 732 (1954).

[57] Ibid, 734-735.

[58] Ibid, 735.

[59] According to Batas Pambansa Blg. 129, Section 2: "The reorganization herein provided shall include the Court of Appeals, the Courts of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts."

[60] Ibid, Section 44. Its last sentence reads: "The cases pending in the old Courts shall be transferred to the appropriate Courts constituted pursuant to this Act, together with the pertinent functions, records, equipment, property and the necessary personnel."

[61] Hayden, *The Philippines* 67 (1945).

[62] 67 Phil. 62 (1939).

[63] 63 Phil. 139.

[64] Ibid, 156.

[65] Article VII, Section 1 of the 1973 Constitution.

[66] Section 16 of Article VII of the 1973 Constitution reads as follows: "All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed and are hereby vested in the President unless the Batasang Pambansa provides otherwise."

[67] Section 1, Article VII of the 1935 Constitution.

[68] Article VII, Section 1 of the Constitution, in its original form.

[69] According to Article IX, Section 1 of the 1973 Constitution prior to its being amended last year: "The Executive power shall be exercised by the Prime Minister with the assistance of the Cabinet. The Cabinet, headed by the Prime Minister, shall consist of the heads of ministries as provided by law. The Prime Minister shall be the

head of the Government."

[70] G. R. No. 58184, October 30, 1981.

[71] Ibid, 4. That characterization is in accordance with the Anglo-American concept of the distinction between presidential and parliamentary systems. In the work of President Marcos entitled, Marcos: Notes for the Cancun Summit 1981, the Conference appears to have adopted such a distinction. Countries with the presidential systems sent their presidents: C. Bendjedid of Algeria; A. Sattar of Bangladesh; J. B. de Oliveira Figueredo of Brazil; F. Mitterand of France; A. Cheng of Guyana; H. Boigny of Ivory Coast; Lopez Portillo of Mexico; A. S. Shagari of Nigeria; Ferdinand E. Marcos of the Philippines; J. K. Nyerere of Tanzania; R. Reagan of the United States; L. Herrera Campins of Venezuela; S. Kraigher of Yugoslavia. Likewise, countries under the parliamentary system sent their Prime Ministers: P. E. Trudeau of Canada; Zhao Ziyang of China; M. H. Thatcher of the United Kingdom; I. Gandhi of India; Z. Suzuki of Japan; N.O.T. Falldin of Sweden. While called Chancellors, B. Kreisky of Austria and H. Schmidt of Germany hold such a position. Crown Prince Fahd Bin Abdul Aziz of Saudi Arabia does not fall under either category.

[72] Article IX, Sections 1 and 3 of the amended Constitution. Section 3 reads in full: "There shall be an Executive Committee to be designated by the President, composed of the Prime Minister as Chairman, and not more than fourteen other members, at least half of whom shall be Members of the Batasang Pambansa. The Executive Committee shall assist the President in the exercise of his powers and functions and in the performance of his duties as he may prescribe."

[73] L-38383, May 27, 1981, 104 SCRA 607.

[74] Ibid, 615.

[75] Article X, Section 6, provides: "The Supreme Court shall have administrative supervision over all courts and the personnel thereof."

[76] Article X, Section 7.

[77] According to Section 67 of the Judiciary Act of 1948, as amended: "No District Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings." Cf. Section 97 as to removal of municipal judges also by the President. Cf. *People v. Linsangan*, 62 Phil. 646 (1935); *De los Santos v. Mallare*, 87 Phil. 289 (1950); *Martinez v. Morfe*, L-34022, March 24, 1972, 44 SCRA 22; and *Pamil v. Teleron*, L-34854, November 20, 1978, 86 SCRA 413.

[78] Cf. Ginsburg, *Judicial Repair of Legislation*, 28 *Cleveland State Law Review*, 301-304 (1979).

[79] G.R. Nos. 50581-50617, January 30, 1982.

[80] Ibid, 12.

[81] Section 7, Presidential Decree No. 537 (1974).

[82] *Tanada v. Cuenco*, 103 Phil. 1051 (1957) lends itself to the view that in the interpretation of the fundamental law, the literal language is not necessarily controlling, if thereby a constitutional objection could be plausibly raised.

[83] The memoranda submitted by the Integrated Bar of the Philippines, the Philippine Bar Association, the Women Lawyers Association of the Philippines, the U.P. Women Lawyers Circle, the Philippine Women Lawyers Association, and the Philippine Trial Lawyers Association of the Philippines were for dismissing the

petition. The Philippine Lawyers Association was for granting the petition. Amicus curiae Lorenzo Sumulong, President of the Philippine Constitution Association, speaking on his own behalf, was of a similar mind. Amicus curiae Dean Irene Cortes, former Dean of the U.P. College of Law, was for dismissing the petition, while amicus curiae Jose W. Diokno was for granting it. A memorandum allowed to stay in the records by former Senator Ambrosio Padilla was for granting it. The Court acknowledges the aid it received from the memoranda submitted.

[84] 63 Phil. 139, 157 (1936).

[85] *Planas v. Gil*, 67 Phil. 62, 73-74 (1939). The quotation from Justice Holmes came from *Springer v. Government of the Philippine Islands*, 277 US 189, 211 (1928). He and Justice Brandeis dissented, upholding the contention of the Filipino leaders that the President of the Senate and the Speaker of the House of Representatives of the then Philippine Legislature could sit in a Board of Control with power to vote government shares in corporations owned or controlled by it. The majority sustained the opposite view, thus giving the then American Governor-General such prerogative.

[86] *Arnault v. Pecson*, 87 Phil. 418, 426 (1950).

[87] Chapter IV, Sec. 41 of Batas Pambansa Blg. 129.

[88] L-32096, October 24, 1970, 35 SCRA 481. Cf. *Agustin v. Edu*, L-49112, February 2, 1979, 88 SCRA 195.

[89] *Ibid*, 497.

[90] G. R. No. 58184, October 30, 1981, 10.

[91] *Ibid*, 11.

[92] *Ibid*.

[93] Batas Pambansa Blg. 129, Section 43.

[94] *Ibid*, Section 44.

[95] Article VII, Section 16 of the Amended Constitution provides: "All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not here-in provided for or conferred upon any official shall be deemed and are hereby vested in the President unless the Batasang Pambansa provides otherwise." Article VII, Section 10, par. (1) of the Constitution reads: "The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

[96] Batas Pambansa Blg. 129, Section 44.

[97] This Court is ready with such a list to be furnished the President.

[98] In the language of par. XI of the Proposed Guidelines for Judicial Reorganization: "The services of those not separated shall be deemed uninterrupted. In such cases, efficiency, integrity, length of service and other relevant factors shall be considered."

[99] Cf. *Roschen v. Ward*, 279 US 337, 339 (1929).

[100] From the standpoint of the writer of this opinion, as earlier noted, the assailed legislation did not go far enough. It is certainly much more, to use the Lasswellian phrase of being a "reverent modification of small particulars." For some it could be characterized as a dose of conservation and a dash of innovation. That is, however, no argument against its validity which, to repeat, is solely a question of power as far as this Court is

concerned.

[101] Former Senators Salvador H. Laurel and Jose W. Diokno.

[102] Fish, William Howard Taft and Charles Evan Hughes, 1975 Supreme Court Review 123.

[103] Ibid. Cf. Bickel, Mr. Taft Rehabilitates the Court, 79 Yale Law Journal 1 (1969).

[104] Article XIII, Section 1, first sentence of the Constitution reads: "Public office is a public trust."

[105] 57 O.G. 147 (1955).

[106] Ibid. 153. The per curiam minute resolution of the Court reads as follows: "In Ocampo et al. vs. The Secretary of Justice et al., G. R. No. L-7910, the petition was denied, without costs, due to insufficient votes to invalidate section 3 of Republic Act No. 1186. Chief Justice Paras, and Justices Padilla, Reyes (A) and Labrador voted to uphold that particular section; Justices Pablo, Bengzon, Montemayor, Jugo, Bautista, Concepcion and Reyes, J.B.L., believe it is unconstitutional." At 147. Republic Act No. 1186, which took effect on June 19, 1954, abolished the positions of Judges-at-Large and Cadastral Judges. There was a vigorous dissent from Justice Bengzon relying on certain American State Supreme Court decisions notably from Indiana and Pennsylvania, but as noted in the opinion of Justice Labrador, they could not be considered as applicable in view of the difference in constitutional provisions. From Justices Montemayor and Bautista also came separate opinions as to its unconstitutionality.

[107] 41 Phil. 322 (1921).

[108] Ibid, 333.

[109] 57 Phil. 600 (1932).

[110] Ibid, 605. The reference should now be to the Constitution, rather than an Organic Act of an unincorporated American territory as the Philippines then was.

CONCURRING AND DISSENTING OPINION

ABAD SANTOS, J.:

I agree with the learned Chief Justice of the Philippines that Batas Pambansa Blg. 129 is not unconstitutional. Unlike Oscar Wilde, I choose not to yield to temptation by embellishing my concurrence lest I be accused of bringing coal to Newcastle. Accordingly, I will simply vote to dismiss the petition.

However, I cannot agree with the Chief Justice when he says:

"x x x In the implementation of the assailed legislation, therefore, it would be in accordance with accepted principles of constitutional construction that as far as incumbent justices and judges are concerned, this Court be consulted and that its view be accorded the fullest consideration. There would be no plausibility then to the allegation that there is an unconstitutional taint to the challenged Act. Moreover, such a construction would be in accordance with the basic principle that in the choice of alternatives between one which would save and another which would invalidate a statute, the former is to be preferred."

It has already been ruled that the statute does not suffer from any constitutional infirmity because the abolition of certain judicial offices was done in good faith. This being the case, I believe that the Executive is entitled to exercise its constitutional power to fill the newly created judicial positions without any obligation to consult with

this Court and to accord its views the fullest consideration. To require consultation will constitute an invasion of executive territory which can be resented and even repelled. The implicit suggestion that there could be an unconstitutional implementation of the questioned legislation is not congruent with the basic conclusion that it is not unconstitutional.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. The petitioners filed this petition for declaratory relief and prohibition "to declare the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129) unconstitutional".

The petition should have been dismissed outright because this Court has no jurisdiction to grant declaratory relief and prohibition is not the proper remedy to test the constitutionality of the law. The petition is premature. No jurisdictional question is involved.

There is no justiciable controversy wherein the constitutionality of the said law is in issue. It is presumed to be constitutional. The lawmaking body before enacting it looked into the constitutional angle.

Seven of the eight petitioners are practising lawyers. They have no personality to assail the constitutionality of the said law even as taxpayers.

The eighth petitioner, Gualberto J. de la Llana, a city judge (who in 1977 filed a petition for declaratory relief assailing Presidential Decree No. 1229, which called for a referendum, *De la Llana vs. Comelec*, 80 SCRA 525), has no cause of action for prohibition. He is not being removed from his position.

The Judiciary Reorganization Law was enacted in utmost good faith and not "to cloak an unconstitutional and evil purpose". As ably expounded by the Chief Justice, in enacting the said law, the lawmaking body acted within the scope of its constitutional powers and prerogatives.

CONCURRING OPINION

BARREDO, J.:

I join the majority of my brethren in voting that the Judiciary Reorganization Act of 1980, Batas Pambansa Blg. 129, is not unconstitutional as a whole nor in any of its parts.

The issue of unconstitutionality raised by petitioners relates particularly to Section 44 of the Act which reads as follows:

"SEC. 44. Transitory provisions. The provisions of this Act shall be immediately carried out in accordance with an Executive Order to be issued by the President. The Court of Appeals, the Courts of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts shall continue to function as presently constituted and organized, until the completion of the reorganization provided in this Act as declared by the President. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office. The cases pending in the old Courts shall be transferred to the appropriate Courts constituted pursuant to this Act, together with the pertinent functions, records, equipment, property and the necessary personnel.

"The applicable appropriations shall likewise be transferred to the appropriate courts constituted pursuant to this Act, to be augmented as may be necessary from the funds for organizational changes as provided in Batas Pambansa Blg. 80. Said funding shall thereafter be included in the annual General Appropriations Act."

It is contended by petitioners that the provision in the above section which mandates that "upon the declaration (by the President that the reorganization contemplated in the Act has been completed), the said courts (meaning, the Court of Appeals and all other lower courts, except the Sandiganbayan and the Court of Tax Appeals) shall be deemed abolished and the incumbents thereof shall cease to hold office" trenches on all the constitutional safeguards and guarantees of the independence of the judiciary, such as the security of tenure of its members (Section 7, Article X of the Philippine Constitution of 1973), the prerogative of the Supreme Court to administratively supervise all courts and the personnel thereof (Section 6, Id.) and principally, the power of the Supreme Court "to discipline judges of inferior courts and, by a vote of at least eight Members, order their dismissal." (Section 7, Id.)

On the other hand, respondents maintain that thru the above-quoted Section 44, the Batasan did nothing more than to exercise the authority conferred upon it by Section 1 of the same Article of the Constitution which provides that "(T)he Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law." In other words, since all inferior courts are, constitutionally speaking, mere creatures of the law (of the legislature), it follows that it is within the legislature's power to abolish or reorganize them even if in so doing, it might result in the cessation from office of the incumbents thereof before the expiration of their respective constitutionally-fixed tenures. Respondents emphasize that the legislative power in this respect is broad and indeed plenary.

Viewing the problem before Us from the above perspectives, it would appear that our task is either (1) to reconcile, on the one hand, the parliament's power of abolition and reorganization with, on the other, the security of tenure of members of the judiciary and the Supreme Court's authority to discipline and remove judges or (2) to declare that either the power of the Supreme Court or of the Batasan is more paramount than that of the other. I believe, however, that such a manner of looking at the issue that confronts Us only confuses and compounds the task We are called upon to perform. For how can there be a satisfactory and rational reconciliation of the pretended right of a judge to continue as such, when the position occupied by him no longer exists? To suggest, as some do, that the solution is for the court he is sitting in not to be deemed abolished or that he should in some way be allowed to continue to function as judge until his constitutional tenure expires is obviously impractical, if only because we would then have the absurd spectacle of a judiciary with old and new courts functioning under distinct set-ups, such as a district court continuing as such in a region where the other judges are regional judges or of judges exercising powers not purely judicial which is offensive to the Constitution. The other suggestion that the incumbent of the abolished court should be deemed appointed to the corresponding new court is even worse, since it would deprive the appointing authority, the President, of the power to make his own choices and would, furthermore, amount to an appointment by legislation, which is a constitutional anachronism. More on this point later.

Inasmuch as pursuant to the analysis of the majority of the Members of this Court, in fact and in law, the structure of judicial system created by Batas Pambansa 129 is substantially different from that under the Judiciary Act of 1948, as amended, hence the courts now existing are actually being abolished, why do We have to indulge in any reconciliation or feel bound to determine whose power, that of the Batasang Pambansa or that of this Court, should be considered more imperious? It being conceded that the power to create or establish carries with it the power to abolish, and it is a legal axiom, or at least a pragmatic reality, that the tenure of the holder of an office must of necessity end when his office no longer exists, as I see it, We have no alternative than to hold that petitioners' invocation of the independence-of-the-judiciary principle of the Constitution is unavailing in the

cases at bar. It is as simple as that. I might hasten to add, in this connection, that to insist that what Batas Pambansa 129 is doing is just a renaming, and not a substantial and actual modification or alteration of the present judicial structure or system, assuming a close scrutiny might somehow support such a conclusion, is pure wishful thinking, it being explicitly and unequivocally provided in the section in question that said courts "are deemed abolished" and further, as if to make it most unmistakably emphatic, that "the incumbents thereof shall cease to hold office." *Dura lex, sed lex*. As a matter of fact, I cannot conceive of a more emphatic way of manifesting and conveying the determined legislative intent about it.

Now, why am I yielding to the above reasoning and conclusion? Why don't I insist on championing the cause of the independence of the judiciary by maintaining that the constitutional safeguards thereof I have already enumerated earlier must be respected reorganization ordained by the parliament? My answer is simple. Practically all the Members of the Court concede that what is contemplated is not only general reorganization but abolition - in other words, not only a rearrangement or remodeling of the old structure but a total demolition thereof to be followed by the building of a new and different one. I am practically alone in contemplating a different view. True, even if I should appear as shouting in the wilderness, I would still make myself a hero in the eyes of many justices and judges, members of the bar and concerned discerning citizens, all lovers of the judicial independence, but understandably, I should not be, as I am not, disposed to play such a role virtually at the expense not only of my distinguished colleagues but of the Batasang Pambansa that framed the law and, most of all, the President who signed and, therefore, sanctioned the Act as it is, unless I am absolutely sure that my position is formidable, unassailable and beyond all possible contrary ratiocination, which I am not certain of, as I shall demonstrate anon.

To start with, the jurisprudence, here and abroad, touching on the question now before Us cannot be said to be clear and consistent, much less unshakeable and indubitably definite either way. None of the local cases^[1] relied upon and discussed by the parties and by the Members of the Court during the deliberations, such as *Borromeo*,^[2] *Ocampo*,^[3] *Zandueta*,^[4] *Brillo*,^[5] etc. can, to my mind, really serve as reliable pole stars that could lead me to certainty of correctness.

Of course, my instinct and passion for an independent judiciary are uncompromising and beyond diminution. Indeed, my initial reactions, publicly known, about Batas Pambansa 129 explaining academically its apparent tendency to invade the areas of authority of the Supreme Court, not to speak of its dangerously impairing the independence of the judiciary, must have, I imagine, created the impression that I would vote to declare the law unconstitutional. But, during the deliberations of the Court, the combined wisdom of my learned colleagues was something I could not discount or just brush aside. Pondering and thinking deeper about all relevant factors, I have come to the conviction that at least on this day and hour there are justifiable grounds to uphold the Act, if only to try how it will operate so that thereby the people may see that We are one with the President and the Batasan in taking what appear to be immediate steps needed to relieve the people from a fast spreading cancer in the judiciary of our country.

Besides, the Philippines has somehow not yet returned to complete normalcy. The improved national discipline, so evident during the earlier days of martial law, has declined at a quite discernible degree. Different sectors of society are demanding urgent reforms in their respective fields. And about the most vehement and persistent, loud and clear, among their gripes, which as a matter of fact is common to all of them, is that about the deterioration in the quality of performance of the judges manning our courts and the slow and drag-ging pace of pending judicial proceedings. Strictly speaking, this is, to be sure, something that may not necessarily be related to lack of independence of the judiciary. It has more to do with the ineptness and/or corruption among and corruptibility of the men sitting in the courts in some parts of the country. And what is worse, while in the communities concerned, the malady is known to factually exist and is actually graver and widespread, very few, if any, individuals or even

associations and organized groups, truly incensed and anxious to be of help, have the courage and possess the requisite legal evidence to come out and file the corresponding charges with the Supreme Court. And I am not yet referring to similar situations that are not quite openly known but nevertheless just as deleterious. On the other hand, if all these intolerable instances should actually be formally brought to the Supreme Court, it would be humanly impossible for the Court to dispose of them with desirable dispatch, what with the thousands of other cases it has to attend to and the rather cumbersome strict requirements of procedural due process it has to observe in each and every such administrative case, all of which are time consuming. Verily, under the foregoing circumstances, it may be said that there is justification for the patience of the people about the possibility of early eradication of this disease or evil in our judiciary pictured above to be nearing the breaking point.

Withal, we must bear in mind that judicial reorganization becomes urgent and inevitable not alone because of structural inadequacies of the system or of the cumbersomeness and technicity-peppered and dragging procedural rules in force, but also when it becomes evident that a good number of those occupying positions in the judiciary, make a mockery of justice and take advantage of their office for selfish personal ends and yet, as already explained, those in authority cannot expeditiously cope with the situation under existing laws and rules. It is my personal assessment of the present situation in our judiciary that its re-organization has to be of necessity two-pronged, as I have just indicated, for the most ideal judicial system with the most perfect procedural rules cannot satisfy the people and the interests of justice unless the men who hold positions therein possess the character, competence and sense of loyalty that can guarantee their devotion to duty and absolute impartiality, nay, impregnability to all temptations of graft and corruption, including the usual importunings and the fearsome albeit improper pressures of the powers that be. I am certain that the Filipino people feel happy that Batas Pambansa 129 encompasses both of these objectives, which indeed are aligned with the foundation of the principle of independence of the judiciary.

The above premises considered, I have decided to tackle our problem from the viewpoint of the unusual situation in which our judiciary is presently perilously situated. Needless to say, to all of us, the Members of the Court, the constitutional guarantees of security of tenure and removal-only-by the Supreme Court, among others, against impairment of the independence of the judiciary, which is one of the bedrocks and, therefore, of the essence in any "democracy under a regime of justice, peace, liberty and equality", (Preamble of the 1973 Constitution), are priceless and should be defended, most of all by the Supreme Court, with all the wisdom and courage God has individually endowed to each of Us. Withal, we are all conscious of the fact that those safeguards have never been intended to place the person of the judge in a singular position of privilege and untouchability, but rather, that they are essentially part and parcel of what is required of an independent judiciary where judges can decide cases and do justice to everyone before them *ruat caelum*. However, We find Ourselves face to face with a situation in our judiciary which is of emergency proportions and to insist on rationalizing how those guarantees should be enforced under such a circumstance seem to be difficult, aside from being controversial. And so, in a real sense, We have to make a choice between adhering to the strictly legalistic reasoning pursued by petitioners, on the one hand, and the broader and more practical approach, which as I have said is within the spirit at least of the Constitution.

My concept of the Constitution is that it is not just a cluster of high sounding verbiages spelling purely idealism and nobility in the recognition of human dignity, protection of individual liberties and providing security and promotion of the general welfare under a government of laws. With all emphasis and vehemence, I say that the fundamental law of the land is a living instrument which translates and adapts itself to the demands of obtaining circumstances. It is written for all seasons, except for very unusual instances that human ratiocination cannot justify to be contemplated by its language even if read in its broadest sense and in the most liberal way. Verily, it is paramount and supreme in peace and in war, but even in peace grave critical situations arise demanding

recourse to extraordinary solutions. Paraphrasing the Spanish adage, "Grandes males, grandes remedios", such inordinary problems justify exceptional remedies. And so, history records that in the face of grave crises and emergencies, the most constitutionally idealistic countries have, at one time or another, under the pressure of pragmatic considerations, adopted corresponding realistic measures, which perilously tether along the periphery of their Charters, to the extent of creating impressions, of course erroneous, that the same had been transgressed, although in truth their integrity and imperiousness remained undiminished and un-impaired.

The Philippines has but recently had its own experience of such constitutional approach. When martial law was proclaimed here in 1972, there were those who vociferously shouted not only that the President had acted arbitrarily and without the required factual bases contemplated in the Commander-in-Chief clause of the 1935 Constitution, but more, that he had gone beyond the traditional and universally recognized intent of said clause by utilizing his martial law powers not only to maintain peace and tranquility and preserve and defend the integrity and security of the state but to establish a New Society. The critics contended that martial law is only for national security, not for the imposition of national discipline under a New Society.

Due to its relevancy to Our present discussion, it is well for everyone to bear in mind that in this jurisdiction, this concept of martial law has already been upheld several times by this Court. I, for one, accepted such a construction because I firmly believe that to impose martial law for the sole end of suppressing an insurrection or rebellion without coincidentally taking corresponding measures to eradicate the root causes of the uprising is utter folly, for the country would still continue to lay open to its recurrence.

I have made the foregoing discourse, for it is fundamentally in the light of this Court's doctrines about the imposition of martial law as I have stated that I prefer to base this con-currence. To put it differently, if indeed there could be some doubt as to the correctness of this Court's judgment that Batas Pambansa 129 is not unconstitutional, particularly its Section 44, I am convinced that the critical situation of our judiciary today calls for solutions that may not in the eyes of some conform strictly with the letter of the Constitution but indubitably justified by its spirit and intent. As I have earlier indicated, the Charter is not just a construction of words to whose literal ironclad meanings we must feel hidebound, without regard to every Consti-tution's desirable inherent nature of adjustability and adaptability to prevailing situations so that the spirit and fundamental intent and objectives of the framers may remain alive. Batas Pambansa 129 is one such adaptation that comes handy for the attainment of the transcendental objectives it seeks to pursue. While, to be sure, it has the effect of factually easing out some justices and judges before the end of their respective constitutional tenure sans the usual administrative investigation, the desirable end is achieved thru means that, in the light of the prevailing conditions, is cons-titutionally permissible.

Before closing, it may not be a miss for me to point out that Batas Pambansa 129, aside from what has been discussed about its effect on the guarantees of judicial independence, also preempts, in some of its provisions, the primary rule-making power of the Supreme Court in respect to procedure, practice and evidence. With the pardon of my colleagues, I would just like to say that the Court should not decry this development too much. After all, the legislature is expressly empowered by the Charter to do so, (Section 5(5), Article X of the Constitution of 1973) so much so, that I doubt if the Court has any authority to alter or modify any rule the Batasang Pambansa enunciates. Truth to tell, as Chairman of the Committee on the Revision of the Rules of Court, for one reason or another, principally the lack of a clear consensus as to what some of my colleagues consider very radical proposals voiced by me or my committee, We have regrettably procrastinated long enough in making our procedural rules more practical and more conducive to speedier disposal and termination of controversies by dealing more with substantial justice.

So also have We, it must be confessed, failed to come up to expectations of the framers of the Constitution in our

ways of disposing of administrative complaints against erring and misconducting judges. Of course, We can excuse Ourselves with the explanation that not only are We overloaded with work beyond human capability of its being performed expeditiously, but that the strict requisites of due process which are time consuming have precluded Us from being more expeditious and speedy.

I feel I must say all of these, because if the above-discussed circumstances have not combined to create a very critical situation in our judiciary that is making the people lose its faith and confidence in the administration of justice by the existing courts, perhaps the Court could look with more sympathy at the stand of petitioners. I want all and sundry to know, however, that notwithstanding this decision, the independence of the judiciary in the Philippines is far from being insubstantial, much less meaningless and dead. Batas Pambansa 129 has precisely opened our eyes to how, despite doubts and misgivings, the Constitution can be so construed as to make it possible for those in authority to answer the clamor of the people for an upright judiciary and overcome constitutional roadblocks more apparent than real.

To those justices, judges, members of the bar and concerned citizens whose eyes may be dimming with tears of disappointment and disenchantment because of the stand I have chosen to adopt in these cases, may I try to assuage them by joining their fervent prayers that some other day, hopefully in the near future, Divine Providence may dictate to another constitutional convention to write the guarantees of judicial independence with ink of deeper hue and words that are definite, clear, unambiguous and unequivocal, in drawing the line of demarcation between the Parliament and the Judiciary in the manner that in His Infinite wisdom would most promote genuine and impartial justice for our people, free, not only from graft, corruption, ineptness and incompetence but even from the tentacles of interference and insidious influence of the political powers that be. Presently, I am constrained from going along with any other view than that the Constitution allows abolition of existing courts even if the effect has to be the elimination of any incumbent judge and the consequent cutting of his constitutional tenure of office.

I cannot close this concurrence without referring to the apprehensions in some quarters about the choice that will ultimately be made of those who will be eased out of the judiciary in the course of the implementation of Batas Pambansa 129. By this decision, the Court has in factual effect albeit not in constitutional conception yielded generally to the Batasang Pambansa, and more specifically to the President, its own constitutionally conferred power of removal of judges. Section 44 of the Batasan's Act declares that all of them shall be deemed to have ceased to hold office, leaving it to the President to appoint those whom he may see fit to occupy the new courts. Thus, those who will not be appointed can be considered as "ceasing to hold their respective offices", or, as others would say they would be in fact removed. How the President will make his choices is beyond Our power to control. But even if some may be eased out even without being duly informed of the reason therefor, much less being given the opportunity to be heard, the past actuations of the President on all matters of deep public interest should serve as sufficient assurance that when he ultimately acts, he will faithfully adhere to his solemn oath "to do justice to every man", hence, he will equip himself first with the fullest reliable information before he acts. This is not only my individual faith founded on my personal acquaintances with the character and sterling qualities of President Ferdinand E. Marcos. I dare say this is the faith of the nation in a man who has led it successfully through crises and emergencies, with justice to all, with malice towards none. I am certain, the President will deal with each and every individual to be affected by this reorganization with the best light that God will give him every moment he acts in each individual case as it comes for his decision.

[1] And I am not fond of borrowing ideas from supposed legal acumen of alien judicial figures no matter their recognized reputation.

[2] *Borromeo vs. Mariano*, 41 Phil. 330.

[3] G.R. No. L-7910, January 18, 1955, 51 O.G. 147.

[4] *Zanduetta vs. De la Cuesta*, 66 Phil. 615.

[5] *Brillo vs. Mejia*, 94 Phil. 732.

CONCURRING OPINION

DE CASTRO, J.:

I concur in the declaration that the law is not unconstitutional.

May I, however, submit this separate opinion more to avoid being misunderstood by my brethren in the judiciary as not feeling for them as much concern as I should for their security of tenure which is raised as the main argument against the constitutionality of the law, than by way of giving added force or support to the main opinion so well-written by Our learned Chief Justice in his usual scholarly fashion. I, therefore, limit myself to a discussion that the assailed statute is not unconstitutional without having to suggest how it may be implemented in order that it could stand the most rigid test of constitutionality, for in that area, what is involved is purely an executive act of the President in whose wisdom, patriotism and sense of justice We should trust in how he would fulfil his sworn duties to see that the laws are faithfully executed and to do justice to every man.

Moreover, while I also concur in the dismissal of the petition, I do so on the additional ground that petitioners have not fulfilled all the requisites for the exercise by this Court of its power of judicial inquiry -- the power to declare a law unconstitutional.

I

The creation and organization of courts inferior to the Supreme Court is a constitutional prerogative of the legislature. This prerogative is plenary and necessarily implies the power to reorganize said courts, and in the process, abolish them to give way to new or substantially different ones. To contend otherwise would be to forget a basic doctrine of constitutional law that no irrepealable laws shall be passed.[1]

The power to create courts and organize them is necessarily the primary authority from which would thereafter arise the security of tenure of those appointed to perform the functions of said courts. In the natural order of things, therefore, since the occasion to speak of security of tenure of judges arises only after the courts have first been brought into being, the right to security of tenure takes a secondary position to the basic and primary power of creating the courts to provide for a fair and strong judicial system. If the legislature, in the exercise of its authority, deems it wise and urgent to provide for a new set of courts, and in doing so, it feels the abolition of the old courts would conduce more to its objective of improving the judiciary and raising its standard, the matter involved is one of policy and wisdom into which the courts, not even the Supreme Court, cannot inquire, much less interfere with. By this secondary position it has to the primary power of the legislature to create courts, the security of tenure given to the incumbents should not be a legal impediment to the exercise of that basic power of creating the statutory courts which, by necessary implication, includes the power to abolish them in order to create new ones. This primary legislative power is a continuing one, and the resultant right of security of tenure of those appointed to said courts could not bring about the exhaustion of that power. Unquestionably, the legislature

can repeal its own laws, and that power can never be exhausted without, as a consequence, violating a fundamental precept of constitutional and representative government that no irrepealable laws shall be passed.

If the creation of courts is a legislative prerogative their abolition is, therefore, a matter of legislative intent. It involves the exercise of legislative power, an act of legislation which generally concerns policy in the formation of which the courts have no say. Initially, when the legislature creates the courts, it suffers from no limitation arising from the necessity of respecting the security of tenure of judges who are not yet there. This inherent character of fullness and plenitude of the power to create and abolish courts does not change when that same power is once more exercised thereafter, as the need therefor is felt. Which only goes to show that when done in good faith and motivated solely by the good and the well-being of the people, the exercise of the power is not meant to be restricted, curtailed, much less exhausted by the so-called judicial security of tenure.

The passage of the Judiciary Reorganization Act of 1980 is no more than the exercise of the power vested by the Constitution on the legislative body of the Republic as described above. That power carries with it the duty and responsibility of providing the people with the most effective and efficient system of administration of justice. This is by far of more imperative and transcendental importance than the security of tenure of judges which, admittedly, is one of the factors that would conduce to independence of the judiciary - but first of all, a good, efficient and effective judiciary. A judiciary wanting in these basic qualities does not deserve the independence that is meant only for a judiciary that can serve best the interest and welfare of the people which is the most primordial and paramount consideration, not a judiciary in which the people's faith has been eroded, a condition which the security of tenure, in some instances, may even be contributory.

In enacting the Judiciary Reorganization Act of 1980, the legislature is presumed to have been motivated by no other objective than to provide the people the kind of judicial machinery that would best serve their interest and welfare, in its belief that the present machinery is falling short of that measure of public service. It should, likewise, be presumed that it has been led to this low estimate of the utility and effectiveness of the present set-up of the judiciary after informing itself, with the facilities at its command, such as the power of legislative investigation, of the actual condition of the courts, particularly as to whether they continue to enjoy the trust, faith and confidence of the public, and what the cause or causes are of their erosion, if not loss, as is the keenly perceptible feeling of the people in general. Responsibility for this more or less extensive slowdown of the delivery of judicial service can be laid on no other than either of the two components of a court -- the procedural laws or rules that govern the workings of the courts, or the persons executing or applying them - or both.

When two interests conflict as what had given rise to the present controversy - the duty of the legislature to provide society with a fair, efficient and effective judicial system, on one hand, and the right of judges to security of tenure, on the other, the latter must of necessity yield to the former. One involves public welfare and interest more directly and on a greater magnitude than the right of security of tenure of the judges which is, as is easily discernible, more of a personal benefit to just a few, as indeed only the judge affected could seek judicial redress of what he conceives to be its violation.

Herein lies the propriety of the exercise of "police power" of the State, if this concept which underlies even the Constitution, has to be invoked as a constitutional justification of the passage of the Act in question. That is, if a conflict between the primary power of the legislature to create courts, and mere consequential benefit accorded to judges and justices after the creation of the courts is indeed perceivable, which the writer fails to see, or, at least, would disappear upon a reconciliation of the two apparently conflicting interests which, from the above disquisition, is not hard to find. It is, without doubt, in the essence of the exercise of police power that a right assertable by individuals may be infringed in the greater interest of the public good and general welfare. This is demonstrated in how the rights and freedoms enumerated in the Bill of Rights enjoyable by the entire people, not

just by a handful in comparison, are made subject to the lawful exercise of the police power of the State.

Viewed, therefore, from the abovementioned perspective, the general revamp of the judiciary involving both its components - the court as an office or institution, and the judges and justices that man them - should not find any legal obstacle in the security of tenure of judges. This security, after all, is no more than as provided for all other officials and employees in the civil service of the government in Section 3, Article XII-B of the Constitution which provides:

"No officer or employees in the civil service shall be suspended or dismissed except for cause as provided by law."

The provision of Article XVII, Section 10 of the Constitution gives to judicial officials no more than a guarantee that their retirement age as fixed in the Constitution shall not be alterable at mere legislative pleasure. The equivalent provision in the 1935 Constitution was inserted for the first time because the retirement age before then was provided merely by statute not by the Constitution. If it comes to their removal or suspension, what gives them constitutional protection is the aforequoted provision which does not contemplate abolition of office when done in good faith, for removal implies the existence of the office, not when it is abolished. Admittedly, as has been held, abolition of office for no reason related to public welfare or for the good of the service, let alone when done in bad faith, amounts to an unlawful removal.^[2] The abolition of the courts as declared in the Act as a result of a reorganization of the judiciary, as the Title of the law curtly but impressively announces, can by no means, from any viewpoint, be so branded. And whether by said reorganization, the present courts would be deemed abolished, as the law expresses such an unmistakable intent, the matter is one for the sole and exclusive determination of the legislature. It rests entirely on its discretion whether by the nature and extent of the changes it has introduced, it has done enough to consider them abolished. To give the Supreme Court the power to determine the extent or nature of the changes as to their structure, distribution and jurisdiction, before the clear intent to abolish them, or to declare them so abolished, is given effect, would be to allow undue interference in the function of legislation. This would be contrary to the primary duty of courts precisely to give effect to the legislative intent as expressed in the law or as may be discovered therefrom.

From the above observation, it would be futile to insist that the present courts would not effectively be abolished by the Act in question. It might be to arrogate power for Us to say that the changes the law brings to the present judicial system, do not suffice for this Court to give effect to the clear intent of the legislative body. Where would the agrarian courts, the circuit criminal courts, the JDRC's be in the judicial structure as envisioned by the law? Are they not abolished by merger with the regional trial courts, which by such merger, and by the other changes introduced by the law, would make said courts different from the present Courts of First Instance which, as a consequence, may then be considered abolished? Integrated as the present courts are supposed to be, changes somewhere in the judicial machinery would necessarily affect the entire system.

The fact that the Supreme Court may specially assign courts to function as the special courts just mentioned, does not mean that the changes wrought are only superficial or "cosmetic" as this term has been used so often in the oral argument. Without the new law, these courts will remain fixed and permanent where they are at present. Yet in the course of time, the need for their independent existence may disappear, or that by changed conditions, where they are needed at present at a certain place, the need for them may be somewhere else in later years, if maximum benefit at the least expense is to be achieved, as always should be a most desirable goal and objective of government.

Demonstrably then, the abolition of the courts is a matter of legislative intent into which no judicial inquiry is proper, except perhaps if that intent is so palpably tainted with constitutional repugnancy, which is not so in the instant case. We have, therefore, no occasion, as earlier intimated, to speak of removal of judges when the

reorganization of the judiciary would result in the abolition of the courts other than the Supreme Court and the Court of Tax Appeals. Hence, the provision of the Constitution giving to the Supreme Court power to dismiss a judge by a vote of eight justices does not come into the vortex of the instant controversy. Its possible violation by the assailed statute cannot happen, and may, therefore, not constitute an argument against the constitutionality of the law.

Former Justice Barrera, in a speech before the Philippine Bar Association,[3] impliedly indorsed the judicial revamp when he enumerated the qualities of a good judge that the appointing power should consider in making new appointments to the judiciary upon its reorganization pursuant to the questioned Act. The words of the eminent jurist may well reflect the favorable reaction of the public in general to what the Act aims to achieve in the name of good and clean government. The present judicial incumbents, who have not in any way, by their acts and behavior while in office, tarnished the good image that the judiciary should have, therefore, have no cause for apprehension that what they are entitled to, under the Constitution by way of security of tenure will be denied them, considering the publicly known aim and purpose of the massive judicial revamp, specially as cherished with deep concern by the President who initiated the when he created the Judiciary Reorganization Committee to recommend needed and appropriate judicial reforms.

If the only obstacle to a verdict in favor of constitutionality of the law is its possible effect of impairing the security of tenure of the incumbents, We may have the following facts to consider:

1. Under the 1973 Constitution all incumbent judges and justices may continue in office until replaced or reappointed by the President. As to those judicial officials, no security of tenure, in the traditional concept, attaches to their incumbency which is, in a real sense, only a hold-over tenure. How the President has exercised this immense power with admirable restraint should serve as the strongest guarantee of how justice and fairness will be his sole guide in implementing the law.
2. As to the rest of the incumbents, they are all appointees of Our present President, and he should feel concerned more than anyone else to protect whatever rights they may rightfully claim to maintain their official standing and integrity. They need have no fear of being ignored for no reason at all, much less for mere spirit of vindictiveness or lack of nobility of heart.

From the foregoing, it would become apparent that only in the implementation of the law may there possibly be a taint of constitutional repugnancy, as when a judge of acknowledged honesty, industry and competence is separated, because an act of arbitrariness would thereby be committed, but the abolition of the courts as decreed by the law is not by itself or per se unconstitutional.

Consequently, the law, the result of serious and concerned study by a highly competent committee, deserves to be given a chance to prove its worth in the way of improving the judiciary. If in its implementation, any one, if at all, feels aggrieved, he can always seek judicial redress, if he can make out a case of violation of his right of security of tenure with uncontrovertible clarity, as when the separation is very arbitrary in the peculiar circumstances of his case, for an act of arbitrariness, under any constitution, is unpardonable.

II

This petition should also be dismissed for being pre-mature, as is the stand of Justice Aquino. The petition asks this Court to exercise its power of judicial inquiry, the power to declare a law unconstitutional when it conflicts with the fundamental law (People vs. Vera, 65 Phil. 56). This power has well-defined limits, for it can be exercised only when the following requisites are present, to wit: (1) There must be an actual case or controversy; (2) The question of constitutionality must be raised by the proper party; (3) He should do so at the earliest opportunity; and (4) The determination of the constitutionality of the statute must be necessary to a final

determination of the case.

I am of the opinion that the petition does not present an actual controversy nor was it filed by the proper parties.

The main ground for which the constitutionality of the Judiciary Reorganization Act of 1980 is assailed is that it is violative of the security of tenure of justices and judges. The only persons who could raise the question of constitutionality of the law are, therefore, the actual incumbents of the courts who would be separated from the service upon the abolition of the courts affected by the law, on the theory as advanced by petitioners that their judicial security of tenure would be violated. Olongapo City Judge de la Llana, the only judge among the petitioners, has not been separated from the service. Nor is his separation already a certainty, for he may be appointed to the court equivalent to his present court, or even promoted to a higher court. Only when it has become certain that his tenure has been terminated will an actual controversy arise on his allegation of a fact that has become actual, not merely probable or hypothetical.

The present petition may neither be allowed as a taxpayer suit. A taxpayer may bring an action to raise the question of constitutionality of a statute only when no one else can more appropriately bring the suit to defend a right exclusively belonging to him, and, therefore, would localize the actual injury to his person, and to no other. For a "proper party" to invoke the power of judicial inquiry, as one of the requi-sites in the exercise of such power, does not mean one having no better right, one more personalized, than what he has as a member of the public in general. With the incumbent judges undoubtedly being the ones under petitioners' theory, who would suffer direct and actual injury, they should exclude mere taxpayers who cannot be said to suffer as "direct" and "actual" an injury as the judges and justices by the enforcement of the assailed statute, from the right to bring the suit.

The validity of the foregoing observation becomes more evident when We consider that only after the fate of the present incumbents is known, whether they have been actually separated or not, would the present courts be declared abolished. For the law clearly continues their existence until all the new courts have been filled up with new appointments, or at least such number as would be equal to the number of actual incumbents, and they are the very courts to which they may lay claim to the right to continue therein, so that the status of each and everyone of them has thereby been made certain. Only then, upon the actual abolition of the courts, may there possibly be a violation of the security of tenure, as contended, that would give rise to an "actual controversy" in which the "proper party" can be no other than the judges who feel aggrieved by their non-appointment to the new courts.

It would, therefore, not be proper to declare the law void at this stage, before it has even been given a chance to prove its worth, as the legislature itself and all those who helped by their exhaustive and scholarly study, felt it to be an urgent necessity and before any of the proper parties who could assail its constitutionality would know for a fact, certain and actual, not merely probable or hypothetical, that they have a right violated by what they could possibly contend to be an unconstitutional enforcement of the law, not by a law that is unconstitutional unto itself.

I am, therefore, for giving the law a chance to be put into application so as not to douse great popular expectations for the courts to regain their highest level of efficiency had reputation for probity. Inevitably, this is to be so since only when the law is fully implemented will all the courts affected be declared abolished, undoubtedly to avoid an interregnum when the country is without any court, except the Supreme Court, the Court of Tax Appeals and the Sandigan. Only then will it be known whether an actual controversy would arise because any of the incumbents have been left out, in the restructured judiciary.

There would then be also a proper party to assail the constitutionality of the law, conformably to the conditions requisite for the exercise of the power of judicial inquiry which by their stringent character, together with the constitutional prescription of a comparatively higher vote to declare a law unconstitutional, reveal a salutary

principle of government that a law should, by all reasonable intendment and feasible means, be saved from the doom of unconstitutionality, the rule corollary thereto being that if a law is susceptible to two interpretations, one of which would make it constitutional, that interpretation should be adopted that will not kill the law.

It is to adhere to the above principles that the submission is made herein, that while in the implementation of the law, constitutional repugnancy may not entirely be ruled out, a categorical ruling hereon not being necessary or desirable at the moment, the law itself is definitely not unconstitutional.[4] Any of the incumbent judges who feel injured after the law shall have been implemented has adequate remedy in law, with full relief as would be proper. But surely, the benefits envisioned by the law in the discharge of one of the basic duties of government to the people - the administration of justice - should not be sacrificed, as it would be, if the law is, as sought in the present petition, declared void right now, on the claim of a few of being allegedly denied a right, at best of doubtful character, for the claim would seem to rest on an unsupportable theory that they have a vested right to a public office.

Just one more point. The law in question is not self-executing in the sense that upon its effectivity, certain judges and justices cease to be so by direct action of the law. This is what distinguishes the Act in question from R.A. No. 1186 involved in the Ocampo case,[5] which by its direct action, no act of implementation being necessary, all the judges whose positions were abolished, automatically ceased as such. The Act in question, therefore, is not as exposed to the same vulnerability to constitutional attack as R.A. No. 1186 was. Yet by the operation of the Constitution with its wise provision on how a law may be declared unconstitutional, R.A. No. 1186 stood the test for it to be enforced to the fullness of its intent, which was, as in the law under consideration, identified with public interest and general welfare, through a more efficient and effective judicial system as the Judiciary Reorganization Act of 1980 seeks to establish.

Hence, the constitutionality of the law should not be assailed, and the law itself, stricken down, on the ground that some judges or justices may be removed or separated in violation of their security of tenure. The law does not directly operate with that effect. It is in how the law would be implemented that this feared eventuality may or may not occur. We would then be killing the law on a mere speculation if we do so at this stage. This would be an injudicious act done in reckless disregard of the safeguards built around a law to defend it when its constitutionality is attacked; first, the presumption that a law is constitutional; second, when a law is susceptible to two interpretations one that would make it constitutional, the other, unconstitutional, the former should be adopted; and third, the Constitution itself which ordains that a law may not be declared unconstitutional except on the vote of at least ten (10) members of the Supreme Court, more than what is required for an ordinary decision of the Court en banc. This is not to mention the stringent requisites for the exercise of the power of judicial inquiry as already adverted to, all designed to save the law from the dire fate of unconstitutionality.

To the writer, the question before this Court is a simple matter of choosing between protecting some judges from possible separation, as the implementation of the law to achieve its primary purpose of improving the judiciary may have to result in, or serving the interest of the entire society through an honest, efficient and effective judiciary. For, it is unthinkable that what is for the good of the people as a whole could have been meant by the Constitution to be sacrificed for the sake of only a few. The greatest good for the greatest number is an unwritten rule, more firm and enduring than any of the postulates spread in our written Constitution. This, I might say, is the main theme of this separate opinion, otherwise expressed in the well-known and time-honored maxim: "Salus populi est suprema lex."

[1] Constitution of the Philippines by Chief Justice Enrique M. Fernando, 1977 Edition, p. 177.

[2] Roque vs. ERICTA, 53 SCRA 156; Abanilla vs. Ticao, 17 SCRA 652; Cruz vs. Primicias, Jr., 23 SCRA 998; Ocampo vs. Duque, 16 SCRA 962; Briones vs. Osmeña, 104 Phil. 588; Urgelio vs. Osmeña, Jr., 9 SCRA 317; Gacho vs. Osmeña, 94 Phil. 208.

[3] Delivered on Law Day, September 19, 1981 before the Philippine Bar Association.

[4] Cf. G.R. No. 58184, Free Telephone Workers Union vs. The Honorable Minister of Labor and Employment, promulgated on October 30, 1981.

[5] Ocampo vs. Secretary of Justice, 50 O.G. 147.

CONCURRING OPINION

ERICTA, J.:

I concur in the view that the Judiciary reorganization law is not unconstitutional. It does not violate the principle of security of tenure of Judges.

The constitution grants to the Batasang Pambansa the power to create courts inferior to the Supreme Court (Article X, Section 1). All existing inferior courts were created by law. No law is irrevocable. The power to create an office includes the power to abolish the same. (Urgelio vs. Osmeña, 9 SCRA 317; Maza vs. Ochave, 20 SCRA 142)

Security of tenure cannot be invoked when there is no removal of a public officer or employee but an abolition of his office. (Manalang vs. Quitoriano, 94 Phil. 903; Cruz vs. Primicias, 23 SCRA 998; Baldoz vs. Office of the President, 78 SCRA 354, 362) A distinction should be made between removal from office and abolition of an office. Removal implies that the office subsists after ouster, while, in abolition, the office no longer exists thereby terminating the right of the incumbent to exercise the rights and duties of the office. (Canonigo vs. Ramiro, 31 SCRA 278)

The power of the legislative branch of the government to abolish courts inferior to the Supreme Court has long been established. (Ocampo vs. Secretary of Justice, 51 O.G. 147). What is only needed is that the abolition passes the test of good faith. It need only be shown that said abolition of the courts is merely incidental to a bona fide reorganization. (Urgelio vs. Osmeña, supra.)

It is unthinkable to impute bad faith to the Presidential Committee on Judicial Reorganization composed of four (4) distinguished members of the Supreme Court, the Minister of Justice and the Deputy Minister of Justice, and to the members of the Batasang Pambansa whose combined efforts after a careful study and deliberation resulted to the enactment of a bill now signed into law as Batasang Pambansa Blg. 129. In his sponsorship speech, Justice Ricardo C. Puno declared the objectives of the Judiciary Reorganization Law to be the following: (1) the attainment of more efficiency in the disposal of cases; (2) the improvement in the quality of decisions by the courts that will result from the easing of court dockets; and (3) structural changes to meet the exigencies of present day Philippine Society and of the foreseeable future.

Admittedly, in the implementation of the law, some Judges and Justices may be adversely affected. But in a conflict between public interest and the individual interest of some Judges and Justices, the public weal must prevail. The welfare of the people is the supreme law.

The implementation of the law will entail appointments to the new courts. The power of appointment is the exclusive prerogative of the President. The implementation of the law should be left exclusively to the wisdom,

patriotism and statesmanship of the President.

CONCURRING OPINION

GUERRERO, J.:

I concur with my distinguished and learned colleagues in upholding the constitutionality of the Judiciary Reorganization Act of 1980. For the record, however, I would like to state my personal convictions and observations on this case, a veritable landmark case, for whatever they may be worth.

The legal basis of the Court's opinion rendered by our esteemed Chief Justice having been exhaustively discussed and decisively justified by him, a highly-respected expert and authority on constitutional law, it would be an exercise in duplication to reiterate the same cases and precedents. I am then constrained to approach the problem quite differently, not through the classic methods of philosophy, history and tradition, but following what the well-known jurist, Dean Pound, said that "the most significant advance in the modern science of law is the change from the analytical to the functional attitude."^[1] And in pursuing this direction, I must also reckon with and rely on the ruling that "another guide to the meaning of a statute is found in the evil which it is designed to remedy, and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."^[2]

I have no doubt in my mind that the institutional reforms and changes envisioned by the law are clearly conducive to the promotion of national interests. The objectives of the legislation, namely: (a) An institutional restructuring by the creation of an Intermediate Appellate Court, thirteen (13) Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts; (b) A re-apportionment of jurisdiction geared towards greater efficiency; (c) A simplification of procedures; and (d) The abolition of the inferior courts created by the Judiciary Act of 1948 and other statutes, as approved by the Congress of the Philippines^[3] are undoubtedly intended to improve the regime of justice and thereby enhance public good and order. Indeed, the purpose of the Act as further stated in the Explanatory Note, which is "to embody reforms in the structure, organization and composition of the Judiciary, with the aim of improving the administration of justice, of decongesting judicial dockets, and coping with the more complex problems on the present and foreseeable future" cannot but "promote the welfare of society, since that is the final cause of law."^[4]

Hence, from the standpoint of the general utility and functional value of the Judiciary Reorganization Act, there should be no difficulty, doubt or disbelief in its legality and constitutionality. That there are ills and evils plaguing the judicial system is undeniable. The notorious and scandalous congestion of court dockets is too well-known to be ignored as are the causes which create and produce such anomaly. Evident is the need to look for devices and measures that are more practical, workable and economical.^[5]

From the figures alone (301,497 pending cases in 1976; 351,943 in 1977; 404,686 in 1978; 426,911 in 1979; 441,332 in 1980; and 450,063 as of February 3, 1982)^[6] the congested character of court dockets rising year after year is staggering and enormous, looming like a legal monster.

But greater than the need to dispense justice speedily and promptly is the necessity to have Justices and Judges who are fair and impartial, honest and incorruptible, competent and efficient. The general clamor that the prestige of the Judiciary today has deteriorated and degenerated to the lowest ebb in public estimation is not without factual basis. Records in the Supreme Court attest to the unfitness and incompetence, corruption and immorality of many dispensers of justice. According to the compiled data, the total number of Justices and Judges against whom administrative charges have been filed for various offenses, misconduct, venalities and other

irregularities reaches 322. Of this total, 8 are Justices of the Court of Appeals, 119 CFI Judges, 2 Criminal Circuit Court Judges, 8 Car Judges, 1 Juvenile & Domestic Relations Court Judge, 38 City Judges, and 146 Municipal Judges.

The Supreme Court has found 102 of them guilty and punished them with either suspension, admonition, reprimand or fine. The number includes 1 CA Justice, 35 CFI Judges, 1 CCC Judge, 3 CAR Judges, 1 JDRC Judge, 9 City Judges and 53 Municipal Judges.

Seventeen (17) Judges have been ordered dismissed and separated from the service. And these are 3 CFI, 1 CAR, 1 City Judge and 12 Municipal Judges.

Going over these administrative proceedings, it took an average of two-year period from the filing of the charge to the dismissal of the respondent. In one case, the proceedings were terminated after seven years. How long the pending administrative cases will be disposed of, only time will tell as an increasing number of administrative cases are being filed by victims of judicial misconduct, abuse and arbitrariness.

Excepting those who have been punished and dismissed from the service, there are many who have been castigated and censured in final judgments of the Supreme Court upon appeal or review of the decisions, orders and other acts of the respondent courts, Justices and Judges. To cite a few cases, Our decisions have categorically pronounced respondents' actuations, thus: "deplorable, giving no credit to the Judiciary"[7]; "everything was irregular and violative of all pertinent and applicable rules. The whole proceedings looked no more than a pre-arranged compromise between the accused and the Judge to flaunt the law and every norm of propriety and procedure"[8]; "there was a deliberate failure of respondent Judge to respect what is so clearly provided in the Rules of Court"[9]; "It is unfortunate that respondent Judge failed to acquaint himself with, or misinterpreted, those controlling provisions and doctrines"[10]; "The failure of the respondent Municipal Judge to yield obedience to authoritative decisions of the Supreme Court and of respondent Court of First Instance Judge and his deplorable insistence on procedural technicalities was called down in L-49828, July 25, 1981. For peremptorily dismissing the third party complaint on the ground that the motion to dismiss was 'well-taken' and respondent Judge did not elaborate, the Court remarked: "May his tribe vanish." [11] In one case, We noted "There is here something unusual, but far from palliating the gravity of the error incurred, it merely exacerbated it. x x x it did render the due process requirement nugatory, for instead of a fair and impartial trial, there was an idle form, a useless ceremony." [12]

It is dishonorable enough to be publicly and officially rebuked but to allow these Judges and their ilk to remain and continue to preside in their court-rooms is a disgrace to the Judiciary. It is to be deplored that the Supreme Court has not found time to exercise its power and authority in the premises, for no charges or proceedings have been instituted against them. We have a list of these crooked Judges whose actuations have been found to be patently wrong and manifestly indefensible. There ought to be no objection or compunction in weeding them out from the service. If they are not booted out now, it will take from here to eternity to clean this Augean stable.

Candidly, one reason for writing this concurring opinion is to call attention to these evils, abuses and wrongs which are surreptitiously but surely destroying the trust and faith of the people in the integrity of the entire Judiciary. Some members of the Court felt that these revelations would be like washing dirty linen in public. But these facts are of public and official records, nay court cases, and sooner or later, Truth will come out.

In the light of these known evils and infirmities of the judicial system, it would be absurd and unreasonable to claim that the legislators did not act upon them in good faith and honesty of purpose and with legitimate ends. It is presumed that official duty has been regularly performed.[13] The presumption of regularity is not confined to the acts of the individual officers but also applies to the acts of boards, such as administrative board or bodies,

and to acts of legislative bodies.[14] Good faith is always to be presumed in the absence of proof to the contrary, of which there is none in the case at bar. It could not be otherwise if We are to accord as We must, full faith and credit to the lawmakers' deep sense of public service and the judicious exercise of their high office as the duly-elected representatives of the people.

It is conceded that the abolition of an office is legal if attendant with good faith.[15] The question of good faith then is the crux of the conflict at bar. Good faith in the enactment of the law does not refer to the wisdom of the measure, the propriety of the Act, or to its expediency. The questions raised by petitioners and amicus curiae for their cause, viz: Why abolish all the courts? Why legislate out the judges? Why not amend the Rules of Court only? Is abolition of all courts the proper remedy to weed out corrupt and misfits in our Judiciary? - may not be inquired into by Us. "It is not the province of the courts to supervise legislation and keep it within the bounds of propriety and common sense. That is primarily and exclusively a legislative concern." [16] The Courts "are not supposed to override legitimate policy and x x x never inquire into the wisdom of the law." [17] Chief Justice Fernando who penned the Morfe decision, writes that while "(i)t is thus settled, to paraphrase Chief Justice Concepcion in *Gonzales v. Commission on Elections*, that only congressional power or competence, not the wisdom of the action taken, may be the basis for declaring a statute invalid," [18] he adds that it is "useful to recall what was so clearly stated by Laurel that 'the Judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.'" [19] In any case, petitioners have not shown an iota of proof of bad faith. There is no factual foundation of bad faith on record. And I do not consider the statement in the sponsorship speech for Cabinet Bill No. 42 of Minister of Justice Ricardo J. Puno that the Bill would be a more efficient vehicle of "eliminating incompetent and unfit Judges" as indicative of impermissible legislative motive. [20]

It may be true that while the remedy or solution formulated by the legislation will eradicate hopefully or at least minimize the evils and ills that infect and pester the judicial body, it will result in the actual removal of the Justices of the Court of Appeals and Judges of the lower courts. It is also true that whether it is termed abolition of office or removal from office, the end-result is the same - termination of the services of these incumbents. Indeed, the law may be harsh, but that is the law. *Dura lex sed lex*.

The Justices and Judges directly affected by the law, being lawyers, should know or are expected to know the nature and concept of a public office. It is created for the purpose of effecting the ends for which government has been instituted, which are for the common good, and not the profit, honor or private interest of any one man, family or class of men. In our form of government, it is fundamental that public offices are public trust, and that the person to be appointed should be selected solely with a view to the public welfare. [21] In the last analysis, a public office is a privilege in the gift of the State. [22]

There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary. When an office is created by the Constitution, it cannot be abolished by the legislature, but when created by the State under the authority of the Constitution, it may be abolished by statute and the incumbent deprived of his office. [23] Acceptance of a judicial appointment must be deemed as adherence to the rule that "when the court is abolished, any unexpired term is abolished also. The Judge of such a court takes office with that encumbrance and knowledge." [24] "The Judge's right to his full term and his full salary are not dependent alone upon his good conduct, but also upon the contingency that the legislature may for the public good, in ordaining and establishing the courts, from time to time consider his office unnecessary and abolish it." [25]

The removal from office of the incumbent then is merely incidental to the valid act of abolition of the office as

demanding by the superior and paramount interest of the people. The bad and the crooked Judges must be removed. The good and the straight, sober Judges should be reappointed but that is the sole power and prerogative of the President who, I am certain, will act according to the best interest of the nation and in accordance with his solemn oath of office "to preserve and defend its Constitution, execute its laws, do justice to every-one x x x." There and then the proper balance between the desire to preserve private interest and the desideratum of promoting the public good shall have been struck.[26]

The Supreme Court has been called the conscience of the Constitution. It maybe the last bulwark of constitutional government.[27] It must, however, be remembered "that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as courts." [28] The responsibility of upholding the Constitution rests not on the courts alone but on the legislatures as well. It adheres, therefore, to the well-settled principle that "all reasonable doubts should be resolved in favor of the constitutionality of a statute" for which reason it will not set aside a law as violative of the Constitution "except in a clear case." [29]

Finally, I view the controversy presented to Us as a conflict of opinions - on judicial independence, whether impaired or strengthened by the law; on reorganization of the courts, whether abolition of office or removal therefrom; and on delegation of legislative power, whether authorized or unauthorized. Without detracting from the merits, the force and brilliance of their advocacies based on logic, history and precedents, I choose to stand on the social justification and the functional utility of the law to uphold its constitutionality. In the light of contemporaneous events from which the New Republic emerged and evolved new ideals of national growth and development, particularly in law and government, a kind or form of judicial activism, perhaps similar to it, is necessary to justify as the ratio decidendi of Our judgment.

This is the time and the moment to perform a constitutional duty to affix my imprimatur and affirmation to the law, hopefully an act of proper judicial statesmanship.

[1] See Cardozo, The Nature of the Judicial Process, p. 73.

[2] Church of the Holy Trinity vs. U.S., 143 U.S. 457, cited in Willoughby On the Constitution of the United States, 2nd ed., Vol. I, p. 61.

[3] Explanatory Note, Cabinet Bill No. 42 which became Batas Pambansa Blg. 129, The Judiciary Reorganization Act of 1980.

[4] Cardozo, The Nature of the Judicial Process, p. 66.

[5] Chief Justice Castro, The Bar and the Congested Dockets, p. 5.

[6] See Report of the Presidential Committee on Judicial Reorganization. Also Report of Court Administrator.

[7] See L-37399, May 29, 1974, 57 SCRA 123.

[8] See L-30355, May 31, 1978, 83 SCRA 437, 450.

[9] See L-46542, July 21, 1978, 84 SCRA 198, 203.

[10] See L-49995, April 8, 1981.

[11] See G.R. No. 54452, July 20, 1981.

[12] See L-36161, December 19, 1973.

[13] Rule 131, Section 5(m), Revised Rules of Court.

[14] 31 C.J.S. 810.

[15] Cruz vs. Primicias, Jr., L-28573, June 13, 1968, 23 SCRA 998; Bendanillo, Sr. vs. Provincial Governor, L-28614, January 17, 1974, 55 SCRA 34; Enciso vs. Remo, L-23670, Sept. 30, 1969, 29 SCRA 580; Roque vs. Ericta, L-30244, Sept. 28, 1973, 53 SCRA 156.

[16] Morfe vs. Mutuc, L-20387, Jan. 31, 1968, 22 SCRA 424, 450.

[17] Ibid.

[18] Chief Justice Fernando, The Constitution of the Philippines, p. 48.

[19] Ibid., p. 46.

[20] Journal of the Batasan, Third Regular Session, Feb. 3, 1981, p. 12.

[21] Brown vs. Russel, 166 Mass. 14, cited in Gonzales, Administrative Law, Law on Public Officers and Election Law, 2nd ed., p. 148.

[22] 42 Am. Jur. 881.

[23] Ibid.

[24] Cherokee, County vs. Savage, 32 So. 2nd 803.

[25] McCulley vs. State, 53 S.W. 134.

[26] Answer of Solicitor General, par. 22, p. 29.

[27] Laurel, con., Zanduetta vs. de la Cuesta (1938), 66 Phil. 615.

[28] Missouri, K. & T. Co. vs. May, 194 U.S. 267, 270; People vs. Crane, 214 N.Y. 154, 173, cited in Cardozo, The Nature of the Judicial Process, p. 90.

[29] People vs. Vera (1937), 65 Phil. 56, See Chief Justice Fernando, The Power of Judicial Review, p. 110.

CONCURRING OPINION

MELENCIO-HERRERA, J.:

There is unqualified adherence on my part to the dismissal of the Petition filed in this case. If I am writing this separate concurrence, it is merely to state certain views I entertain in regards to the constitutionality of Batas Pambansa Blg. 129.

The controversy in this case involves two constitutional provisions. Article X, Section 1, of the Organic law provides that the legislative has the power to establish inferior Courts by law. Section 7 of the same Article reads:

"SEC. 7. The Members of the Supreme Court and judges of inferior courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court shall have the power to discipline judges of inferior courts and, by a vote of at least eight Members, order their dismissal."

There should be no conflict between the two provisions. Both should be harmonized.

1. a) It is a fundamental proposition that the legislative power to create Courts ordinarily includes the power to organize and to reorganize them, and that the power to abolish Courts is generally coextensive with the power to create them. The power to abolish was not intended to be qualified by the permanence of tenure (Opinion of Chief Justice Ricardo Paras in *Ocampo vs Secretary of Justice*, 51 O.G. 147 [1955], citing *McCulley vs. State*, 53 SW 134; *Halsey vs. Gaines*, 2 Lea 316). The right of Judges to hold office during good behavior until they reach the age of 70 years, or become incapacitated to discharge the duties of their office, does not deprive Congress of its power to abolish, organize or reorganize inferior Courts (*Brillo vs. Enage*, 94 Phil. 732, 735, citing *Zanduetta vs. de la Costa*, 66 Phil. 615; 42 Am. Jur., Pub. Officer, 904-5). Judges of those Courts take office with that encumbrance and knowledge.

"The legislative power to create a court carries with it the power to abolish it. When the court is abolished any unexpired term is abolished also. The judge of such court takes office with that encumbrance and knowledge. *Perkins v. Corbin*, 45 Ala. 103, 6 Am. Rep. 698; *State, ex rel. Thomas v. Gunter*, 170 Ala. 165, 54 So 283, et al."

The importance and the imperative of maintaining the independence of the Judiciary is undisputed. At the same time, the power of Congress under the Constitution cannot be abridged. For, in the last analysis, it is not the security of tenure per se that is the only safeguard to the independence of the Judiciary. It is the character and the mettle of the Judges who sit on the Bench. Has not the impression been created in the public mind that there are those who have abused the prerogatives of their judicial position knowing that they are untouchables by virtue of the permanence of their tenure?

b) A distinction should be made between tenure of Judges and tenure of Courts. Section 1 here-tofore mentioned refers to the "Judiciary" as a fundamental department of Government. Section 7 quoted above refers to the tenure of office of "individual" Judges (inclusive of Justices of inferior Courts); that is to say, tenure of office is a matter concerning the individual Judge. This "individuality" character of Section 7 is supported by the clause that the Supreme Court has the power to discipline individual judges of inferior Courts.

A legislature is not bound to give security of tenure to Courts. Courts can be abolished. In fact, the entire judicial system can be changed. If that system can no longer admit of change, woe to the wheels of progress and the imperatives of growth in the development of the Judiciary. To hold that tenure of Judges is superior to the legislative power to reorganize is to render impotent the exercise of that power.

It may even be stated that, under Section 7, *supra*, Judges are entailed to their Courts, from which they cannot be separated before retirement age except as a disciplinary action for bad behavior. Under Section 1, Courts are not entailed to their Judges, because the power of the legislative to establish inferior Courts presupposes the power to abolish those Courts. If an inferior Court is abolished, the Judge presiding that Court will necessarily have to lose his position because the abolished Court is not entailed to him.

c) The constitutional guarantee of tenure of Judges applies only as their Courts exist. As long as those Courts exist, the Judges cannot be ousted without just cause; that is the extent of the constitutional provision relative to security of tenure of Judges. Upon declaration of the completion of the reorganization as provided for in the Reorganization Act, the affected Courts "shall be deemed automatically abolished." There being no Courts, there are no offices for which tenure of Judges may be claimed. By the abolition of those offices, the rights to them are necessarily extinguished (*Manalang vs. Qutoriano*, 94 Phil. 903 [1954]).

2. I am satisfied that the challenged law was enacted by the Batasang Pambansa in response to an urgent and pressing public need and not for the purpose of affecting adversely the security of tenure of all Judges or legislating them out to the detriment of judicial independence. It should not be said of the Batasang Pambansa that its power of abolition of Courts has been used to disguise an unconstitutional and evil purpose to defeat the security of tenure of Judges. The Judiciary Reorganization Act of 1981 sufficiently complies with the bona fide rule in the abolition of public office, as clearly explained in the main opinion. Besides, every presumption of good faith in its actuations must be accorded a coordinate and coequal branch of government, supreme

within the limits of its own sphere, until that presumption is clearly overcome. There is no showing that the Reorganization Act was motivated for personal or political reasons as to justify the interference by the Court (Garvey vs. Lowell, 199 Mass, 47, 85 N.E. 182, 127 A.S.R. 468; State vs. Edwards, 40 Mont. 287; 106 Pac. 695, 19 R.C.L. 236; Llanto vs. Dimaporo, 16 SCRA 599 [1966]). Public interest and public good, as the legislative body views it, must be balanced with tenure of Judges, which is an individual right. Reverting to Section 1 and Section 7, supra, the former is the weightier, because the "Judiciary" is of more importance to the welfare of the country than the tenure of office of an individual Judge. If a Judge is removed without cause, there can be damage to the public welfare to some extent, but maintenance of a Court that does not meet the requirements of progressive Government, can cause incalculable prejudice to the people.

3. Nor does a conflict exist with the power of discipline vested in the Supreme Court by the present Constitution reading: the Supreme Court shall have the power "to discipline Judges of inferior Courts, and, by a vote of at least 8 members, order their dismissal." Absent the Court, it would be futile to speak of the Supreme Court's power to discipline. Thus, where the legislature has willed that the Courts be abolished, the power to discipline cannot pose an obstacle to the abolition. The power to discipline can come into play only when there is removal from an existing judicial office, but not when that office is abolished. The reorganization of the judicial system with the abolition of certain Courts is not an exercise of the power to discipline the Judges of the abolished Courts.

It is of significance to note that the power of dismissal vested in the Supreme Court by the 1973 Constitution is delimited by its power to discipline. Absent any need for discipline and the power to dismiss does not exist. Being circumscribed in scope, it may well be asked: does the grant of the power of discipline and dismissal in the Supreme Court deprive the executive of the power of removal? Is it not more in keeping with the allocation of powers in our government to state that the Supreme Court shares its power to dismiss with the executive power of removal? For is not the power of removal basically executive in nature, as an incident to the power of appointment, which is the prerogative of the Chief Executive alone? As in the case of appointments, Section 5(6), Article X of the Constitution provides that the Supreme Court shall appoint its officials and employees. However, is not this power shared with the power of appointment of the executive who appoints some of the Court officials? These questions could lend themselves to an in-depth study in the proper case.

4. The abolition would be no deprivation either of due process of law. A public office cannot be regarded as the "property" of the incumbent. A public office is not a contract (Segovia vs. Noel, 47 Phil. 543 [1925]). A public office is a public trust (Section 1, Article XIII, 1973 Constitution). It is a privilege in the gift of the State (Brown vs. Russell, 166 Mass. 14, 43 NE 1005, 32 LRA 253 cited also in Tañada & Carreon, Political Law of the Philippines, Vol. 2, p. 537). The officers are the servants of the people and not their rulers (22 R.C.L. 378-379, cited in Martin, Administrative Law, Law on Public Officers and Election Law, p. 112, 1970 ed.). Besides, it bears stressing that there is no removal from office but abolition of the office itself.

5. The questioned statute is in keeping with major reforms in other departments of government. "The thrust is on development." It is "the first major reorganization after four generations." It does not provide for a piecemeal change, which could be ineffective. It goes to the roots and does not just scratch the surface of our judicial system. Its main objectives are an improved administration of justice, the "attainment of more efficiency in the disposal of cases, a reallocation of jurisdiction, and a revision of procedures which do not tend to the proper meting out of justice." These aims are policy matters of necessity in the pursuit of developmental goals within the Judiciary.

6. The Reorganization Act reorganizes the entire judicial system excluding the Supreme Court; which is the only constitutional Court, and the Sandiganbayan. It envisages institutional reforms in the Philippine judiciary. It does not simply change the names of the Courts. The facts herein are dissimilar from those in Brillo vs. Enage (94 Phil. 732 [1954]) where the position of Justice of the Peace, although ostensibly abolished, was merely changed to Municipal Judge after the municipality of Tacloban was converted into a city with its own charter.

Significant among the institutional changes and procedural reforms are:

The Intermediate Appellate Court

This Court is now constituted into ten (10) divisions instead of fifteen (15), five members composing each division, and a majority vote of three members being needed for a decision. This obviates the cumbersome procedure, in case of dissent, of assigning two other members to compose a "division of five". It also allows flexibility in that any three members of a division, arriving at unanimity, can promulgate a decision.

Now provided for is specialization into four (4) Civil Cases Divisions, two (2) Criminal Cases Divisions and four (4) Special Cases Divisions. The specialization is expected to contribute to the expeditious disposal of cases.

The Court has been given original jurisdiction to issue Writs of mandamus, prohibition, certiorari, habeas corpus, quo warranto and auxiliary writs or processes whether or not in aid of its appellate jurisdiction. This would undoubtedly ease the burden of the Supreme Court where numerous such cases are filed daily.

It has exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the exclusive appellate jurisdiction of the Supreme Court in accordance with the Constitution.

The Intermediate Appellate Court would now have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings (Sec. 9). This does away with the delays attendant to the remand of cases to the lower trial Courts.

Regional Trial Courts

There are now thirteen (13) Judicial Regions, the same as the present administrative and Batasang Pambansa Regions, instead of sixteen (16) Judicial Districts.

A Judge is appointed to a region, which is his official station. This ensures mobility since a Judge may be assigned anywhere within the Region without applying the constitutional limitation of six months. Additionally, it can remedy temporary inequalities of caseloads in trial Courts.

Specialized Courts are integrated into the Regional Trial Courts. Thus, Regional Trial Courts would try all cases within its jurisdiction unless special cases are assigned to them, in which case, they remain as Branches of Regional Trial Courts. Special procedures and technical rules governing special Courts will continue to remain applicable in Branches assigned those special cases.

Metropolitan Trial Courts

There is one Metropolitan Trial Court with several Branches for large urban areas. The appointment of Judges would be to a Metropolitan Trial Court, although a Judge may be assigned by the Supreme Court to any Branch of the Metropolitan Trial Court as demanded by the exigencies of the service.

The Supreme Court may designate certain Branches of said Courts to exercise special jurisdiction over certain cases, unlike the present set-up where special jurisdiction applies only to cases of traffic violations.

Municipal Trial Courts/Municipal Circuit Trial Courts

Municipal Trial Courts may now be designated by the Supreme Court to exercise special jurisdiction over certain cases, thereby resulting in overall flexibility. They can also be circuitized with those in cities not forming part of metropolitan areas.

One notable change between the old and the new set-up is that Judges of these Courts will now be Presidential

appointees unlike presently where the incumbent Judges are merely designated by the Supreme Court in an Administrative Order to sit in existing Municipal Courts and Municipal Circuit Courts.

7. There are innovative features in the Act that commend themselves:

- a) The confusing and illogical areas of concurrent jurisdiction between trial Courts have been entirely eliminated.
- b) Under Section 39, there is a uniform period for appeal of fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from.

A record on appeal is no longer required to take an appeal. The entire original record is now to be transmitted.

c) Under Section 40, in deciding appealed cases, adoption by reference of findings of fact and conclusions of law as set forth in the decision, order, or resolution appealed from, is also provided for. This will expedite the rendition of decisions in appealed cases.

d) Section 42 provides for "a monthly longevity pay equivalent to 5% of the monthly basic pay for Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the Judiciary, Provided that, in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank." Thus, Justices and Judges who may not reach the top, where unfortunately there is not enough room for all, may have the satisfaction of at least approximating the salary scale of those above him depending on his length of service.

8. But while the law itself as written is constitutional, the manner in which it will be administered should not be tainted with unconstitutionality (*Myles Salt Co. vs. Board of Commrs.*, 239 US 478, 60 L. Ed. 392, 36 Sct 204). To obviate the possibility of an unconstitutional exercise of power the following safeguards are recommended and/or expected to be undertaken:

- a) The President can be expected to indicate a reasonable time frame for the completion of the reorganization provided for in the Act and the issuance of the corresponding implementing Order.
- b) Appointments and their effectivity should be simultaneous with, or as close as possible, to the declaration by the President of the completion of the reorganization under Section 44 to avoid any detriment to the smooth and continuous functioning of the judicial machinery.
- c) The services of those not separated should be deemed uninterrupted, as recommended by the Committee on Judicial Reorganization (Article XI of its Report).

9. For the speedy implementation of the law, the Supreme Court can be expected to submit to the President within thirty (30) days from the date of finality of its Decision the staffing pattern for all Courts required by Section 43.

I am constrained to disagree with the suggestion of one of the amici curiae that the staffing pattern be made to include the names of Judges. The staffing pattern for Judges is already clearly and explicitly provided in the law itself which enumerates the various Judges and Justices in their hierarchical order. Furthermore, to include the superior positions of Judges would depart from the traditional concept of a staffing pattern, which refers more to personnel organization and corresponding salaries of inferior employees. It is also constitutionally objectionable in that it would interfere with the prerogative of appointment intrinsically executive in nature (*Guevara vs. Inocentes*, 16 SCRA 379 [1966]; *Government of the Philippines vs. Springer*, 50 Phil. 259 [1927]). The President may not be deprived of, nor be limited in, the full use of his discretion in the appointment of persons to any public office. Nothing should so trench upon executive choice as to be, in effect, judicial designation.

10. A word of explanation. If I had resolved not to inhibit myself in this case upon motion filed by petitioners, it

was because the Committee on Judicial Reorganization, of which I was privileged to be a member, confined its work to the recommendation of options and guidelines in the task of reorganization. The Committee had no part whatsoever in the drafting of the bill nor in the public hearings conducted. In fact, some of its recommendations like the circuitization or regionalization of the Intermediate Appellate Court, the appellation of members of the Judiciary, the confinement of the jurisdiction of the Intermediate Appellate Court merely to appellate jurisdiction, the adoption of the system found in the United Kingdom and in Commonwealth countries of having a Court of general jurisdiction with trial and appellate divisions, were not availed of in the final Act.

11. Lastly, but by no means the least, I entertain no doubt that reliance can be placed on the good faith of the President that all the deserving, upon considerations of "efficiency, integrity, length of service and other relevant factors", shall be appointed to a strengthened and revitalized judicial system in the interest of public service; that appointments will not be unduly delayed; and that appointees will be evaluated thoroughly to ensure quality and impartiality in the men and women who will keep vigil over our judicial ramparts.

CONCURRING AND DISSENTING OPINION

PLANA, J.:

As the lawmaking body has the power to create inferior courts and define, prescribe and apportion their jurisdiction, so it has the power to abolish or replace them with other courts as long as the act is done in good faith and not for the purpose of attaining an unconstitutional end. Good faith has thus become the crucial issue in the case at bar.

Upon an examination of the legislative history of Batas Pambansa 129, as has been done in the main opinion, it is manifest that actual not merely presumed good faith attended its enactment. On this basis, I concur in the opinion penned by the learned Chief Justice, qualified only by the following observations:

1. Executive consultation with the Supreme Court. - I believe the President is under no obligation to consult with the Supreme Court; and the Supreme Court as such is not called upon to give legal advice to the President. Indeed, as the Supreme Court itself has said, it cannot give advisory opinions (*Bacolod - Murcia Planters' Asso., Inc. vs. Bacolod - Murcia Milling Co.*, 30 SCRA 67; *NWSA vs. Court of Industrial Relations*, 90 SCRA 629) even to the President.

In the drafting of the present Constitution, there was an attempt to vest the Supreme Court with the function of giving advisory opinions. The framers of the Constitution, however, did not see fit to adopt the proposal.

If the President should consult the Supreme Court on the implementation of Batas Pambansa 129 and the Supreme Court should give its advice (leaving aside the question of procedure), I believe the President would be free to follow or disregard the advice; but, in either case, there would be no guarantee that the implementing action would be upheld in one case or stricken down in the other.

2. Undue delegation of legislative powers. - The petitioners have also assailed the constitutionality of Batas Pambansa 129 on the ground that a provision thereof (regarding fixing of compensation and allowances for members of the Judiciary) constitutes an undue delegation unto the President of legislative power.

As pointed out in the main opinion, the legislature has provided ample standards or guidelines for the implementation of the delegated power, which makes the delegation inoffensive. I would like to add however some observations on the doctrine of undue delegation of legislative power.

Under the old Constitution, when the abiding rule was separation of legislative and executive powers, there was

good reason to maintain the doctrine of non-delegation of legislative power. Otherwise, the principle of separation of governmental powers could be negated via unbridled delegation of legislative power. The 1973 Constitution has however radically changed the constitutional set-up. There is now a commingling or fusion of executive and legislative powers in the hands of the same group of officials. Cabinet members play a leading role in the legislative process, and members of the Batasan actively discharge executive functions. The Prime Minister indeed must come from its ranks. Under the circumstances, there is really not much sense in rigidly upholding the principle of non-delegation of legislative power, at least vis-a-vis the Executive Department. In a very real sense, the present Constitution has significantly eroded the hoary doctrine of non-delegation of legislative power, although it has retained some provisions of the old Constitution which were predicated on the principle of non-delegation, this time perhaps not so much to authorize shifting of power and thereby correspondingly reduce the incidence of "undue" delegation of legislative power, as to avert the abdication thereof.

"In times of war or other national emergency, the Batasang Pambansa may by law authorize the President for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Batasang Pambansa, such powers shall cease upon its next adjournment." (Art. VIII, Sec. 15.)

"The Batasang Pambansa may by law authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts." [Ibid., Sec. 17(2).]

DISSENTING OPINION

TEEHANKEE, J.:

Undoubtedly, no more crucial and transcendental issue of such magnitude has confronted the Philippine judiciary than in the present case. The challenged Act, Batas Pambansa Blg. 129 by its title would reorganize all existing courts (except the nine-member Sandiganbayan^[1] and the three-member Court of Tax Appeals) and upon declaration by the President of the completion of the re-organization would unprecedentedly deem all the said courts "auto-matically abolished" en masse and "the incumbents thereof shall cease to hold office."^[2] The total abolition involves a total of 1,663 judicial positions with 1,180 incumbent judges (and 483 vacancies) as of January 26, 1982 and the Act would effect an increase of 230 judicial positions raising the total of judicial positions to be filled by new appointments to 1,893. Notwithstanding the great deference due to enactments of the Batasan, I regrettably find my-self unable to join the ranks of my esteemed colleagues in the ma-jority who uphold the constitutionality of the Act and have voted to dismiss the petition, for the following main considerations and reasons: -

1. I go by the ruling of the numerical majority of seven Justices (namely, Pablo, Cesar Bengzon, Montemayor, Jugo, Bautista, Roberto Concepcion and J.B.L. Reyes, JJ.) in the leading 1955 case of Ocampo^[3] who fell short by one vote to reach the constitutionally required 2/3 majority (at the time 8 out of an 11-member Supreme Court) to declare unconstitutional and invalid section 3 of Republic Act 1186 abolishing the positions of 18 judges--at-large and 15 cadastral judges and removing or legislating out the incumbent judges from office as against the contrary vote of a minority of 4 Justices (namely, then Chief Justice Paras and Padilla, Alex Reyes and Labrador, JJ.) with the paradoxical situation that the last three named Justices voted for the validity of the Act as a remedial measure that abolished said positions without permanent station which subjected them to a rigodon de jueces without the consent of the Supreme Court, which they considered as "repulsive to an independent judiciary" and violative of an express prohibitory provision of the 1935 Constitution - while Justice Alex Reyes conceded that otherwise he would go with the majority that "Congress

may not, as a general rule, abolish a judicial post without allowing the incumbent to finish his term of office."

2. As then Associate, later Chief Justice Cesar Bengzon remarked in his separate opinion - "(T)he [adverse] outcome of this litigation [sanctioning the ouster from office of the ten petitioners who were presiding different Courts of First Instance, some as judges-at-large, others as cadastral judges, upon the enactment on June 19, 1954 of R.A. 1186 abolishing the positions of judges-at-large and cadastral judges] is apt to revive the speculation whether wittingly or unwittingly the Constitution has further weakened the usually weak judicial department because of its 'innovative' requirement of a 2/3 majority vote of the Supreme Court to declare a statute unconstitutional, and 'never in our history has such a number of judges of first instance [totalling 33 positions] been ousted through judicial reorganization.'"

His rationale that the express constitutional guaranty of security of tenure of judges "during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office"[4] must prevail over the implied constitutional authority to abolish courts and to oust the judges despite their constitutionally-secured tenure bears repeating, thus:

"A careful analysis will perceive that whereas petitioners invoke an express guaranty or positive definition of their term of office, the respondents rely on implied authority to abolish courts and the positions of the respective judges. Accurately stated, respondents' defense rests on a second inference deduced from such implied power, because they reason out thusly: Congress has express power to establish courts; therefore it has implicit power to abolish courts and the positions of judges of such abolished courts (first inference); and therefore (second inference) Congress likewise has power to eject the judges holding such positions.

"Resultant juridical situation: The implied authority invoked by respondents collides with the express guaranty of tenure protecting the petitioners. Which shall prevail? Obviously the express guaranty must override the implied authority. 'Implications can never be permitted to contradict the expressed intent or to defeat its purpose.' x x x

x x x

"But the collision may be-should be-avoided, and both sections given validity, if one be considered a proviso or exception to the other. In other words, under the Constitution the Congress may abolish existing courts, provided it does not thereby remove the incumbent judges; such abolition to take effect upon termination of their incumbency. The fundamental provisions on the matter are thereby 'coordinated and harmonized' as Justice Laurel suggested in his concurring opinion in *Zanduetta v. De la Costa*. To bring about reconciliations is the great work of jurists. (Cardozo, *Paradoxes of Legal Science*, p. 6)"[5]

3. This reasoning that the express guaranty of tenure protecting incumbent judges during good behavior unless removed from office after hearing and due process or upon reaching the compulsory retirement age of seventy years must override the implied authority of removing by legislation the judges has been further strengthened and placed beyond doubt by the new provisions of the 1973 Constitution that transferred the administrative supervision over all courts and their personnel from the Chief Executive through the then Secretary of Justice to the Supreme Court[6] and vested in the Supreme Court exclusively "the power to discipline judges of inferior courts and, by a vote of at least eight members, order their dismissal,"[7] which power was formerly lodged by the Judiciary Act in the Chief Executive.

As former Chief Justice Bengzon stressed in his opinion in *Ocampo*, the 1934 Constitutional Convention "frowned on removal of judges of first instance through abolition of their offices or reorganization," citing Professor Jose Aruego's observation that the security of judges' tenure provision was intended to "help secure the independence of the judiciary" in that "during good behaviour, they may not be legislated out of office by the law-making body nor removed by the Chief Executive for any reason and under the guise of any pretense whatsoever; they may stay in office until they reach the age of seventy years, or become incapacitated to

discharge the duties of their office. (Aruego, *The Framing of the Philippine Constitution*, Vol. II, pp. 718-719)" He further cited Aruego's report that a proposed amendment to the effect that the prohibition against transfers of judges to another district without the approval of the Supreme Court^[8] "should not be applicable to a reorganization of tribunals of justice or of districts, but the amendment was defeated easily without debate"^[9] and logically concluded that "(N)ow, therefore, having vetoed the transfer of judges thru a re-organization, the Convention evidently could not have permitted the removal of judges thru re-organization."

Now, if the framers of the 1973 Constitution wished to dispel the strong doubts, to say the least in the light of the 7 to 4 vote in the Ocampo case against removal of incumbent judges through legislative action by abolition of their courts, then they would have so clearly provided for such form of removal in the 1973 Constitution, but on the contrary as already stated they ruled out such removal or ouster of judges by legislative action by vesting exclusively in the Supreme Court the power of discipline and removal of judges of all inferior courts.

4. This being so, the fundamental point emphasized by former Chief Justice Bengzon that abolition of the 33 judicial positions in the Ocampo case was "merely an indirect manner of removing the petitioners-judges" while the "positions [that] were eliminated ... were in fact substituted or replaced by other positions of judges" applies with greater force in the case at bar which involves an unprecedented total "abolition," thus: "(C)all it reorganization, or legislation or re-moval or abolition, this law disregards the constitutional assurance that these judges, once appointed, shall hold office during good behaviour x x x [unless incapacitated and until retirement]."

"The abolition of their offices was merely an indirect manner of removing these petitioners. Remember that on June 19, 1954, there were 107 judges of first instance, district judges, judges-at-large and cadastral judges (Rep. Act 296). After the passage of Republic Act No. 1186 there were 114 positions of judges of first instance. There was no reduction - there was increase - in the number of judges, nor in the number of courts. The positions of Judges-at-Large and Cadastral Judges were eliminated; but they were in fact substituted or replaced by other positions of judges; or if you please, there was a mere change of designation from 'Cadastral Judge or Judge-at-Large' to 'district judge'. Hence it should be ruled that as their positions had not been 'abolished' de facto, but actually re-tained with another name, these petitioners are entitled to remain in the service. (*Brillo v. Enage*, G.R. No. L-7115, March 30, 1954.) For it is not permissible to effect the removal of one judge thru the expediency of abolishing his office even as the office with same power is created with another name. (*Brillo v. Enage*, *Malone v. Williams*, 118 tenn. 391, *Gibbe's Case* 4 A.L.R., p. 211). In this view of the picture, we believe, Congress could have, and should have - as suggested by Secretary Tuazon during the hearings in Congress - directed in said Republic Act, No. 1186 that 'the present judges--at-large and cadastral judges shall become district judges presid-ing such districts as may be fixed by the President with the con-sent of the Commission on Appointments;' or by the Secretary of Justice, as originally proposed by Senator Laurel in connection with the same bill. Something similar was done before, and it would not be objectionable as an encroachment on the President's prerogative of appointment, because such judges had already been appointed to the judiciary before the passage of the act, and the provision may be construed in the light of mere change of official designation plus increase in salary."

5. Concededly, the questioned Act effects certain changes and procedural reforms with more specific delineation of jurisdiction as mentioned particularly in the majority opinion, but they do not change the basic structure of the existing courts. The present Municipal Courts, Municipal Circuit Courts and City Courts are restructured and redesignated as Municipal Trial Courts and Municipal Circuit Trial Courts and Metropolitan Trial Courts in the challenged Act. The Courts of First Instance, Circuit Criminal Courts, Juvenile & Domestic Relations Courts and Courts of Agrarian Relations are all restructured and redesignated to be known by the common name of Regional Trial Courts with provision for certain branches thereof "to handle exclusively criminal cases, juvenile and domestic relations cases, agrarian cases, urban land reform cases and/or such other special cases as the Supreme Court may determine in the interest of a speedy and efficient

administration of justice"[10] and the Court of Appeals is restructured and redesignated as the Intermediate Appellate Court with an increase in the number of Appellate Justices from the present 45 to 50 but with a reduction of the number of divisions from 15 (composed of 3 Justices each) to 10 (composed of 5 members each) such that it is feared that there is created a bottleneck at the appellate level in the important task discharged by such appellate courts as reviewers of facts.

In my view, the "candid admission" by the Chief Justice in his opinion for the Court "that he entertained doubts as to whether the intermediate court of appeals provided for is a new tribunal"^{10-a} is equally applicable to all the other above-mentioned courts provided for in the challenged Act as "new courts". And the best proof of this is the plain and simple transitory provision in section 44 thereof that upon the President's declaration of completion of the reorganization (whereby the "old courts" shall "be deemed automatically abolished and the incumbents thereof shall cease to hold office"), "(T)he cases pending in the old Courts shall be transferred to the appropriate Courts constituted pursuant to this Act, together with the pertinent functions, records, equipment, property and the necessary personnel", together with the "applicable appropriations." This could not have been possible without a specification and enumeration of what specific cases of the "old courts" would be transferred to the particular "new courts", had these "new courts" not been manifestly and substantially the "old courts" with a change of name - or as described by Justice Barredo to have been his first view, now discarded, in his separate opinion: "just a renaming, and not a substantial and actual modification or alteration of the present judicial structure or system" or "a rearrangement or remodeling of the old structure."^[11]

6. I do not subscribe to the test of good faith or bad faith in the abolition of the courts and consequent ouster of the incumbent judges from office as expounded by the late eminent Justice Jose P. Laurel in his separate concurring opinion in the pre-war case of *Zanduet*^[12] wherein the Court dismissed the petition for *quo warranto* on the ground of petitioner *Zanduet*'s estoppel and abandonment of office.^[13] Realistically, viewed from the basis of the established legal presumptions of validity and constitutionality of statutes (unless set aside by a 2/3 majority of 10 members of the Supreme Court) and of good faith in their enactment, one is hard put to conjure a case where the Court could speculate on the good or bad motives behind the enactment of the Act without appearing to be imprudent and improper and declare that "the legislative power of reorganization (is) sought to cloak an unconstitutional and evil purpose." The good faith in the enactment of the challenged Act must needs be granted. What must be reconciled is the legislative power to abolish courts as implied from the power to establish them with the express constitutional guaranty of tenure of the judges which is essential for a free and independent judiciary. Adherents of the Rule of Law are agreed that indispensable for the maintenance of the Rule of Law is a free and independent judiciary, sworn to protect and enforce it without fear or favor - "free, not only from graft, corruption, ineptness and incompetence but even from the tentacles of interference and insidious influence of the political powers that be," to quote again from Justice Barredo's separate concurring opinion.^[14] Hence, my adherence to the 7-member majority opinion of former Chief Justice Bengzon in the *Ocampo* case, *supra*, as restated by the Philippine Association of Law Professors headed by former Chief Justice Roberto Concepcion that "any reorganization should at least allow the incumbents of the existing courts to remain in office [the appropriate counterpart 'new courts'] unless they are removed for cause."

7. The "judges' broader and stronger guarantees of tenure than ordinary civil servants" as stressed by former Chief Justice Bengzon in his majority opinion in *Ocampo* is based on the judiciary's status as a coequal and coordinate branch of government, whereas the long line of Philippine cases upholding the legislative power to abolish offices refers to officers or employees in the executive branch of government and "the underlying consideration must be borne in mind that *Manalang* [the aggrieved petitioner] belonged to the Executive Department and because the President approved the law, no question or encroachment by one branch on the other could be apprehended or alleged."^[15] This is not a matter of personal privilege for the incumbent judges but as aptly stated by former U.P. Law Dean Irene Cortez in her memorandum as *amicus curiae*, "for the judiciary whose independence is not only eroded but is in grave danger of being completely destroyed."

Dean Cortez aptly stressed that "judicial independence is not a guarantee intended for the Supreme Court alone, it extends to the entire court system and is even more vital to the courts at the lowest levels because there are more of them and they operate closest to the people," and "(P)articularly under the present form of modified parliamentary government with legislative and executive functions overlapping and in certain areas merging, the judiciary is left to perform the checking function in the performance of which its independence assumes an even more vital importance."

The extensive memoranda filed by Dean Cortez and other amici curiae such as former Senator Jose W. Diokno who strongly urges the Court to strike down the Act "to prevent further destruction of judicial independence," former Senator Lorenzo Sumulong, president of the Philippine Constitution Association who advocates for the Court's adoption of the Bengzon majority opinion in the Ocampo case so as to abide by "the elementary rule in the interpretation of constitutions that effect should be given to all parts of the Constitution" and that the judges' security of tenure guaranty should not be "rendered meaningless and inoperative" former Solicitor General Arturo A. Alafritz, president of the Philippine Lawyers' Association who submits that the total abolition of all courts below the Supreme Court (except the Sandiganbayan and the Court of Tax Appeals) and the removal of the incumbent Justices and Judges "violates the independence of the judiciary, their security of tenure and right to due process guaranteed them by the Constitution" and Atty. Raul M. Gonzales, president of the National Bar Association of the Philippines who invokes the Declaration of Delhi at the ICJ Conference in 1959, that "The principles of unremovability of the Judiciary and their Security of Tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law" have greatly helped in fortifying my views.

8. I had submitted in my memo of September 4, 1980 to the Presidential Committee on Judicial Reorganization that "(W)hatever reorganization plans the committee may recommend to meet the worldwide problem of congested court dockets, and to improve judicial services in the public interest, it should be borne in mind that the members of the judiciary as the weakest branch of government, yet called upon to safeguard the people's rights and protect them from oppression, official and otherwise, are entitled to security of tenure as guaranteed by the Constitution. Even though the lower courts may be reshuffled or abolished in the process, the mandate and spirit of the Constitution guaranteeing their security of tenure and maintaining the independence of the judiciary should be respected, and they should be retained in the new courts."

In the same vein, Dean Cortez warned of the dire consequences of giving the questioned provisions of the Act the "absolutist sense which they appear to have at first blush" thus: "(T)o accept legislative power to abolish courts asserted under Batas Pambansa Blg. 129 which sweeps through practically the entire judiciary would be to open the door to future court abolitions in the guise of reorganization. At this stage of our political development, the process of embarking upon a modified parliamentary system may well usher in a situation where despite guarantees of judicial tenure, each ruling party in the legislature or any alliance that can command a majority vote may periodically undertake complete reorganization and remove judges, thus making of the judiciary a veritable straw in the political wind," and "(F)urthermore, what can result in the modified parliamentary system from the close working relationship between executive and legislature is made manifest in Batas Pambansa Blg. 129. If the sweeping revamp provided were to be carried out the President would appoint all of the justices and judges of the courts affected and the whole membership in the judiciary from the highest to the lowest courts would be his appointees. It is relevant to point out that it is precisely a situation like this that the Constitution seeks to avoid when it provides staggered terms for the chairman and members of the constitutional commissions which like the judiciary are guaranteed independence."

9. The judges' security of tenure was rendered nugatory by the Transitory Provisions of the 1973 Constitution which granted the incumbent President the unlimited power to remove and replace all judges and officials^[16] (as against the limited one-year period for the exercise of such power granted President Quezon in the 1935 Constitution upon establishment of the Philippine Commonwealth). Upon the declaration of martial law in

September, 1972, justices and judges of all courts, except the Supreme Court, had been re-quired to hand in their resignations. There is listed a total of 53 judges who were replaced or whose resignations were accepted by the President during the period from September, 1972 to April, 1976. The power to replace even the judges appointed after the effectivity on January 17, 1973 of the 1973 Constitution is yet in-voked on behalf of the President in the pending case of Tapucar vs. Famador[17] notwithstanding the generally held view that such post-1973 Constitution appointed judges are not subject to the Re-placement Clause of the cited Transitory Provision. (In this case, petitioner judge appointed on January 30, 1976 as judge of the Court of First Instance of Agusan del Norte and Butuan City, Branch I, invoked his constitutional security of tenure and questioned the appointment extended on February 26, 1980 to respondent to replace him, although he had not been removed or otherwise dismissed from his position nor had he resigned therefrom. The Court per its March 27, 1980 resolution ordered both to refrain from discharging the functions of the questioned office.) And now comes this total abolition of 1,663 judicial positions (and thousands of personnel posi-tions) unprecedented in its sweep and scope. The urgent need is to strengthen the judiciary with the restoration of the security of tenure of judges, which is essential for a free and independent judiciary as mandated by the Constitution, not to make more enfeebled an already feeble judiciary, possessed neither of the power of the sword nor the purse, as decried by former Chief Justice Bengzon in his Ocampo majority opinion:

"Shall we have judges of the type of Lord Coke? Or judges, who, in his place, would have answered 'I'll do what his majesty pleases,' judges who, afraid of ouster thru a judiciary reshuffle, would rather serve the interests of the party in power or of the political boss, than the interests of justice?"

"As it is, the Judicial Department is feeble enough. Shall we render it feebler with judges precariously oc-cupying their official seats? Judges performing their duties under the sword of Damocles of future judicial reorganizations?"

10. Chief Justice, in his opinion for the Court, equally stressed that "what is equally apparent is that the strongest ties bind the executive and legislative departments. It is likewise undeniable that the Batasang Pambansa retains its full authority to enact whatever legislation may be necessary to carry out national policy as usually formulated in a caucus of the majority party. It is under-standable then why in *Fortun vs. Labang*[18] it was stressed that with the provision transferring to the Supreme Court administrative supervision over the Judiciary, there is a greater need 'to preserve unimpaired the independence of the judiciary, especially so at present, where to all intents and purposes, there is a fusion between the executive and the legislative branches,'"[19] with the further observation that "many are the ways by which such independence could be eroded." In the cited case of Judge Fortun (likewise penned by the Chief Justice for the Court), the Court issued a writ of prohibition and certiorari ordering the dismissal of the criminal com-plaint filed with respondent fiscal Labang by "disgruntled members of the bar with a record of losing cases" in the judge's court and imposed the penalty of censure on each and everyone of the private respondents-lawyers for the "unseemly haste" with which they filed the criminal complaint, abetted by "the appearance of sheer vindictive-ness or oppressive exercise of state authority." The Court marked the "violation of the cardinal principles of fairness and due process that underlie the Rule of Law. Petitioner-Judge was not heard; he was denied the opportunity to defend himself against the accusation. There was, on the part of private respondents then, a failure to abide by a Resolution of the Integrated Bar stressing that precisely integration could shield 'the judiciary which traditionally cannot defend it-self except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence,'" and that such subjection of a judge to public "harassment and humiliation ... can diminish public confidence in the courts."

11. This brings us to the allegedly underlying need for B.P. Blg. 129 discussed in the course of committee hearings of Cabinet Bill No. 42 and the deliberation on second reading in the Batasang Pambansa to rid the judiciary of incompetent and corrupt judges and to restore confidence in the integrity of the courts. The purge has been the constant subject of headlines and editorials, with the Ministry of Justice's Integrity Council reportedly screening and conducting "integrity tests" as to new applicants and the incumbent judges[20] and

seeking "confidential information on corrupt and incompetent judges to help the government purge the judiciary." [21] Prime Minister Cesar Virata was quoted as saying that "there will be a purge of the corrupt and the misfits' when the Judiciary Reorganization Act is signed into law by President Marcos and implemented in coordination with the Supreme Court." [22] The public respondents' answer sidesteps the issue of such purge contravening the rudiments of a fair hearing and due process and submits that "no term of office is sacrosanct when demanded before the altar of the public good." The metropolitan papers reported the "anxiety grip-ping the judiciary as the Ministry of Justice has reportedly been asked to collate information 'on the performance of the judges and on the qualifications of those slated to take over the positions of the incompetent, the inefficient or those involved in irregularities.' As stated in an editorial, 'Somehow, the uncertainty that now hovers over the judiciary has unduly subjected the judges to mental torture since they do not know when or whether the axe will fall on them. Worse, the sword of Damocles hanging over their heads could provoke them into seeking the help of people claiming to have influence with the powers that be.'" [23]

But Dean Cortez in her memorandum states that "However, nowhere on public record is there hard evidence on this. The only figures given in the course of the committee hearings were to the effect that out of some 1,700 members of the judiciary, between 10 to 15 were of the undesirable category, i.e. misfit, incompetent or corrupt. (Barredo, J., before the Committee on Justice, Human Rights and Good Government, December 4, 1980)," and that "(I)f this be the case, the unprecedented, sweeping and wholesale abolition of judicial offices becomes an arbitrary act, the effect of which is to assert the power to remove all the incumbents guilty or innocent without due process of law." Nor would it be of any avail to beg the question and assert that due process is not available in mass abolitions of courts.

Justice Barredo, however, without citing any hard evidence, refers in his separate concurrence to twin objectives of getting rid of "structural inadequacies of the system or of the cumbersomeness and technicality-peppered and dragging procedural rules in force" and of "a good number of those occupying positions in the judiciary (who) make a mockery of justice and take advantage of their office for personal ends." He adds that "it is my personal assessment of the present situation in our judiciary that its reorganization has to be of necessity two-pronged, as I have just indicated, for the most ideal judicial system with the most perfect procedural rules cannot satisfy the people and the interests of justice unless the men who hold positions therein possess the character, competence and sense of loyalty that can guarantee their devotion to duty and absolute im-partiality, nay, impregnability to all temptations of graft and corruption, including the usual importunings and the fearsome albeit improper pressures of the powers that be," [24] and invokes the adage of "grandes males, grandes remedies" to now uphold the validity of the Act.

Former Senator Diokno in his memorandum anticipates the argument that "great ills demand drastic cures" thus: "Drastic, yes -- but not unfair nor unconstitutional. One does not improve courts by abolishing them, any more than a doctor cures a patient by killing him. The ills the judiciary suffers from were caused by impairing its independence; they will not be cured by totally des-roying that independence. To adopt such a course could only breed more perversity in the administration of justice, just as the abuses of martial rule have bred more subversion."

12. Finally, as stated by the 1975 Integrated Bar of the Philippines 2nd House of Delegates, "It would, indeed, be most ironical if Judges who are called upon to give due process cannot count it on themselves. Observance of procedural due process in the separation of misfits from the Judiciary is the right way to attain a laudable objective."

As stressed by the Chief Justice in the Fortun case, judges are entitled to the cardinal principles of fairness and due process and the opportunity to be heard and defend themselves against the accusations made against them and not to be subjected to harass-ment and humiliation, and the Court will repudiate the "oppressive exercise of legal

authority." More so, are judges entitled to such due process when what is at stake is their constitutionally guaranteed security of tenure and non-impairment of the independence of the judiciary and the proper exercise of the constitutional power exclusively vested in the Supreme Court to discipline and remove judges after fair hearing.

In sum, I see no reason to change the stand submitted by me to the Presidential Committee on Judicial Reorganization that -

Judges of inferior courts should not be summarily removed and branded for life in such reorganization on the basis of confidential adverse reports as to their performance, competence or integrity, save those who may voluntarily resign from office upon being confronted with such reports against them. The trouble with such ex-parte reports, without due process or hearing, has been proven from our past experience where a number of honest and competent judges were summarily removed while others who were generally believed to be basket cases have remained in the service; and

The power of discipline and dismissal of judges of all inferior courts, from the Court of Appeals down, has been vested by the 1973 Constitution in the Supreme Court, and if the judiciary is to be strengthened, it should be left to clean its own house upon complaint and with the cooperation of the aggrieved parties and after due process and hearing.

The constitutional confrontation and conflict may well be avoided by holding that since the changes and provisions of the challenged Act do not substantially change the nature and functions of the "new courts" therein provided as compared to the "abolished old courts" but provide for procedural changes, fixed delineation of jurisdiction and increases in the number of courts for a more effective and efficient disposition of court cases, the incumbent judges guaranteed security of tenure require that they be retained in the corresponding "new courts."

[1] With three vacancies.

[2] Section 44, B.P. Blg. 129.

[3] Ocampo vs. Secretary of Justice, G.R. No. L-1790, Jan. 18, 1955; 51 O.G. 147.

[4] Article X, section 7, 1973 Constitution, as amended (Art. VIII, sec. 9, 1935 Constitution).

[5] Cited in Chief Justice Fernando's The 1973 Constitution, page 376; emphasis copied.

[6] Art. X, sec. 6, 1973 Constitution.

[7] Idem, Art. X, sec. 7.

[8] Art. VIII, sec. 7, 1935 Constitution.

[9] Aruego, Framing of the Phil. Constitution, Vol. I, p. 513.

[10] Sec. 23, B.P. Blg. 129.

10-a At page 16, fn. 50.

[11] At page 3 thereof.

[12] Zanduetta vs. De la Costa, 66 Phil. 615 (1938).

[13] See the Chief Justice opinion, pages 14 - 15.

[14] At page 8 thereof.

[15] Citing *Manalang vs. Quitariano*, 50 O.G. 2515.

[16] Art. XVII, sections 9 and 10.

[17] G.R. No. 53467 filed on March 27, 1980.

[18] 104 SCRA 607 (May 27, 1981).

[19] Main opinion at page 21.

[20] *Phil. Daily Express* issue of Aug. 24, 1981.

[21] *Times Journal* issue of Aug. 16, 1981.

[22] *Evening Post* issue of Aug. 11, 1981.

[23] *Metropolitan papers* of Aug. 8, 1980. *Times Journal* editorial of Aug. 31, 1980.

[24] At page 5.

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