

## FREE USE OF KNOWLEDGE IN THE CONTEXT OF OUR LAW \*

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When we speak of the free use of knowledge in the context of our law, I would consider knowledge in terms of content and of competence. From its character as content, knowledge is the sum of information which man has acquired and civilization has conserved. It is the material of learning which has enabled man to improve his condition, to live in a changing environment, and to acquire a better understanding of his place in society. It embraces a vast variety of subjects, extending over the intellectual, physical, religious, moral, and aesthetic sides of human life. Man has acquired them through various modes and processes, including personal experience, scientific experimentation, historical investigation, philosophical speculation, and other methods. All together they form the substance of our civilization and at the same time serve as the means for its continuing march.

In this sense, knowledge is the product of the joint labors of the scientist and the scholar, the inventor of techniques and the manipulator of facts, the speculative thinker and the creative artist. Men of different races, creeds, and nationalities have been responsible for its growth and diffusion urged by the stimulus of human need oftentimes immediate but sometimes remote. Indeed, at times this need has been so remote that only a few men of vision and faith could dimly perceive it in some distant future.

It would seem plain, therefore, that man should have free use of knowledge, which is possible only when this pool of learning is made completely available to him. From whatever source it may be derived and through whatever means it may be spread, it is essential that knowledge be assured of the widest distribution possible. Gilbert Highet in his book *The Migration of Ideas* realizes this need when he says: "A period of *high civilization* is one in which thoughts fly freely from mind to mind, from one country to another—yes, and from the past into the present. A *barbarous epoch*, a barbarous country, is one that attempts to paralyze communication, to keep ideas locked up, to treat thoughts as magic—either deliberately held away from the many or heedlessly scorned by the many. A sign of barbarism is the closed mind, which refuses to take in ideas from 'foreigners' and will not accept a thought derived from the past. Savages have narrow horizons. Civilized men see all

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round the planet and far into the past: perhaps even a little distance into the future."

Law has been of considerable aid in the diffusion of knowledge. It has provided man with opportunities for the acquisition of knowledge. In a sense it has given him guarantees for the free use of knowledge in various forms. In a democratic society, the rate and effectiveness of the flow of knowledge to all the social strata have been accelerated by law. This is inevitable. For the legal system of a democracy rests upon the principle that the people are the rulers, and the ability to rule depends upon several factors, one of the most essential of them being knowledge.

For this reason our Constitution makes provision for the dissemination of knowledge by positive mandates. It recognizes both the individual right to acquire knowledge and the social obligation to furnish knowledge to every man. At the same time it denies to the government authority to prevent any action intended to diffuse knowledge or to suppress any activity for the diffusion of knowledge.

A definite provision of our Constitution on this subject declares that "the government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens." A complete and adequate system of public education obviously includes the earliest instruction for young children, elementary and secondary education, and higher training in arts, sciences, and the professions. It presupposes the establishment of nursery and kindergarten schools, elementary and high schools, colleges, and graduate institutions of learning.

The obligatory nature of the constitutional provision on this matter arises from the well-known fact that the preservation of democratic institutions depends upon an educated citizenry. The survival of democracy is made possible only by the existence of citizens who are conscious of their basic rights and obligations and are competent to choose persons morally strong to furnish the needed leadership and highly capable of independent thinking and critical judgment.

It should be evident that to maintain "a complete and adequate system of public education," it is not enough for the government to spend millions of pesos for primary or elementary schools. The government must also look for ways and means to support one or more institutions for higher education. To neglect the latter and to concentrate its efforts on the former is to disregard the constitutional mandate.

The government of the Philippines has partly complied with this mandate by establishing and maintaining a few institutions of higher education with the University of the Philippines at the head of them. It is quite evident that as the highest institution of learning, the University of the Philippines is expected to take care of the advancement and teaching of science and scholarship. This work is concerned with

knowledge on the higher levels. That our Constitution contemplates performance of this function under the government's auspices is clearly indicated by some of its provisions. One of these specifically says: "The State shall promote scientific research and invention. Arts and letters shall be under its patronage." More pointedly, another provision particularly declares: "The State shall create scholarships in arts, science, and letters for specially gifted citizens." These are matters that pertain to higher or university education. Scientific research and scholarship in arts and letters are certainly the proper and indispensable activities of every university. Other institutions might perform some of these tasks, but an institution is not a university unless it devotes itself to all these tasks. In other words, it is the characteristic mission of a university to promote activities within this field. By constitutional mandate, the University of the Philippines is bound to carry out this mission.

And here we have to consider another aspect of the concept of knowledge. For it is now obvious that a university is not a mere repository of human knowledge. That is the primary concern of a library which is but a part of a university, even though it is an essential part of it. A university should be more than a mere receptacle of dead or dying things, a museum of devitalized objects and frozen ideas. It is not just a pool of informative materials from which men may draw handfuls, so to say, for their use. If it were, it is bound to get empty or stagnant.

It is the basic obligation of a university to increase quantitatively the mass of human learning or to improve qualitatively some particular branch of learning. Occupying as it does the topmost place in the educational hierarchy, the university has to be critical and creative. It should not be a mere systematic disseminator of extant information, important as this activity is. Dissemination is the primary and main concern of schools or lower institutions of education. But the university would have no claim to being an institution of higher learning should it fail to dedicate its energies to research and scholarship. Its teaching should no longer be merely a process of imparting information but a training in independent thinking and in developing the imagination and judgment. The university professor, unlike the schoolmaster, has to be an investigator and a scholar engaged in a search for new ideas or for fresh aspects of existing ideas. It is his responsibility to open new trails or avenues to truth. In the pursuit of this work, he expresses and reveals the real meaning of intellectual discipline.

That other meaning of knowledge now emerges, that meaning which is conveyed by the expression: "Knowledge is power." This is intellectual illumination on facts and ideas of the past and the present, capacity to interpret, to criticize, to understand relationships between concrete or abstract phenomena. It is the free use of this knowledge that justifies or demands the provision of our Constitution exclusively in-

tended for government universities which says: "Universities established by the State shall enjoy academic freedom." Academic freedom acquires significance as a right guaranteed to universities when university authorities and professors are not mere passive agents to dish out indiscriminately universally accepted notions and ideas. It is one effective means by which the free use of knowledge may be made possible. For academic freedom is the right of the scientist and the scholar, the thinker and the professor, to express his own views and theories freely and openly to all men who come in contact with him or his works. No one can be an authentic scientist, or scholar, or thinker, if all that he could do or will do is to repeat verbatim what others have said, to produce a faithful replica of what others have produced, or to copy the exact formula of some sage, or to proclaim the conclusions of some seer. The genuine scholar has his own contribution to knowledge. That contribution may assume various forms. It may be a reasoned reaction to old ideas, or a new light shed on existing knowledge, or a passage added to another man's unfinished work, or a link to strengthen the chain of some scientific formula. But whatever it may be, it should be the product of the professor's own brain. Men are entitled to know what it is. For it may improve life in one way or another or it may be the basis for the improvement of mankind not necessarily in the immediate present but perhaps in some distant future. Academic freedom is thus made a constitutional mandate in order that knowledge, vital and fresh, may be made available to many.

Having the force and character of a legal mandate in our country, academic freedom specifically releases this University, as a State university, from the control of political authority and protects it against bureaucratic dictation. But apart from this constitutional provision, academic freedom, as a principle of higher education, releases every university worthy of the name from any control of thought regardless of the source and character of such control, be it ecclesiastical, political, nationalistic, or plutocratic.

Under our system of government and by virtue of the constitutional principle of separation of State and Church, a State university does not need any special legal protection against ecclesiastical power; and yet its administrators may so place themselves under the personal influence of particular sectarian groups that academic freedom might well receive no more than lip service. Should such a situation arise, there may appear subtle restrictions on the free use of knowledge, especially with respect to certain forms of knowledge considered inconsistent with preferred articles of faith. The charter of the University of the Philippines has wisely provided against this condition by prohibiting the employment of any religious test in the selection of members of the University faculty. But more than this, it also specifically prohibits the inculcation and teaching of sectarian tenets in the classroom and enjoins against

any attempt to influence students or attendants in this University in favor or against any particular religious sect.

But obviously neither the constitutional provision guaranteeing academic freedom nor the statutory directives against any special tests, whether sectarian, political, or other tests irrelevant to academic competence and scholarship, are self-executing. Standing alone they cannot assure freedom to the scholar or the scientist. Something else must be developed to make academic freedom a living force. It is a particular climate and environment. I shall quote from Professor Michael Polanyi's *The Logic of Liberty* these pregnant lines descriptive of this condition: "A strong and homogenous academic opinion, deriving its coherence from its common rootedness in the same scholarly tradition, is an indispensable safeguard of academic freedom. If there exists such an academic opinion, and if popular opinion respects academic opinion, then there is no danger to academic freedom. Then it matters little whether the universities get their money from public or private sources."

Professor Polanyi illustrates the difference between a situation where public opinion supports academic freedom and an instance where academic freedom is left alone as a phrase in the constitution. He says: "A survey of the universities in various countries shows a great variety of machinery for making academic appointments. But I can find very little connection between the nature of these constitutions and the strength of academic freedom established under their dominion. In some Continental countries—e.g., Holland, Belgium, Sweden, Norway, Denmark, Switzerland—state-run universities have been a complete success; whereas in some States of America, for example, they have been repeatedly impaired by an intolerant legislature. The difference lies entirely in the condition of public opinion, which has shown a greater respect for the autonomy of scholarship, say, in the canton of Zurich than in the State of Iowa."

But academic freedom, Polanyi warns us, could be thwarted and even corrupted by the forces of intrigue, intolerance, and envy within the university itself. He says: "Nor is self-government of universities a safeguard against corruption of academic freedom. I know of instances where universities were run for a generation by a clique of professors, keeping up a close system of nepotism and political patronage. Any candidate who had acquired a scientific reputation was regarded as a seeker of publicity who was trying to force himself on the university by unfair practices. While institutional safeguards of academic freedom are desirable, we must not forget that they are not enough, and may even become the shield of a corrupt academic opinion."

In our country it is particularly desired that this atmosphere of intrigue and envy in the University should be fearlessly guarded against. For we can barely count with the fingers of a man's two hands the number of men and women of Filipino nationality who could, in some mea-

sure, truly lay claim to the position of a scholar or a scientist. If because of the unworthy pressure of academic jealousy and envy a professor's right to academic freedom is made the cause for withholding the recognition he deserves, university authorities will be condemning our country to a state of intellectual mediocrity and educational aridity. The springs of growth being thus obstructed, national development in its various phases, whether economic or social or cultural, would have to be slow and inadequate.

In the report of a committee composed of the presidents of five outstanding American universities, a report unanimously approved by the thirty-seven university heads comprising the Association of American Universities, we find this passage which seems to appropriate to our subject: "Free enterprise is as essential to intellectual as to economic progress. A university must therefore be hospitable to an infinite variety of skills and view-points, relying upon open competition among them as the surest safeguard of truth. Its whole spirit requires investigation, criticism, and presentation of ideas in an atmosphere of freedom and mutual confidence. This is the real meaning of 'academic' freedom. It is essential to the achievement of its ends that the faculty of a university be guaranteed this freedom by its governing board, and that the reasons for the guarantee be understood by the public. To enjoin uniformity of outlook upon a university faculty would put a stop to learning at the source. To censor individual faculty members would put a stop to learning at its outlet."

It should not be understood that there are no limitations to academic freedom. Like any other right, no matter how fundamental it might be, academic freedom is not absolute. It is indeed not compatible with censorship but it has to be consistent with the demands of public order and with the responsibility of the scholar and the scientist to the norms and standards of their profession or discipline. These two fundamental restraints may be described as the law of the state and academic responsibility. Objectively, however, they should not be imposed as previous restraints but as consequential sanctions whose application or imposition should be reasonably expected by the scholar or the scientist. These sanctions for the violation of academic freedom have to be recognized because academic freedom has no meaning and validity in a vacuum space but only in a society of human beings. Moreover, the exercise and enjoyment of academic freedom are predicated on the assumption of intellectual maturity, which is not necessarily identical with chronological maturity, but which is attained only by academic or scientific competence and integrity manifested by one's accomplishments in his particular discipline.

The legal norms which establish the dividing line beyond which the freedom of the scholar may not go with impunity, are expressed in the laws validly adopted by the proper authority of the nation. But these

should not be understood as any statute or executive order arbitrarily adopted or unreasonably composed. They must be measures that can stand the test of constitutional criteria which have been interpreted and declared by the highest courts of our country and of Anglo-American countries and which appear in our Constitution in the principle known as "due process of law."

It is quite obvious, therefore, that a prescribed legal limitation is not necessarily a silencer of responsible criticisms. But to be responsible, any criticism should be based on conclusions reached by objective analysis, unbiased investigation, and unhampered inquiry pursued with integrity by the scholar himself. Criticism that comes from conclusions that are dictated from without and accepted unquestionably is irresponsible. It is a form of indoctrination, which is the essence of Communism and other doctrines we detest. The true scholar condemns it because it is essentially a denial of freedom. If we believe in the principle that truth makes men free, then we have to disbelieve in and reject any system that denies freedom of inquiry. Under such a system the free use of knowledge would be seriously curtailed if not rendered entirely impossible.

But the free use of knowledge is involved in the context of a legal mandate with even much wider latitude than that which guarantees academic freedom in state universities. The liberty of expression which our Constitution recognizes as a fundamental right of every person is both a source and an outlet of knowledge for all. In the opinion of authoritative jurists it occupies a preferred or privileged position among the different rights of individuals living in a democracy. It is placed by our own Constitution beyond the reach of any prohibitory action exercised either by Congress or by the President. Unless the expression of one's ideas is directly harmful to the human dignity and worth of another man, unless it is intended to produce and actually produces immediate danger to the state's right to exist, it may not be suppressed nor made to seek cover by threat of punishment.

Preventive legal action against the free use of knowledge under our system of law and government as a rule is not countenanced. In principle positive legal commands on what a man should say, whether in speech, in writing, or in pictures, do not have validity as legal norms in our constitutional scheme. For they are embraced in the technique of censorship, a procedure that makes a mockery of liberty and introduces the deadly mechanism of dictatorship. The late Justice Jackson of the Supreme Court of the United States has given us this reminder: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

The evidence of history strengthens the cause for the free use of knowledge. For when we consider the lessons of man's whole past, we come across beliefs, opinions, ideas, and institutions which had once been held true and even sacrosanct but which later events proved the error of their nature and so made imperative their discard. That was why Justice Oliver Wendell Holmes, one of the deepest thinkers of American jurists, remarked: "The best test of truth is the power of the thought to get itself accepted in the competition of the market." It is the recognition of this conclusion, supported by historical facts or scientific proofs, which has justified the constitutional guarantee to liberty of speech and press.

To uphold this basic right, courts have decided that statutes imposing previous restraints on publications which are apt to contain scandalous or even obscene matters, ordinances prohibiting the free and public distribution of pamphlets, executive orders providing for censorship on moving pictures, are violative of the constitutional guarantee to freedom of expression. Our Constitution does not permit any governmental organ to draw dividing lines between various methods of communicating ideas excepting those that employ coercive force or physical violence. One form of expression is just as effective and as legitimate as another, depending upon the occasion and the circumstances. Hence, in the language of the Supreme Court of the United States: "In this Nation every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the censor." The law is thus placed at the service and for the protection of the free use of knowledge.

But here one may be troubled by cynical thoughts and skeptical questions. Is this not a demonstration of looseness and laxity amounting to a contradiction of the very objective of law itself, which is order and justice? Is this not a justification of authoritarianism itself? Is this not conducive to conflict and confusion? The courts have given us a negative answer to all these questions and with good reason. It is this: In recognizing the right to liberty, the law at the same time exacts a responsibility from every man who uses it. He is absolutely free to express his ideas, to produce his play, to print his book, to deliver his speech. But he is held accountable for going beyond the bounds of human decency and social order. He has to pay the penalty for unjustly destroying the good name of his fellow man, for preaching obscenity and immorality, for advocating the use of violence or force to accomplish his objectives. In so doing the law establishes and maintains that indispensable balance between liberty and order. The protection of the law is for the free use of knowledge, not for the free abuse of it.

In this, educational institutions again play a very decisive role. Just as schools and universities are under the obligation to promote the spirit and practice of individual freedom, so should they also have to develop the sense and awareness of individual responsibility. The proper



exercise of the freedom of the press, which is fundamentally needed in our society, comes as the natural result of education that lays stress on the disciplined and responsible use of knowledge.

The creation of a responsible public opinion, intelligent and courageous, is possible only under a system of free and effective educational institutions. These ideas are very well expressed by Justice Frankfurter of the Supreme Court of the United States in this language: "That our democracy ultimately rests on public opinion is a platitude of speech but not a commonplace in action. Public opinion is the ultimate reliance of our society only if it be disciplined and responsible. It can be disciplined and responsible only if habits of open-mindedness and of critical inquiry are acquired in the formative years of our citizens . . . To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution."