COMMENTS

THE STATE AND EDUCATION: THE SPANISH LAW

Education, under our present laws, occupies a unique position. The government exercises an almost absolute control over all educational institutions, public or private.[1] This control ranges from prescribing what subjects are to be taught to determining the location and size of school latrines. Failure of the school concerned to comply with these regulations would authorize the Secretary of Education to impose penalties including cancellation of the permit of such school to operate.[2]

In its last session,[3] Congress passed another law, amending a prior law,[4] (hereinafter referred to as the Spanish Law[5]) affecting our educational system. The Spanish Law makes it obligatory for all universities and colleges, public and private, to teach at least twenty-four units of Spanish subjects to students taking up law, commerce, foreign service, liberal arts, and education. In all other courses, the students are required to complete only twelve units of Spanish courses.[6]

The enactment of this law was attended with much discussion. For the first time, the attention of the public was focussed upon a vital question that has received little or no discussion at all — how far may the state interfere with the education of its young citizens?

More specifically, the Spanish Law raises the question whether or not the government may determine, consistent with constitutional limitations, the number of units a student must take in a particular subject. The question raises such issues as to the wisdom of a law that is out of harmony with a curriculum planned by professional educators as well as the propriety of interferring with individual liberties.

Furthermore, the law makes it obligatory upon all colleges and universities to teach so many units of Spanish courses, as the case may be. The obligation in this instance is very imperative because the penalty impossable for disobedience is revocation of the license to operate as a college or university.[7] In this country, no student

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[1] Act No. 2706 (March 10, 1917), as amended by Com. Act No. 180 (Nov. 13, 1936), and Rep. Act No. 74 (Oct. 21, 1946).

[2] The constitutionality of Act No. 2706, as amended, was questioned in Philippine Association of Colleges and Universities v. Secretary of Education, 51 Off. Gaz. 12, 6230 (1955). But the case was dismissed on the ground that it did not present a justiciable controversy.

[3] Third Congress, Fourth Session.

[4] Rep. Act No. 709 (June 5, 1952) as amended by Rep. Act No. 1881 (June 22, 1957).

[5] Actually, the law does not have a short title. The title, Spanish Law, is adopted in this Comment only for convenience.

[6] Full text of the law is found elsewhere in this issue.

[7] The Spanish Law does not have a penal clause. In the absence of an express provision for a penalty, the provision of Act No. 2706, sec. 9 as amended applies, to wit:

"The Secretary of Public Instruction (now Secretary of Education) may at any time revoke the Government recognition granted to any school if it can be shown to his satisfaction that such school or college has failed to keep up to the standards prescribed for it by the Secretary of Public Instruction."

in his right senses will study in a college or university not recognized by the government. His chances of getting a job after graduation are nil. Besides, persons who maintain any such school without government recognition are liable to be punished by severe penalties.[8] This circumstance explains any vigorous objection to any law which in any way burdens a particular curriculum. In fact this feature of the law has frustrated attempts by private schools to improve their respective curriculum.[9]

These issues are, indeed, worth reflecting on. This Comment will not make a dogmatic pronouncement as to the validity or invalidity of the Spanish Law. The author confines himself to a mere consideration of the possible legal objections that may be raised against the law.

Interest Of The State Over Education

Education is a matter in which the state is deeply concerned. The safety of a democracy or republic, it is said, rests upon the intelligence and virtue of its citizens.[10] This is so because:

> "Wherever education is most general, there life and property are the most safe, and civilization of the highest order."[11]

The principle that the state has a paramount interest in the education of its citizens finds sanction in our Constitution. It is there provided that:

> "All educational institutions shall be under the supervision of and subject to the regulation by the State."[12]

This constitutional provision is so broad as to warrant the conclusion that the State has plenary power over all educational matters. But this is not true. The government, through which the State acts, exercises its powers according to the limitations found in the Constitution. Its powers are confined within definite boundaries. It the government has any such plenary power, it has reference only to public schools.[13] Private schools are subject only to such control as is consistent with their constitutional rights.[14]

Therefore, the supervision and regulation, in the above quoted provision of the Constitution, should be construed to include only such general powers as: (1) to see that an educational institution does not teach or promote doctrines and practices contrary to the criminal laws and (2) to prevent immoral or fraudulent practices on the part of the institution.[15] This construction is warranted by the general principles which underlie our system of government.

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[8] Act No. 2706, as amended, sec. 12, *supra* note 1.

[9] Hernandez, *Education Or Chaos*, 32 PHIL. J. OF EDUC. 20 (1953).

[10] Nebraska Dist. of E. L. Synod v. McKelvie, 175 N.W. 531, 534 (1919).

[11] State *ex rel.* Kelley v. Ferguson, 144 N.W. 1039, 1043 (1914).

[12] PHIL. CONST. Art. XIV, sec. 5.

[13] *See*, e.g., Waugh v. University of Mississippi, 237 U.S. 589, 59 L. Ed. 1131 (1915); Leeper v. State, 53 S.W. 962 (1899).

[14] Pierce v. Society of Sisters, 268 U.S. 510, 69 L. Ed. 1070 (1925).

[15] SINCO, PHILIPPINE POLITICAL LAW, 488 (10th ed., 1954).

Democratic principles repudiate the idea that the state is everything, and the individual is merely one of its component parts.[16] Certainly, our Constitution does not permit the State to standardize its youth by forcing them to accept whatever education it prescribes. There is, indeed, a point beyond which the State may not go without violating the individual rights guaranteed by the Constitution.[18]

An examination of the proceedings of the Constitutional Convention shows that there was no intention to vest the government with absolute control over all educational institutions. The intention was otherwise. The philosophy behind the provision, as explained by Delegate Osias, is merely to enable the State to supervise all educational institutions and regulate their operation that they would advance the interests of the country as a whole and the welfare of its inhabitants. By this provision, the State will be able to prevent schools from becoming agencies for the spread of foreign propaganda subsersive of public peace and order, inimical to the interests of the general public and violative of the spirit of the Constitution.[19]

It is interesting to note that the provision as originally worded contained the phrase "subject to the laws thereof." Delegate Araneta objected to the inclusion of this phrase. He pointed out that these words might be interpreted to mean that the power of the State over educational institutions was absolute, authorizing interference with the individual freedoms found in the Constitution. He argued that the provision as now found in the Constitution is sufficient authority for the enactment of measures for the attainment of the objectives cited by Delegate Osias.[20]

From these discussions emerges the sphere within which the State is competent to act on educational matters. The limitations are reasonable. As a general rule, therefore, the State exercises active control over education only to the extent that it is necessary for its own protection. For this reason, it is universally conceded that the State may require all children to attend some school.[21]

It may also require all schools to teach certain subjects which are plainly essential to good citizenship.[22] The end in view in thus conceding that much authority to the State is to insure that its citizens are familiar with the nature of the government under which they live, and are competent to take part in it. Beyond this point, education should be left to the fullest freedom of the individual.[23]

Viewed from this angle, the Spanish Law can not be sustained as a legitimate exercise of governmental authority over education.

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[16] Nebraska Dist. of E.L. Synod v. McKelvie, *supra* note 10.

[17] See Pierce v. Society of Sisters, *supra* note 14, at 1078.

[18] HAMILTON AND MORT, THE LAW AND PUBLIC EDUCATION, 462 (1941).

[19] 2 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 615 (1936).

[20] Id. at 616-617.

[21] Stephens v. Bongart *et al.*, 189 A. 131 (1937).

[22] People *ex rel.* Vollmar v. Stanley *et al.*, 255 P. 610 (1927).

[23] See note 10 *supra*.

No one has advanced the argument that the study of the Spanish language is plainly essential to good citizenship. We, Filipinos, have been and will always be law abiding citizens in spite of the fact that a great majority of us do not have a working knowledge of the Spanish language. Neither can it be argued that failure to teach this subject is inimical to the public welfare. Clearly, the law must be justified on other grounds.

Police Power And Education

Courts have often upheld laws regulating education on the broad principle of police power. The police power was invoked in these cases because these laws cannot otherwise be justified under the power that the state has over education. Furthermore, these laws have to do more with the protection of the health and interests of the public in general rather than with the determination of educational policies.[24] These regulations consist in fixing a standard of training or requiring that professionals must pass an examination before being allowed to practice their profession. Within these spheres, there can be no objection against governmental regulation so long as the means adopted are reasonable.

Police power is said to be the "law of overruling necessity."[25] It exists "wherever the public interests demand it"[26] and "extends to all the great public needs."[27] Police power is so comprehensive and all pervading[28] that courts have set limitations to its proper exercise.[29] These limitations are adopted for the protection of the individual against possible abuse. The minimum requirements set are that: (1) the object of the legislature must be permissible; (2) the means must have a substantial relation to the end; (3) fundamental rights must not be infringed; and (4) the law in question must not be arbitrary, unreasonable, or oppressive.[30]

Bearing in mind the foregoing limitations, we shall proceed to inquire wheher or not the Spanish Law is a valid exercise of police power.

An examination of the explanatory note[31] of House Bill No. 3635, now enacted as the Spanish Law, will reveal the legislative intent

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[24] United States v. Gomez Jesus, 31 Phil. 218 (1915); Tolentin v. Board of Accountancy, G.R. No. L-3062, Sept. 28, 1951.

[25] Lake View v. Rose Hill County Co., 70 Ill. 191, 194 (1873).

[26] National Cotton Oil Co. v. Texas, 197 U.S. 115, 129, 49 L.Ed. 689, 694 (1905).

[27] Noble State Bank v. Haskell, 219 U.S. 104, 55 L.Ed. 112, 116 (1911).

[28] In Barbier v. Connolly, 113 U.S. 27, 28 L.Ed. 923, 925 (1885), police power is define as the authority "to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

[29] United States v. Toribio, 15 Phil. 85 (1910).

[30] See Brown, *Due Process, Police Power And The Supreme Court*, 40 HARV. L. REV. 929, 953 (1927).

[31] The office of Congressman Cuenco furnished the writer with a copy of the Explanatory Note. Interested persons may read the Note in the Law Journal Office.

behind the law. The note gives the following as the objectives of the law:

> "History, religion, geography and world commerce demand the preservation of our Filipino-Spanish-Anglo-Saxon civilization and culture.
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> "We should always think and act as good Filipinos. We should be proud of our race. We should always show that we are a cultured people. We shall betray a great heritage and prove ourselves unfit to the highest destinies of our nation, if we do not promote the study of that language, which in the Philippines has been and is in itself, the very cause of our country's civilization and culture, the Spanish language."

The ultimate object and end of the law is to promote the culture and progress of our country. It is believed that a man should not only be a professional but also a cultured individual. Knowledge of several languages is an indication of culture.[32]

> "A knowledge of several languages increases one's cultural, spiritual, economic and political worth."[33]

Simply stated, the law seeks to make the students more cultured. Knowledge of the Spanish language will assists him in understanding himself and his history. In this way, the proponents argue, he would appreciate more the cultures of Spanish speaking peoples and be able to carry an intelligent conversation in intellectual circles.[34]

But the more important purpose of the law is to inculcate patriotism in the minds of the youth. This goal is sought to be achieved by requiring the teaching of the following in their original Spanish versions: (1) Mabini's Memorias de La Revolución Filipina; (2) a compilation of the outstanding speeches in the Congress of Malolos of the First Philippine Republic; and (3) a compilation of the great poems of Jose Rizal, Cecilio Apostol, Fernando Ma. Guerrero, Jose Palma, Claro M. Recto, Zaragoza Cano, Pacifico Victoriano, and others of a patriotic and nationalistic character as well as those depicting the Philippine scene.[35]

The above enumerated writings are said to constitute "the *bible* of Filipino nationalism." "They communicate to our young men and women the ideas of the founders of our nation as to liberty, self-government and an unyielding faith in the high destines of our race."[36]

These are laudable aims. They deserve the support not only of the government but of all Filipinos as well. The Constitution, it must be remembered, provides that arts and letters shall be under the patronage of the State.[37] And all schools are enjoined to develop, among others, civic conscience and to teach the duties of citizenship.[38]

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[32] These views were expressed by President Carlos P. Garcia, while still a Senator, when Rep. Act No. 709 was under consideration in the Senate. 3 SENATE CONGRESSIONAL RECORD 1105 (1952).

[33] Explanatory Note to House Bill No. 3635, *supra* note 31.

[34] See Mana, *In Defense Of The Spanish Bill*, The Manila Times, June 12, 1957, p. 4.

[35] Rep. Act No. 709, as amended, sec. 2, *supra* note 4.

[36] Cuenco, *Bill* 3635 *And Filipino Nationalism*, The Manila Times, June 13, 1957, p. 4.

[37] PHIL. CONST. Art. XIV, sec. 4.

[38] PHIL. CONST. Art. XIV, sec. 5.

The law, however, seeks to achieve all these objectives by compulsion. It is this aspect of the law that has been seriously criticized. The method chosen to realize these ends is said to be unreasonable. The argument is that patriotism cannot be legislated upon.

Laws of this nature have been passed and imposed upon schools. In fact a majority of school laws are compulsory in nature.[39] Some of these laws, however, have been stricken out of the statute books as offending the Constitution because the means adopted were unreasonable.

The case of *Meyer v. Nebraska*,[40] though not exactly in point, is very instructive and may help us in our problem. In that case, the appellant was convicted for teaching the German language under a law which prohibited the teaching of foreign languages to children of a certain age. The United States Supreme Court acquitted the accused and declared the law unconstitutional. The Court agreed with the trial court as to the salutary purpose of the statute.[41] But

> "...a desirable end cannot be promoted by prohibited means."[42]

In another case,[43] the law required all children to attend only public schools. The law, according to the same Court, is an arbitrary and unreasonable interference with individual liberties. It was there ruled that it is beyond the competency of the state "to standardize its children by forcing them to accept instruction from public teachers only."[44]

In both cases, it must be observed, the end in view was held to be proper. But this did not preclude the Court from declaring the

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[39] Reutter, Jr., *The Law And The Curriculum*, 20 LAW AND CONTEM. PROB. 91 (Winter, 1955).
cation, *supra* note 2, at 6284.

[40] 262 U.S. 390, 67 L.Ed. 1040 (1923).

[41] The lower court gave the following as the objective of the law: "The salutary purpose of the statute is clear. The legislature had seen the baneful effects of permitting foreigners who had taken residence in this country, to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners who had emigrated here, to be taught from early childhood the language of the country of their parents, was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interests of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language, and until it had become a part of them they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state. Meyer v. Nebraska, 187 N.W. 100, 102 (1922), reversed, 262 U.S. 390, *supra* note 40.

[42] Meyer v. Nebraska, *supra* note 40, at 1046.

[43] Pierce v. Society of Sister, *supra* note 14.

[44] Id. at 1078.

law unconstitutional. In both instances, compulsion was held to be an unreasonable method for realizing a proper end.[45]

> "The objection to unjust and arbitrary legislation lies not in the interests affected, whether of property, body, or spirit, but in the justice of any interference not called for by the public needs."[46]

At this stage, we may conclude that the State, under the police power, has a limited right to regulate educational institutions in the public interests.[47] In fact, any such regulation must take into consideration that private schools have a constitutional right to exist.[48] This is a right which they cannot be deprived of arbitrarily.[49] Neither may such right be limited or abridged unless there are conditions which will justify reasonable restrictions.

With regard to the Spanish Law, there exists no compelling circumstances to justify compulsion. The teaching of patriotism and the promotion of culture may be advanced as justifications. However, it is doubtful whether these are sufficient reasons. No exceptional circumstances exist as to make it desirable for the State to promote the culture of the country. Neither can it be pretended that there exists an emergency of extreme necessity demanding the immediate promotion of such a salutary end.

Our Supreme Court, in an obiter dictum, has declared that the State may properly exercise its police power to correct *"a great evil."*[50] The "great evil" in that particular case consisted in that the great majority of the private schools from primary grade to university level are money-making devices for the profit of those who organize and administer them. Of course, what may or may not come under the test "great evil" has to depend upon the circumstances of each case.

A great majority of us, Filipinos, do not know how to read and write in the Spanish language. Most Filipino students have read the works of our heroes as translated in the English language. Congress has determined this situation detrimental to the promotion of our culture and progress. So the Spanish Law was enacted.[50-a] But it cannot be maintained seriously that the situation is so anomalous

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[45] Farrington *et al.* v. Tokushige *et al.*, 11 F.2d 710 (1926), *aff'd*, 273 U.S. 284 (1926).

[46] Brown, *Due Process, Police Power And The Supreme Court*, *supra* note 30, at 951.

[47] See Packer Collegiate Institute v. University of State, 81 N.E.2d 80, 83 (1948).

[48] Pierce v. Society of Sisters, *supra* note 14; Packer Collegiate Institute v. University of State, ibid.

[49] See note 7, *supra*.

[50] Philippine Association of Colleges and Universities v. Secretary of Edu-

[50-a] According to Senator Briones, the following is the ultimate objective of the Spanish Law: "Aprobando este proyecto de ley no solamente acabaremos por cimentar, por aumentar nuestras relaciones comerciales y culturales con España y la America Hispaña, sino que también prepararemos a nuestro pueblo no solamente para su lucha por mantener nuestra propia cultura, sino también para las luchas económicas y comerciales del futuro." 3 SENATE CONGRESSIONAL RECORD 1104 (1952).

as amounting to "a great evil" that will justify the exercise of police power. This observation is too obvious to require arguments.

A further observation is proper at this point. The law was amended, by increasing the number of units a student must complete, in certain courses, with the hope that the amendment will promote the culture and progress of the country. But, why confine the greater benefits of the law to students of law, commerce, foreign service, liberal arts and education only? Are those the only students who are so retarded in their culture that legislative compulsion is necessary for their progress?[51] The author believes otherwise. The law, to be consistent with its declared purposes should have been extended to all students in the collegiate level. Failing to do so, the law may be struck down as a class legislation and therefore violative of the Constitution.[52] I find no substantial reason for the classification.[53] It is arbitrary and without any basis in the Constitution or under prevailing circumstances.[54]

Intellectual Liberty

It is well-settled that the right to impart instruction is one of the liberties guaranteed by the Due Process Clause.[55] It is a right

> "...given by the Almighty for beneficient purposes and its use may not be forbidden or interferred with by Government — certainly not, unless such instruction is, in its nature, harmful to the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property — especially, where services are rendered for compensation."[56]

This does not mean, however, that the teaching profession is absolute. Like any other profession, it is subject to reasonable regulations as are in the interest of the general good.[57] These regulations may take the form of prescribing the minimum qualifications of teachers or that the things taught are not immoral or inimical to the public welfare.[58]

The Spanish Law is objected to as an unwarranted interference with the right of instruction. There is no question that the legislature is the proper authority to lay down educational policies. But the details, such as the determination of number of units a student be required to complete for a particular subject, should be left to the discretion of educators.[59] Details are worked out more satisfactorily

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[51] Rubi v. Provincial Board, 39 Phil. 660 (1919).

[52] PHIL. CONST. Art. 111, sec. 1 (1) reads: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[53] SINCO, *op. cit, supra* note 15, at 613-614.

[54] Smith Bell and Co. v. Natividad, 40 Phil. 136 (1919); Kwong Sing v. City of Manila, 41 Phil. 103 (1920).

[55] See Sharp, *Movement In Supreme Court Adjudication — A Study Of Modified And Overruled Decisions*, 46 HARV. L. REV. 361, 381 *et seq.* (1933).

[56] Mr. Justice Harland, dissenting in Berea v. Kentucky, 211 U.S. 45, 53 L.Ed. 81, 90-91 (1908).

[57] See note 24, *supra.*

[58] People *ex rel.* Vollmar v. Stanley *et al.*, *supra* note 22.

[59] See Remmlein, *Statutory Problems*, 20 LAW AND CONTEM. PROB. 125, 134 (1955).

by experts who make a thorough study of the matter than legislators.[60] As the former Senator Osias, one of our foremost living educators, said:[61]

> "...la determinación de cursos de enseñanza debe encomendarse en manos de los mismos educadores y no de los legisladores. Los cursos de enseñanza deben ser flexibles y no rígidos, porque,...la educación es una ciencia progresiva y, por consiguiente, esta sujeto a los cambios de la sociedad y de los conceptos filosóficos de los educadores del mundo."

The wisdom of a law that runs counter to the professional opinion of skilled educators is very questionable.[62] It is an ill-considered law. The power of the legislature is to promote education. It cannot and should not, hinder its progress.[63]

The Spanish Law is an example of a piece of legislation that has been approved in spite of the opposition from leading educators of the country.[64] The Philippine Association of Colleges and Universities and the Philippine Association for Curriculum Development objected to the law from the very start.[65] On top of everything, the law was enacted without the advice of the Board of National Education, the highest policy-making body in the country.[66]

Even the present Director of Private Schools himself admitted that he was particularly against the compulsory teaching of Spanish. He is against going deeper into the culture of the western world "without developing our own."[67]

All in all, Congress appears to have adopted the law without much deliberation and consideration. Yet, the law demands much from the teacher. There is no doubt that it materially affects the right of educators to determine the length of time a student should

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[60] The Manila Times, Editorial, June 26, 1957, p. 4.

[61] 3 SENATE CONGRESSIONAL RECORD 1105 (1952).

[62] See Seitz, *Supervision of Public Elementary And Secondary School Pupils Through State Control Over Curriculum And Text Book Selection,* 20 LAW AND CONTEMP. PROB. 104, 108 (Winter, 1955).

[63] When the Spanish Law was under consideration in the Senate, Senator Abada made the following observation when compulsion is employed in matters of education: "The word 'compulsion' carries with it a feeling of resentment on the part of most people. When a person likes to learn and acquire knowledge of a certain thing, he sacrifices and does his best to learn it. But when he is only compelled to learn a language without being made to realize the importance of that tongue, it will, I fear, result merely in that old saying — there is none so blind as one who does not want to see." 3 SENATE CONGRESSIONAL RECORD 1104 (1952).

[64] The objection is particularly against Rep. Act 1881, which amends Rep. Act. 709. There is not much objection against the latter law because it was adopted only after consulting the opinion of the Secretary of Education, Presidents of principal universities and colleges and the President of the University of the Philippines. 3 SENATE CONGRESSIONAL RECORD 1487 (1952).

[65] The Manila Times, *supra* note 60.

[66] Yabes, *The Spanish Bill,* The Manila Times, "We The People Column," p. 4.

[67] The Manila Times, June 25, 1957, p. 1, col. 4.

devote to a particular subject.[68] Besides, compulsion is really contrary to free education.

In cases like this, the best way is to give the curriculum planners wide discretion to determine which foreign language should be mastered by the students. The proper choice of a foreign language has to depend on the kind of course.[69] The German language, for example, is more helpful to chemistry students than any other foreign language. If the course is foreign service, French will be very advantageous to the student. To require all students, without discrimination, to master a particular foreign language is tantamount to compelling a student to study a subject which, as far as his course is concerned, is of no practical utility.

Parents And The Education Of Their Children

Before ending this Comment, on the Spanish Law, it is desirable to take into consideration the degree of control that a parent exercises over the education of his children. Parental participation in the education of the youth has been recognized by courts independent of any express law to the effect. It is a right that is based on prescription and tradition.[70]

The Constitution of the Philippines has deemed it wise to leave the education and nurture of the children of the State to the direction of the parent.[71] It is one of its declared principles that:[72]

> "The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government."

This constitutional provision impliedly recognizes the principle that the right of parents over the education of the youth is superior to that of the government.[73] Otherwise, the Constitution would not have limited the authority of the government to the giving of aid and support in the carrying out of this natural right and duty of parents. Delegate Benitez explained this principle in this wise:

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[68] In this regard, former Senator Abada has this to say: "I am in favor of the plan to require every college graduate in the Philippines to have a working knowledge of Spanish but as to how many units will be required is a matter that should be studied thoroughly not only by experts but also by the various colleges and universities." 3 SENATE CONGRESSIONAL RECORD 1105 (1952).

[69] President Carlos P. Garcia, while still a Senator, expressed a similar thought: "Really, in college, the students must be left to choose the foreign language that they want to master depending on the kind of course they are taking. If one is taking chemistry, that foreign language should be German; if mechanical engineering, he probably would prefer Frence; if diplomacy or a foreign service course, it will be to his advantage to learn English, French, and Spanish because it is an admitted fact that the entire South-American continent is composed of more than nineteen Spanish speaking Republics. 3 SENATE CONGRESSIONAL RECORDS 1107 (1952).

[70] 2 KENT, COMMENTARIES ON AMERICAN LAW, 195-196 (Gould Ed., 1896).

[71] *See* Rullison *et al.* v. Post, 79 Ill. 567, 573 (1875).

[72] PHIL. CONST. Art. 11, sec. 4.

[73] Morrow v. Wood, 17 Am. Rep. 471 (1874).

> "In individualistic society, we consider that it is the duty of the parent to educate his children; but in a socialistic society, we consider it the duty of the State. But the State may go further and claim that duty and deprive the parents of their natural right to take care of their children. Hence, this compromise. There is, for example, Russia. That is a concrete example of absolute socialism where the parents have not almost the right to take care of the children. We do not want to go that far. Therefore, the philosophy of this draft."

It is not, therefore, without reason that courts have included this right as one of those liberties protected by the Constitution.

> "Liberty is more than freedom from imprisonment....the right of parents to have their children taught where, when, how, what, and by whom they may judge best, are among the liberties guaranteed by...the... Constitution."[75]

This right given to parents has been invoked and upheld in several instances.[76] Those cases have particular reference to the right of a parent to select which subjects his child should study and those which he should not be forced to study. Various reasons have been advanced for upholding the parent.[77] All of these reasons have, however, their basis on the principle that this parental right is intimately related with family life. To take away this right or unduly limit it would undermine that basic foundation of all well-ordered society — the family.

The case of *Hardwick v. Board of School Trustees* explains the social policy behind the principle placing this parental right on a superior level to that of the State. In that case, the parent forbade his child to take dancing lessons. The school authorities refused to accede to the wishes of the parent since dancing was one of the subjects included in the curriculum. The court declared that the State has no right to enact a law or regulation the effect of which will be to alienate in a measure the children from parental authority along lines looking to the building up of the personal character and the advancement of the personal welfare of the children. The wishes of the parent, the court ruled, should always be respected so long as his views are not offensive to the moral well-being of the children nor inconsistent with the best interests of society. To deny the parent of this right, the court said:

> "...would be distinctly revolutionary and possibly subversive of that home life so essential to the safety and security of society and the government which regulates it, the very opposite effect of what the public school system is designed to accomplish..."[79]

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[74] 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 146 (1936).

[75] People *ex rel.* Vollmar v. Stanley *et al.*, *supra* note 22, at 613.

[76] *See*, for example, State *ex rel.* Kelley v. Ferguson, 144 N.W. 1039 (1914); Rullison *et al.* v. Post, 79 Ill. 567 (1875).

[77] Justice McReynolds described this parental right thus: "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, *supra* note 14, at 1078

[78] 205 P. 49 (1921).

[79] Id. at 54.

Another line of decisions approaches the problem from the point of view of the child. The case of *Morrow v. Wood*[80] is a good example. In that case, the father wished his boy to study orthography, reading and writing. He also told his son to give particular attention to the study of arithmetic in order that he might assist in keeping accounts. The teacher required the boy to study geography and proceeded to compel obedience by force in spite of his knowledge of the wishes of the father. In upholding the father, the court described the situation of the son thus:

> "...it is one of the earliest and most sacred duties taught the child, to honor and obey its parents. The situation of the child is truly lamentable, if the condition of the law is that he is liable to be punished by the parent for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parent in that particular."[81]

From the practical point of view, the parent is more competent to determine the capabilities of the child than the teacher. In this regard, the parent is in a better position to determine wisely what subjects the child should give particular emphasis and what subjects should be left out in his course of study. The case of *State* ex rel. *Sheibly v. School District*[82] emphasizes this consideration.

The facts of the case are: The father expressed a desire to have his daughter study grammar instead of rhetoric. His wish was respected and the change made. Subsequently, he changed his mind and requested that his daughter be excused from continuing the study. His only reason was "that said study was not taught in said school as he had been instructed when he went to school." Under the direction of her father, the child refused to pursue the study and as a result of such refusal she was expelled. The Court ordered her reinstatement and explained its decision thus:

> "Now, who is to determine what studies she shall pursue in school, — a teacher who has a mere temporary interest in her welfare, or her father, who may reasonably be supposed to be desirous of pursuing such course as will best promote the happiness of the child? The father certainly possesses superior opportunities of knowing the physical and mental capabilities of his child. It may be apparent that all the prescribed course of studies is more than the strength of the child can undergo, or he may be desirous, as is frequently the case, that his child while attending school should also take lessons in music, painting, etc., from private teachers. This he has a right to do."[83]

These cases, however, admit certain qualifications to the parental right of controlling the education of the child. During school hours, general education and the control of pupils are in the hands of the school authorities.[84] This control extends to health, proper surroundings, necessary discipline, promotion of morality and other wholesome influences, while parental authority is superseded.[85] This parental right should give way to regulations which are for the

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[80] 17 Am. Rep. 471 (1874).
[81] Id. at 473.
[82] State *ex rel.* Sheilbley v. School Dist. No. 1, 48 N.W. 393 (1891).
[83] Id. at 395.
[84] *See* Board of Education v. Purse, 101 Ga. 422, 41 L.R.A. 593 (1897).
[85] *See* Richard v. Braham, 249 N.W. 557, 559 (1933).

benefit of all, and tend to promote a common interest and the efficiency of the school.[86]

Filipino parents find certain objectionable features of the Spanish Law. One such objection is the fact that the additional academic requirement provided by the law would entail additional expenses on the part of the student.[87] These expenses have reference to the increased number of hours that a student has to spend in school.[88] It may even happen that a student has to stay in school for an extra year just to comply with the law.[89] Obviously, the student has also to buy books.

A more serious objection may arise when a parent requests that his son be exempted from taking Spanish subjects on the ground that another foreign language has more relation to the course the son is pursuing than Spanish. A chemistry student,[90] for example, would profit more if he masters the German language. Of course, he may take the languages at the same time. There is no law prohibiting that. The controversy arises when the parent insists that the time his son is required to study Spanish subjects should be devoted exclusively to the study of the German language.

In trying to meet these objections to the Spanish Law, one should always bear in mind that a parent has a "God-given and constitutional right . . . to have some voice in the bringing up and education of his children."[91] It is his right to educate his own child in his own way.[92] This right belongs to that class of rights of individuals conceived by some to be beyond the reach of the powers of the State except in extraordinary emergencies. It must not, therefore, be trifled with in the consideration of any law regulating education.

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[86] *See* State *ex rel.* Sheibley v. School District No. 1, *supra* note 82, at 394.

[87] See note 60, *supra.*

[88] It is true the Spanish Law expressly requires that the number of years required for the completion of the specified courses should not be increased. But this provision is not practical since the students are now taking their respective courses under normal load. To add more Spanish subjects to the curriculum would either increase the load or spread the additional requirements by lengthening the residence of the student.

[89] President Carlos P. Garcia expressed a contrary view when he signed H. B. No. 3635 into a law: "There is every reason to believe that such increase can easily be absorbed by students without seriously impairing their efficiency.... There is no need of sacrificing subjects of science or vocational subjects, nor is there need of prolonging the course by one semester . . . the purpose of this act is to enable our students to read in the original the literary works of our patriots, like Rizal, Palma, and Apostol." The Manila Times, June 24, 1957, p. 1, col. 8.

[90] In the University of the Philippines, the College of Liberal Arts offers the course leading to the degree of Bachelor of Science in Chemistry. The law does not define who are liberal arts students. The question is pertinent: Does the term *liberal arts students* include all students studying in the College of Liberal Arts?

[91] State *ex rel.* Kelley v. Ferguson, *supra* note 76, at 1043.

[92] Farrington *et al.* v. Tokushige *et al.*, *supra* note 45, at 714.

The problem that the Spanish Law presents is clear. To arrive at a proper solution, the courts must strike a satisfactory balance between the conflicting claims of the government to supervise and regulate education on one hand and the claims of the teacher to impart instruction and the parent to determine what is good for the child on the other hand. These latter rights are guaranteed by the Constitution. Since the Constitution is said to be a limitation and not a grant of power to the government, the recognition of the respective rights of the parent and the teacher is in effect a limitation of the authority of the government over education. There is, therefore, a point which the government may not go without violating these constitutional rights. Whether or not the Spanish Law has gone beyond that point has to depend much upon the determination by the courts as to the reasonableness of the method provided for achieving salutary ends.

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