FREEDOM OF THE PRESS IN THE PHILIPPINES

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I. HISTORICAL INTRODUCTION:

Before the twentieth century, freedom of the press as understood in modern democratic nations was unknown in the Philippines.[1] The government under Spain was a despotism [2] and had complete power to prohibit and penalize criticism of the prevailing institutions and policies. Censorship was legitimate.[2a] Much of the exercise of this power was designed to keep the faith of the people pure.[3] At the time, the marriage between the State and Church was still intact [4] and so civil power was available for suppressing ideas that challenged dogma in all departments of social life. Among the functions of the parish priest was the far-reaching one of sharing with the civil authorities, control over literary expressions of the natives. He was censor of the plays, comedies and dramas in the language of the country, deciding whether they were against the public peace or morals.[5]

Towards the close of the nineteenth century, enough liberal ideas had filtered into the country to start a ferment. Quite a number of the rising *ilustrado* or intelligentsia class had caught up with the enlightenment of Europe and had begun to note that the conditions in the country were bad. Before long, the spirit of reform was in the air.[6] But it was seen quickly that any agitation for reform was bound to be stifled, unless, among other liberties, the press was free. If a movement for social betterment were to be at all successful, the great mass of people had to be aroused to their unenviable plight and this could not be done if there was no effective freedom to discuss social evils in print.

It was then, understandably, one of the most recurrent demands of the propagandists that the press in the Islands should be free. Aside from pleading for the liberties of conscience and association, Lopez-Jaena asked for the liberty of the press.[7] Rizal insisted on the same right and thought it vital to the permanence and genuine-

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[1] *U.S. v. Bustos*, 37 Phil. 731.

[2] I REPORT OF THE PHILIPPINE COMMISSION TO THE PRESIDENT (1900) states at page 84:
"What the people want above every other thing, is a guarantee of those fundamental human rights which Americans hold to be natural and inalienable birthright of the individual but which under Spanish domination in the Philippines were shamefully and ruthlessly trampled upon."
Cf. Rizal's "Indolence of the Filipinos," RIZAL'S POLITICAL WRITINGS ed. Austin Craig (1933), pp. 180-199

[2a] There was an official board of censors, headed by the Governor General and controlled chiefly by clerics. CORPUZ, O. D., BUREAUCRACY IN THE PHILIPPINES (1957), Chap. on "Promise and Performance," p. 136, fn. 17.

[3] "The Spanish government in conjunction with the friars attempted to isolate the Filipinos, both intellectually and physically, from the outside world, in order that they would not receive any impression other than that which was convenient to allow them to have." MABINI, A., II LA REVOLUCION FILIPINA (1931), p. 281.
Cf. RETANA, W., THE LIFE AND WRITINGS OF DR. JOSE RIZAL (1907), p. 127; LAUBACH, F. C., RIZAL: MAN AND MARTYR (1936), p. 266.

[4] Cf. I REPORT OF THE PHILIPPINE COMMISSION, pp. 81-82.

[5] I REPORT OF THE PHILIPPINE COMMISSION, p. 57

[6] KALAW, T. M., THE PHILLIPINE REVOLUTION (1925), pp. 1-13.

[7] LOPEZ-JAENA, G., DISCURSOS Y ARTICULOS VARIOS (1951), p. 37.

ness of reform in the country.[8] The "Hongkong Junta" listed government control over publications as among the specific grievances of the Filipinos against Spain.[9]

The answer of the colonial government to this call for a free press was a policy of greater repression. Most of the works of the propagandists were banned from entering the Islands.[10] The novels of Rizal were proscribed; their importation and circulation was by official decree made a criminal offense.[11] Reformist writings were read under the threat of imprisonment or exile.[12]

The severity of the reaction against the move for reforms made the Filipinos despair of social change through peaceful means. It fostered the growth of a revolutionary temper.[13] Separatist aims begun to be cherished.[14] Andres Bonifacio founded the Katipunan on the dream of a Filipino nation independent of Spain [15] and it did not take long for this revolutionary society to gain many adherents.[16] Its early discovery precipitated the Philippine Revolution—one of the gallant fights of the Filipino people in their search for freedom.

Among the chief causes of the Revolution was the denial of civil rights, among them the freedom of the press.[17] Accordingly, the revolutionary leaders exerted their utmost to assure the existence of this liberty. It was recognized in various organic documents of the time. The Constitution of Biak-na-Bato contained a guarantee of a free press.[18] So did the Malolos Constitution.[19] Mabini emphasizes it in his constitutional program of government as vital to government stability and popular welfare.[20] One of the conditions on which the Filipino leaders accepted the Pact of Biak na Bato was the promise of emancipating the press from government and ecclesiastical censorship.[21]

This vigilant concern of the revolutionists for a free press gave real liberty to newspapers in areas under their control.[22] Save for one or two exceptions, there was no censorship of publications. In fact, the government established an official organ and asked the people to contribute articles to it. It also encouraged the publication

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[8] RIZAL, J. EPISTOLARIO RIZALINO (1938 ed. T. M. Kalaw), No. 565. Also his "The Philippines a Century Hence," POLITICAL WRITINGS, p. 62.

[9] III PHILIPPINE SOCIAL SCIENCE REVIEW (1930), pp. 204-221.

[10] KALAW, *op. cit.*, pp. 3-5.

[11] By decree of Governor-General Despujols. KALAW, *op. cit.*, p. 5. Cf. PALMA, R., PRIDE OF THE MALAY RACE (1949) trans. R. Ozaeta, p. 220.

[12] MAJUL, C., THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION (1957), p. 3.

[13] MAPUL, *op. cit.*, pp. 70-75.

[14] Cristobal, E., "Andres Bonifacio," THE PHILIPPINE REVIEW (1918), pp. 38-39. Rizal's later views were claimed to be separatists. Cf. PALMA, *op. cit.*, Chap. on *El Filibusterismo*.

[15] FERNANDEZ, L. H., THE PHILIPPINE REPUBLIC (1926) pp. 10-13.

[16] LE ROY, J. A., I AMERICANS IN THE PHILIPPINES (1914), p. 85.

[17] KALAW, *op. cit.*, pp. 5-18. Cf. MAJUL, *op. cit.*, pp. 70-75.
Aguinaldo declared in his Biac-na-Bato Proclamation:
"Error and deception abound in public instruction; in the schools and *in the press* absolute tyranny." (italics mines), KALAW, p. 61.

[18] KALAW, pp. 62-63. The Constitution of Biák-na-Bato was approved Nov. 1, 1897.

[19] Article 20 embodied the guarantee. MAJUL, p. 179.

[20] "The Constitutional Program of Mabini," IV PHILIPPINE SOCIAL SCIENCE REVIEW (1932), pp. 315-316.

[21] KALAW, p. 67. Negotiations which led to the Pact of Biak-na-Bato included proposals for guaranteeing the freedom of the press. (Aug. 9, 1897). The Pact was formally adopted December 14, 1897.

[22] MAJUL, p. 180.

of private newspapers as means of improving the political education of the people.[22a]

The coming of the Americans with their superior fire-power and their new appetite for conquest put an end to the First Philippine Republic and its early experiments with civil liberty. There was hope, however, that the American government would preserve to the Filipinos a large measure of freedom. Pres. McKinley in the last days of the nineteenth century assured the Filipino people that "it is their liberty and not our power, that we seek to enhance." [23] Some months later, he repeated this promise in a message to the U.S. Congress.[24] It was on these declarations of the American President that Aguinaldo, almost certain of defeat, pinned his hopes that the newly-won rights of his people would not be wholly lost.[25] Mabini, though, was skeptical whether a people could be free without political independence. He emphasized the natural desire for liberty as the basis of the fierce resistance of the Filipinos to American conquest.[26] When defeat became certain, he was willing to concede that civil liberty under American flag was possible but that guarantees through a definite Act of the U.S. Congress would be necessary.[27]

The establishment of civil government augured well for the various freedoms, including that of the press.[28] Previous to that, publications were under the censorship of the military and it was felt to be too strict.[29] Especially cheering were the Instructions of Pres. McKinley to the Second Philippine Commission. It contained a guarantee that no law shall be passed abridging the freedom of speech or of the press or of the right of the people to assemble peaceably and petition the government for a redress of grievances.[30] William H. Taft, in his inaugural address as the first civil governor, also recognized the "sacred obligation... to protect civil and religious freedom." [31] Such assurance led the *Asociacion de Paz*, a group of prominent Filipinos, to work for the passage of a law in the U.S. Congress making all prohibitive provisions of the U.S. Constitutions effective in the Philippines.[32]

Events proved that the optimism of the Filipinos went too far. The intense guerrilla warfare conducted by insurgents still in the field evoked and to a great extent justified, stern repressive measures. In less than five months after the inauguration of the civil regime, the Second Philippine Commission severely restricted the freedom of the press, among others. It passed a law providing in

[22a] TAYLOR, J., IV PHILIPPINE INSURGENT RECORDS, Exhibit 684, cited in MAJUL, p. 180. For newspapers which flourished, see KALAW, pp. 146-147.

[23] Message of Dec. 5, 1899. KALAW, p. 201.

[24] Inaugural Message to Congress on April 7, 1900. KALAW, p. 204.

[25] Manifesto of Aguinaldo on April 19, 1901. KALAW, p. 280.

[26] KALAW, pp. 239-258. Mabini insisted on a guarantee in a letter to Paterno.

[27] Letter of Mabini to Paterno, KALAW, p. 251.

[28] The inauguration took place on July 4, 1901. KALAW, p. 288.

[29] Censorship was specially severe in Manila, Cebu and Iloilo. Even Aguinaldo commented on it in his letter of January 17, 1901. KALAW, pp. 269-272.

Cf. LE ROY, *op. cit.*, pp. 56-59.

[30] Issued April 7, 1900. Previous assurances included:

(1) Art. 9, Sec. 2, of the Treaty of Paris (Dec. 10, 1898) which declared that the civil and political rights of the inhabitants of the Islands were to be determined by Congress of the U.S.

(2) Pres. McKinley's Instructions to the First Philippine Commission issued Sept. 1, 1900, required that 'law and order and individual freedom shall be maintained."

[31] Instructions to the Second Phil. Commission. KALAW, p. 288.

[32] The proposals were made sometime in November, 1901. KALAW, p. 297.

part that whosoever should plead by word of mouth, by means of printed matter or similar methods, the cause of Philippine independence or separation from the United States, would be subject to stiff penalties.[33]

However, it was not long after when the freedom of the press became established as a legal right of the Filipinos. The Philippine Bill of 1902 made provision for this liberty,[34] and thereafter, it was a dominant feature in various organic acts as a limitation to governmental power. The Jones Law explicitly forbade the government from passing any law abridging the freedom of speech, or of the press, or of the right of the people to peaceably assemble and petition the government for redress of grievances.[35]

The free press thus assured became one of the most powerful instruments of the Filipinos in their move for political independence from the United States. When victory came, its continued liberty was sought to be insured, ironically enough, by the sovereignty it helped end. The Philippine Independence Act imposed the requirement, among others, that the proposed Constitution of the Philippines should contain a bill of rights.[36] The liberty of the press was one of the more important guarantees to which it referred.

During the deliberations in the Constitutional Convention, there was a move to embody in the Constitution definite limitations to press freedom.[37] The powerful Sub-Committee of Seven included in their draft public order and good morals as social ends justifying restriction on publications. Moreover, they sought to authorize suppression of publications by final court orders.[38] But stiff opposition checked these proposals; and as things came out, the provision in the Jones Law on the freedom of the press was reproduced in the draft and finally approved.[39]

II. PROTECTION AND SCOPE:

Much has been written on the philosophical basis of press freedom as part of the larger right of free discussion and expression.[40]

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[33] Act of November 4, 1901. PUBLIC LAWS OF THE PHILIPPINES. Cf. KALAW, p. 296.
[34] Act of Congress of July 1, 1902, Sec. 5, par. 13.
[35] Act of Congress of August 29, 1916, Sec. 3, par. 13.
[36] Public Act 227, 73rd Congress of the U.S., Sec. 2.
[37] ARUEGO, J., I FRAMING OF THE PHILIPPINE CONSTITUTION (1936), pp. 165-167.
[38] The first draft contained the following provision:
"There shall be no limitations to the freedom of the press except those required by good morals and public order. No publication shall be suppressed except by final decision of a competent court." ARUEGO, *op. cit.*, p. 165.
[39] ARUEGO, p. 165.
[40] The classic arguments for the liberty of expression are contained in the essay "On Liberty" by John Stuart Mill reprinted in ENGLISH PHILOSOPHERS FROM BACON TO MILL (ed. E. A. Burtt 1939), pp. 949-1041:
"First, if any opinion be compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibity.
Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by collision of adverse opinions that the remainder of the truth has any chance of being supplied.
Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience." pp. 989-990.
Cf. MILTON, J., AREOPAGITICA; Justice Oliver Wendell Holmes, Jr., dissenting opinion in

Its practical importance, though, is more easily grasped. It is the chief source of information on current affairs.[41] It is the most prevasive and perhaps most powerful vehicle of opinion on public questions.[42] It is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances.[43] It is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed.[44]

Such tremendous services to the public weal makes it deserving of protection. Aside from its preferred position in the Constitution,[45] the press in this country benefits from certain ancillary rights. The productions of writers are classified as private property [46] and after publication are protected from usurpation by the Copyright Law.[47] Persons who interfere or defeat the freedom to write for the press or to maintain a periodical publication are liable for damages, be they private indivduals or public officials.[48]

There is one main source of restrictions on the right of the citizen to freely discuss public questions in print, which is seldom within the power of the law to correct. The peculiarities of our economic system allow a minority of private persons almost unlimited discretion in determining newspaper policies. Newspapers re-

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Abrams v. U.S., 250 U.S., 627; Justice Louis D. Brandeis, dissenting in *Whitney v. California*, 274 U.S. 357; Judge Learned Hand, "A Fanfare for Prometheus", reprinted in FREEDOM READER (1957) pp. 22-28; Justice William O. Douglas, "The Manifest Destiny of America." *The Progressive*, Fe. 1955, pp. 7-8. A list of literature on this subject would fill a book.

[41] "(The newspaper) has become the daily vehicle, to almost every family in the land, of information from all quarters of the globe, and upon every subject. Through it, and by means of the electric telegraph, the public proceedings of every civilized country, the debates of the leading legislative bodies, the events of war, the triumphs of peace, the storms in the physical and the agitations in the moral and mental world, are brought home to the knowledge of every reading person, and, to a very large extent, before the day is over on which the events have taken place." COOLEY, II CONSTITUTIONAL LIMITATIONS, p. 937.

[42] "The newspaper is also one of the chief means for the education of the people. The highest and lowest in the scale of intelligence resort to its columns for information; it is read by those who read nothing else, and the best binds of the age make it the medium of communication with each other on the highest and most abstruse subjects. Upon politics, it may be said to be the chief educator of the people; its influence is potent in every legislative body; it gives tone and direction to public sentiment on each important subject as it arises; and no administration in any free country ventures to overlook or disregard an element so pervading in its influence and withal so powerful." 2 COOLEY, p. 937.

[43] *Quisumbing v. Lopez, et al.*, 51 O.G. 1362. Cf. LASKI, H., LIBERTY IN THE MODERN STATE, pp. 67-95 & GRAMMAR OF POLITICS (1925), pp. 143-147.

Cooley explains the importance of freedom of opinion to the stability of the government thus: "Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be, that the evil likely to spring from the violent discussion will probably be less, and its correction by public sentiment more speedy, than if the terrors of the law were brought to bear to prevent the discussion." 2 COOLEY, p. 901.

Cf. LASKI, H., A GRAMMAR OF POLITICS, p. 147 et seq.

[44] "The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of a clear conscience." Justice Malcolm, in *U.S. v. Bustos, et al.*, 37 Phil. 731.

Cf. *U.S. v. Perfecto*, 43 Phil. 225; *People v. Velasco*, (C. A.) 40 O.G. 3694.

[45] *Thomas v. Collins*, CBC *U.S.* 516. The Constitution of the Philippines states: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." (Art. II, Sec. 1, par. 8.)

[46] "By intellectual creation, the following persons acquire ownership: (1) The author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work . . ." (Art. 721, Civil Code of the Philippines.)

[47] "The author and the composer, mentioned in Nos. 1 & 2 of the preceding article (Art. 721), shall have the ownership of their creations even before publication of the same. Once their works are published, their rights are governed by the Copyright laws." (Art. 722, par. 1, Civil Code of the Philippines.) Copyright is governed by Act 3134 (1924).

[48] Art. 32, par. 3, Civil Code of the Philippines.

quire the use of much capital; and to all practical intent, it is inevitable in our society that control over the papers should be in the hands of big business.

But press freedom is not thereby made illusory. There are circumstances which in practice limit the discretion of publishers and which effect to a great degree the free play of opinions on public questions. Diversity of ownership even in a single newspaper, the need for popular patronage, conflicting interests of powerful advertisers, the pressence of respected and independent columnists, and competition among newspapers themselves all combine to bring about general fairness and accuracy of reports as well as adequate representation of opposing views.

Nevertheless, it is futile to deny the limiting power which big business has over the opportunity of private persons to put forth their views in print. As owner, it could and does refuse publicity to opinions it does not like; and as advertiser, it could pressure and sometimes successfully, for the exclusion of views it does not share. Whatever be the decision, the discretion is complete. Our laws do not afford any remedy to one whose opinions have been denied publicity.

In the end, the fairness and impartiality of the press is a responsibility of the public. As in government, a people gets what media it deserves. It is after all the main consumer of publications and it is to be hoped that whatever it has the intelligence to digest and the wisdom to demand, it will get in the long run. Newspapers are in business and will mend their bad habits should the public threaten withdrawal of patronage unless they do.

What is the scope of the freedom of the press?[48a] Philippine Law does not give a complete answer and we must look therefore to the law of those countries where this right has long flourished. Jurisprudence prevailing in the free world today, particularly in the United States, recognizes four aspects of the freedom of the press. These are (1) freedom from prior restraint, (2) freedom from punishment subsequent to publication, (3) freedom of access to information and (4) freedom of circulation.[49]

(1) *Freedom from Prior Restraint:* Freedom from prior restraint is largely freedom from government censorship of publications. The two are sometimes distinguished but there is no sharp difference between them.[50] Both preclude government approval of a proposal to publish. No license need be obtained before a publication can be

[48a] "The constitutional liberty of speech and of the press implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation or pecuniary interests of the individuals." 2 COOLEY, p. 886. Cf. Justice Murphy in *Thornhill v. Alabama*, 310 U.S. 88.

[49] TAÑADA, L., & FERNANDO, E., CONSTITUTION OF THE PHILIPPINES (1949) pp. 256-257.

[50] "The difference between censorship and prior restraint is not easy to define. Actually, censorship is a form of prior restraint."

"Analytically, however, censorship is aimed against the transmission of an idea, thought or expression, while prior restraint is aimed against the idea. Thus attempts to license speakers, parades, vendors of religious literature, etc., are prior restraints rather than censorship." Edwin S. Newman, Comments in THE FREEDOM READER (1957), pp. 144-145.

printed;[51] if any law or official requires it, there is infringement of the constitutional right and remedy can be had at the courts.[52]

Freedom of the press from censorship makes it doubtful whether bad or offensive publications can be considered as a nuisance[53] and therefore, amenable to certain remedies like injunction.[54] This latter remedy entails at least enquiry into the character of a proposed publication for the purpose of banning the printing when found harmful as claimed. This, in essence, is prior restraint which the Constitution forbids.[55]

(2) *Freedom from Liability Subsequent to Publication:*[56] This aspect of press freedom precludes liability for completed publication of views traditionally held innocent.[57] Opinions on public issues cannot be punished when published, merely because they are novel or controversial or because they clash with current doctrines. This does not mean that publishers and editors are never liable for what they print. This freedom gives no immunity from laws punishing scandalous or obscene matter, seditious or disloyal writings, and libelous or insulting words.[58] As classically expressed, the freedom of the press embraces at the very least freedom to discuss truthfully and publicly matters of public concern without previous restraint or fear of subsequent punishment.[59] Discussion to be innocent, must be truthful, must concern something in which people in general take a healthy interest, and must not endanger some important social end[60] which the government by law protects.

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[51] *U.S. v. Sedano*, 14 Phil. 338.

Cf. *U.S. v. Sotto*, 38 Phil. 666: "The freedom of the press consists in the right to print and publish any statement whatever without subjection to the previous censorship of the government."

[52] Any of the writs provided for in Rule 67, Rules of Court, might be available, depending on the specific relief required by the circumstances. And Art. 32 of the Civil Code of the Philippines grants a right to damages for such infringement of the right.

[53] Art. 694 of the Civil Code states in part: "A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (3) Shocks, defies or disregards decency or morality."

[54] Rule 60, Rules of Court.

[55] *Near v. Minnesota*, 283 U.S. 697. In this case, the U.S. Supreme Court declared unconstitutional a statute which categorized as a nuisance an "obscene, lewd, lascivious" or "a malicious, scandalous, and defamatory" publication and which provided that such publication could after proper hearing be permanently enjoined. TANADA & FERNANDO, p. 258.

The Court reasoned thus: "The fact that for approximately one hundred and fifty years there had been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions."

[56] "It is also not easy to draw the line between a prior restraint and subsequent punishment. Punishment meted out for a certain activity may actually operate to inhibit all future activity of the same sort, thereby creating, in essence, a prior restraint." Edwin S. Newman, *op. cit.*, p. 145.

[57] "It is a different matter though where liability arises from expression of opinions which are hostile or contrary to the current political, economic or moral views. To allow liability in such cases is to stifle effectively freedom of the mind, to negate the freedom of expression. For while a few brave and hardy souls may run the risk of incurring the penalty, the rest are not likely to follow their example. They will be coerced into silence. For them, the constitutional right would be nugatory. There must be immunity from liability therefore, to give meaning and substance to this constitutional right." TANADA & FERNANDO, p. 263.

[58] *U.S. v. Sotto*, 38 Phil. 666. Said the Supreme Court of the Philippines:

"It (freedom of the press) does not mean immunity from willful abuses of that freedom, which, if permitted to go unrebuked, would soon make the license of an unrestrained press even more odious to the people than would be the interference of government with the expression of opinion."

Cf. *Chaplinsky v. New Hampshire*, 315 U.S. 586:

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and the obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

[59] Justice Murphy, *Thornhill v. Alabama*, 310 U.S. 88.

[60] *Herndon v. Lowry*, 301 U.S. 242, where the U.S. Supreme Court said:

"The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justifica-

(3) *Freedom of Access to Information:* Freedom of the press has been held to include not merely free discussion but also every accessory right essential to this purpose. The aim is to allow the widest possible broadcast of the best truth available on problems of public concern for the enlightenment of both rulers and the ruled. Freedom of access to information as well as freedom of circulation have received protection because vital to the education of the public through press publications.[61]

Freedom of access to information regarding matters of public interest is kept real in several ways. Official papers, reports and documents, unless held confidential and secret by competent authority in the public interest,[62] are public records and are open, subject to reasonable regulation, to the scrutiny of the inquiring reporter or editor. Our Supreme Court has held that an officer in charge of public records has the duty to allow access thereto to representatives of the press; in case of refusal, he may be compelled to do so by court order.[63] Then proceedings of public bodies like Congress and the courts are likewise public and may be reported on in the press, unless for some special and reasonable cause, sessions are held behind closed doors or to the exclusions of the public,[64] or proceedings are declared confidential and matters taken therein closed to publicity.[65] Lastly, information obtained confidentially may be printed without specification of the source and that source is closed to official inquiry, unless the revelation is deemed by the courts or by a House or committee of Congress vital to the security of the State.[66]

(4) *Freedom of circulation:* This aspect of press freedom refers to the unhampered distribution of newspapers and other media among customers and among the general public. It may be interfered with in several ways. The most important of these is censorship, either at the customs [67] or at the mails.[68]

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tion in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

[61] Cf. TAÑADA & FERNANDO, pp. 256, 260.

[62] The discretion of the President as to what executive papers are to be kept secret is well-nigh absolute, since mandamus cannot be availed of against him. Art. VI, Sec. 10, par. (4) of the Constitution of the Philippines provides: "Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in its judgment require secrecy." And the Rules of Court state: "The records of every court of justice shall be public records and available for the inspection of any interested person, at all proper business hours, under the supervision of the clerk having the custody of such records, unless the court shall, in any special case, have forbidden their publicity, in the interest of morality or decency." (Rule 124, Sec. 2). See also Art. 354 (2), R.P.C.

Liability may arise for publication of confidential or secret papers. See Art. 154 (3) of the Revised Penal Code.

[63] *Subido v. Ozaeta*, G.R. No. L-1631, prom. Feb. 27, 1948.

[64] As to publicity of judicial proceedings, the Rules of Court provide: "The sitting of every court of justice shall be public, but any court may, in its discretion, exclude the public when the testimony to be adduced is of such a nature as to require their exclusion in the interest of morality or decency." (Rule 124, Sec. 2).

[65] The Rules of Court furnish examples:

Sec. 10 of Rule 128 states: "Proceedings against attorneys shall be private and confidential, except that the final order of the court shall be made pubic as in other cases coming before the court." See *In re Abistado*, 57 Phil. 668

Sec. 6 of Rule 129 provides: "Proceedings against judges of first instance or Justices of the Court of Appeals shall be private and confidential." See *In re Lozano & Quevedo*, 54 Phil. 801.

[66] R.A. 53, as amended by R.A. 1477

[67] Sec. 1230 of the Revised Administrative Code provides in part:

"Collectors are authorized to examine and search vessels for mail matter carried contrary to law." See following footnote for what is considered non-mailable matter.

[68] Sec. 1954 of the Revised Administrative Code includes as among non-mailable matter:

"(b) Written or printed matter in any form containing scurrilous libels against the government of the Republic of the Philippines, or containing any statement which tends to disturb or obstruct any lawful officer in executing his office or in in performing his duty, or which instigates

American experience pinpoints two other ways by which attempts to curtail this right may be made. First is requiring a permit for the distribution of media and penalizing dissemination of copies made without it.[69] Second is requiring the payment of a fee or tax, imposed either on the publisher or on the distributor, with the intent to limit or restrict circulation.[70] Both modes of interfering with the freedom to circulate have been constantly stricken down as unreasonable limitations on press freedom. It has been held, however, that door to door canvassing for subscriptions may be validly prohibited by ordinance.[71] And publishers and distributors of newspapers and allied media cannot complain when required to pay ordinary taxes such as the sales tax.[72] The exaction is invalid only when the obvious and immediate effect is to restrict oppressively the distribution of printed matter.

In the Philippines, freedom of circulation seldom meets effective interference. The local governments are generally denied authority to require permits or to impose taxes upon the distribution of printed matter;[73] and it is doubtful whether the national government has made serious attempts to emasculate press freedom in this manner. What censorship exists here as a matter of fact, is not official. Entry of publications through customs has been liberally allowed.[74] The free use of the mails has few restraints.[75] Only one case[76] so far has involved the question of exclusion from the mails. The Supreme Court acknowledged in that case the authority of the Director of Posts under the law to exclude from the mails written or printed matter or photographs of an obscene, lascivious, filthy, indecent or libelous character. It added, however, the caveat that this authority should be sparingly and carefully exercised so that press freedom will not be rendered nugatory. Should the interference of the Director of Posts be felt unjustified, the person aggrieved may appeal from the decision to the courts for relief.

Tending to the same end as the power to exclude offensive matter from the mails is the provision of penal law[77] forbidding the sale

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others to cabal or meet together for unlawful purposes or which suggests or incites rebellious conspiracies or tends to disturb the peace of the community or to stir up the people against the lawful authorities."

"(d) Written or printed matter and photographs, engravings, lithographs, and other representations of an obscene, lewd, lascivious, filthy, indecent or libelous character . . ."

[69] *Schneider v. Irvington*, 308 U.S. 147; *Cantwell v. Connecticut*, 310 U.S. 296; *Largent v. Texas*, 318 U.S. 418; *Lovell v. Griffin*, 303 U.S. 444, among others.

[70] *Jones v. Opelika*, 319 U.S. 103; *Murdock v. Penn.*, 319 U.S. 105; Follett v. McCormick, 321 U.S. 573

[71] *Beard v. City of Alexandria*, 341 U.S. 622; overruling *Martin v. Struthers*, 319 U.S. 141.

It has likewise been held that a State statute providing that no boy under 12 or girl under 18 should sell periodicals on the streets, is constitutional. *Prince v. Mass.*, 321 U.S. 158.

And the distribution of purely advertising matter in the streets may be restricted or even forbidden. *Valentin v. Chrestensen*, 316 U.S. 517.

[72] *Grosjean v. American Press Co., Inc.*, 297 U.S. 233.

[73] C.A. No. 472 provides in part:

"Sec. 3. It shall be beyond the power of municipal council and municipal district council to impose the following taxes, charges and fees: . . . (c) Taxes on business of persons engaged in the printing and publication of newspapers, magazines, reviews or bulletins, appearing at regular intervals and having fixed prices for subscription and sale and which is not published primarily for the purpose of publishing advertisements."

[74] However, refer to the case of Acting Collector of Customs v. Court of Tax Appeals and Commissioner of Customs, G.R. L-8811, Oct. 31, 1957, which involved the importation by the Philippine Education Co. of the issue of Pageant magazine which contained an article "Check Your Sex Life Against the New Kinsey Report" which upon recommendation by Customs Board of Censors had been ordered seized by the Collector under Sec. 3 of the Tariff Act of 1909 which prohibits the entry of obscene and indecent publications in the Philippines.

[75] See fn. 68

[76] *Sotto v. Ruiz*, 41 Phil. 468.

[77] The Revised Penal Code punishes:

"4. Those who shall sell, give away, or exhibit prints, engravings, sculptures, or literature

or other dissemination of literary materials, among others, which are injurious to morals. Such is an offense against decency and good customs and so the restriction is valid, being required in the public interest.

III. LIMITATIONS ON FREEDOM OF THE PRESS:

Social ends preferred to free discussion in case of conflict introduce limitations to the liberty of discussion.[78] There are limits beyond which the freedom of the press ceases to serve public purposes and instead produces public or private harm. In these cases, restriction is deemed valid. The government steps in with restraints and penalties, justifying its interference not by logic or theory but by practical necessity. It hearkens to the experience of mankind as to the effects of certain kinds of publication; and where the evil seems to outweigh the good resulting, it can legitimately prohibit and punish, as it does in fact.

Now, when may publishers, editors or newsmen fear an encounter with public authority? Concrete manifestations of this power, like the act of arrest by a policeman, have to conform to existing rules of law and we must therefore examine the law if we are to successfully predict those cases when a clash is to be feared.

Social retribution through the legal machinery falls upon persons responsible when the publication in question is held by competent public authority to be injurious (1) to the public order or security, (2) to the public morals, (3) to private reputation and right of privacy, or (4) to the integrity or efficiency of public bodies like Congress and the courts. We shall briefly examine the extent to which each of these social ends, limits the freedom of the press.

(A) Restrictions in Connection with Public Order:

Public order is placed in danger through certain acts done in connection with publications and such acts are therefore justifiably penalized. No person shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State.[79] It is submitted as a requisite to liability under this provision that good faith of the person so publishing or causing the publication be absent, that at the time of the publication he knew the news to be false or had reasonable grounds to believe so.

Neither may any person encourage through publications disobedience to the law or to the constituted authorities. No one may praise, justify or extol any act punished by law. No one may maliciously publish or cause to be published any official resolution or document, without proper authority or before such has been published officially.[79a] Nor can any one print, publish or distribute or cause

which are offensive to morals." (Art. 201, par. 4). See also subsection (b) of Sec. 3 of the Espionage Act (C.A. No. 616), fn. 85

[78] "While the Court has emphasized the importance of 'free speech,' it has recognized that 'free speech' is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if interference with free expression of ideas is not found to be the overbalancing consideration." Justice Frankfurter, concurring in *Niemotko v. Maryland*, 340 U.S. 268; *Kunz v. New York*, 340 U.S. 290; and *Feiner v. New York*, 340 U.S. 315.

[79] Art. 154, par. 1, of the Revised Penal Code.

[79a] An example in Philippine jurisprudence is the case of Abelardo Subido who as editor of *Manila Post* published before official release the decision of the Supreme Court in *Krivenko v.*

to be printed, published or distributed literary media which do not bear the real printer's name or which are classified as anonymous.[80] Infraction of these prohibitions is punishable with imprisonment and a fine.[81]

More serious and therefore more heavily penalized than the above offenses are those which threaten civil disturbances within the State or which endanger its security or safety. The law imposes stiff penalties upon those responsible for publications which incite to rebellion [82] or to sedition.[83] Incitement to sedition may be committed in a number of ways. Publications are seditious (1) when they tend to incite others to sedition, (2) when they constitute scurrilous libels against the government or against any of the constituted authorities, (3) when they tend to disturb or obstruct any lawful officer in executing the functions of his office, (4) when they tend to instigate others to cabal and meet together for unlawful purposes, (5) when they suggest or incite rebellious conspiracies or riots or (6) when they lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the government.

The security or safety of the State from foreign conquest also requires limitations on press freedom. Publication of materials like blue-prints depicting installations classified top secret by the President of the Philippines pursuant to law, is heavily punished, unless prior to publication, permission has been given or censorship of the material published has been made, by proper authority.[84]

During wartime, certain acts committed through publications may be disloyal and are therefore punished. Penalized are (1) false statements or reports with the intent to interfere with the operation or success of the armed forces of the Philippines; (2) publications which cause or attempt to cause insubordination and other forms of disloyalty among members of the armed forces with the intent to promote the success of the enemies of the Republic; and (3) publications which willfully obstruct the recruiting or enlistment in the armed forces to the prejudice of the service.[85]

Register of Deeds, a copy having been furnished by a Justice of the Supreme Court. (*In Re Subido*, Res. prom. Sept. 28, 1948).

[80] Art. 154, pars. 2, 3 and 4, of the Revised Penal Code.

[81] The law provides for a penalty of *arresto mayor* and a fine ranging from 200 to 1000 pesos. (Art. 154, Revised Penal Code)

[82] Art. 138 of the Revised Penal Code states:

"The penalty of *prision mayor* in its minimum period shall be imposed upon any person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end."

[83] Article 142, Revised Penal Code.

[84] Sec. 10 of the Espionage Act (C.A. No. 616) provides:

"After the President of the Philippines shall have defined any vital military, naval, or air installation or equipment as being within the category contemplated under section eight of this Act, it shall be unlawful for any person to reproduce, publish, sell, or give away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military, naval, or air installations or equipment so defined, without first obtaining permission of the commanding officer of the military, naval, or air post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map or other representation has clearly indicated thereon that it has been censored by the proper military, naval or air authority. Any person found guilty of a violation of this section shall be punished as provided in section eight of this Act."

[85] Section 4 of the Espionage Act reads:

"Whoever, when the Philippines is at war, shall willfully make or convey false reports or false statements with the intent to interfere with the operation or success of the military, naval, or air forces of the Philippines or to promote the success of its enemies shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military, naval, or air forces of the Philippines, or shall willfully obstruct, the recruiting or enlistment service of the Philippines, to the injury of the service of the Philippines, shall be punished by imprison-

A vital question arises in the enforcement of these provisions. When is an article critical of the government or of its officers merely expressive of an opinion and therefore allowable, and when is it seditious or disloyal and therefore a reason for punishment? When is there incitement to disorder or violence, and when in contrast is there mere discussion? The lines between forbidden and permissible publications are difficult to draw and so far no thoroughly satisfactory test has been devised.

In the United States, the view prevails that if the words complained of are to be properly the basis of penalty, they must be used in such circumstances and must be of such a nature as to create a clear and present danger that they will bring about the substantive evils that the government has a right to prevent.[86] Thus ruled Justice Holmes and so the U.S. courts still hold.[87] In order that publication can be considered seditious under the *clear and present danger* rule, it must be of such a nature that by its circulation there is danger of a public uprising and that such danger must be clear and imminent.

Lately, though, there has been a modification of this test.[87a] If the danger resulting from the publication is *clear and probable* according to the circumstances brought before the court for its consideration, the defendant would be liable.[87b] Imminence of the danger feared seems not to be strictly required.

In the Philippines, a much looser test prevails.[88] Our Supreme Court has a decided preference for the *bad or dangerous tendency* doctrine.[89] Under this test, it is not required that the danger of public uprising arising from the publication be clear and present, or, as modified, clear and probable. The words of the statute itself suggests the degree of imminence required.[90] If the language used

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ment for not more than twenty years, or by a fine of not more than twenty thousand pesos, or both."

Disloyalty can be committed also during peacetime: Sec. 3 of the same Act states:

"It shall be unlawful for any person, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military, naval, or air forces of the Philippines: (a) to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny or refusal of duty by any member of the military, naval, or air forces of the Philippines; or (b) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military, naval, or air forces of the Philippines. The violation of this section shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand pesos, or both."

[86] *Schenck v. U.S.*, 249 U.S. 47 (1919), first stated the doctrine.

[87] After *Herndon v. Lowry*, 301 U.S. 242, where the U.S. Supreme Court formally adopted the test for sedition cases, its application has not been seriously questioned. Cf. TAÑADA & FERNANDO (1952), p. 360. Edwin S. Newman, *op. cit.*, pp. 51-52.

[87a] There is a difference of opinion as to the extent of the modification of the *clear and present danger test* made by the U.S. Supreme Court in *U.S. v. Dennis, et al.*, 341 U.S. 494. See HOOK, S., HERESY, YES—CONSPIRACY, No (1954), particularly Chap. V, "Reflections on the Smith Act," page 94 et seq., for the view that there was no change in doctrine. *Contra:* PRITCHETT, H., CIVIL LIBERTIES AND THE VINSON COURT (1954), p. 72 et seq.

[87b] *U.S. v. Dennis, et al., supra*, fn. 87a. The U.S. Supreme Court adopted the phraseology of Judge Learned Hand of the Federal Circuit Court in interpreting the "clear and present danger" test. Says Judge Hand:

"In each case (courts) must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

The term 'evil' refers to the substantive evils Congress has a right to prevent, and the term 'improbability" is used synonymously with 'remoteness.' HOOK, *op. cit.*, p. 97.

[88] This test prevailed in the U.S. before the adoption of the *clear and present danger* standard. Even after *Schenck v. U.S., supra*, fn. 86, it was used in convicting the defendants in *Abrams v. U.S.*, 250 U.S. 616 and in *Gitlow v. New York*, 268 U.S. 652. The latter case is relied upon as authority by our Supreme Court.

[89] Among the more important cases where this test was used, see PADILLA, *op. cit.*, pp. 114-121. In *Primicias v. Fugoso*, 45 O.G. 3280 (1948), the *clear and present danger* test is believed to have been tacitly adopted. (Fernando, E. and Quisumbing, E., "Freedom of Expression in Philippine and American Courts," 23 PHIL. L.J., p. 803.) But in the later case of *Espuelas v. People*, G.R. No. L-2990, prom. Dec. 27, 1951, the old test was used.

[90] The former law under which the above-mentioned cases were decided was Sec. 8 of Act 292. Its provisions are substantially reproduced in Art. 142 of the Revised Penal Code.

tends to incite the people to take up arms against the constituted authorities and to rise against the established government,[91] if it incites uprising or produces a feeling incompatible with the permanency of government[92] or a feeling incompatible with a disposition to remain loyal to the government and obedient to the laws,[93] or if it tends to overthrow or undermine the security of the government or to weaken the confidence of the people in the government,[94] liability attaches and the editor or the author will be punished. Conviction then is easier under this test than under the American standard.

B. Restrictions in Connection with Public Morals:

Among the time-honored limitations to the freedom of the press is the law penalizing publications offensive to public morals. No one can complain that it unreasonably infringes upon the right of expression. Morals and good customs have been recognized since ancient times as legitimate grounds for restricting what a person could say by word of mouth or in print.[95] It would perhaps be idle to balk at prohibitions of the indecent and the obscene. It is, of course, admitted that what is good taste varies with the age and clime. Nevertheless, it is futile to deny that the sense of decency, though vague in contour and lacking sharp discreteness, is real. Most of us, the liberal-minded included, are shocked as a matter of fact not only by public exhibition of indecent conduct but by open circulation of pornographic writings and prints.

Offenses against public morals which editors and writers are liable to commit include (1) open advocacy or exposition of doctrines openly contrary to public morals and (2) publication of obscene literature.[96] The issue usually involved in the prosecution and trial of these offenses is whether the publication in question is obscene.

Generally, obscenity is a matter of degree. People may differ in the border-line cases but virtually there is a definite area of agreement. One form of presentation may be more or may be less offensive than another. But in any particular case, the question of whether the limits of good taste have been exceeded depends on what are the circumstances and on who appraises them. These variants make the problem difficult. Ultimately, of course, it is a matter for the individual judges. The outcome of prosecutions for obscenity depends essentially on judicial discretion trying its best to agree with the prevailing moral climate.

Tests have been devised to demarcate perverted taste from the good and the permissible. The first of these is the fiction of the so-called average man.[97] A publication is obscene if it shocks the ordinary or average man as an indecency. Actually, the person

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[91] *People v. Feleo*, 57 Phil. 451.
[92] *People v. Evangelista*, 57 Phil. 354.
[93] *U.S. v. Dorr*, 2 Phil. 332. But it was held in this case that mere attack on policy, no matter how virulent, is not necessarily subversive or seditious.
[94] *Espuelas v. People, supra*, fn. 89.
[95] Socrates was condemned to death for corruption of public morals. (See "Apology," PLATO, DIALOGUES [1938] trans. Jowett). In ancient Rome, censorship for the protection of public morals was institutionalized. (See "Cicero," PLUTARCH, PARALLEL LIVES.)
[96] Art. 201, pars. 1 & 2, of the Revised Penal Code.
[97] *People v. Kottinger*, 45 Phil. 352. Cf. *U.S. v. One Book Called 'Ulysses,'* 5 F. Supp. 182 (1933)

shocked is the judge. It is assumed, perhaps fairly, that if the judge, tried as he is in the aberrations ofthe human taste, is shocked by the publication in question, such would be the reaction of the normal person in the community. The test requires the judge to try his best to gauge the general reaction of the community to literature very similar to that charged as had for public morals. Should he find the response condemning, he sustains the charge, otherwise not.

Another test looks to the purpose and sincerity of the author.[98] Evidence of this is largely drawn from the work in question. Was the author inspired by motives of art? If the judge thinks so, the writing is not obscene, though it may suggest in part lewd or impure thoughts.[99]

The test, though, which is ordinarily followed by the courts is whether the tendency of the matter charged as obscene is to corrupt or deprave those whose minds are open to such immoral influences and into whose hands a publication charged as obscene may fall.[100] The law under this standard accomodates itself to the weakness of the persons to be protected. Some say that it goes too far.[101] What normal people may find merely interesting, a perverted imagination may bite upon with prurient pleasure and it thus happens that the law would forbid the former their normal pleasure in its endeavor to protect the latter.

In the Philippines, either because our authors lack the ambition or the imagination to experiment or because the caretakers of our morals have become forgiving, there have been so far few prosecutions for obscenity and fewer convictions.[102] Nevertheless, the effect of the law is a real limitation. Prosecution under it is a constant danger. Even if it is true that our courts are sufficiently enlightened to be liberal in appraising artistic productions so as to make acquittal a safe probability, mere prosecution entails harrassment and personal inconvenience. Being brought to court has unpleasant, even distasteful, consequences. We cannot blame our writers if their works have been less colorful than we expect.[102a]

C. RESTRICTIONS IN CONNECTION WITH REPUTATION AND THE RIGHT OF PRIVACY:

Another ancient limitation on the right to say what one likes in print is the law which protects the reputation of individuals from malicious attack. Libel has at all times been considered a public offense.[102b] The older common law penalized libel on the theory that it tends to provoke an immediate breach of the peace.[103] This view

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[98] *People v. Serano* (C.A.), G.R. No. 5566-R, prom. Nov. 24, 1950, and *People v. Manalili* (C.A.), G.R. No. 8631-R, prom. Feb. 28, 1953. But where pictures are not used for promoting aesthetic aims but primarily for commercial purposes, the test is relaxed. *People v. Go Pin*, 51 O.G. 4005.

[99] Judge Woolsey in *U.S. v. One Book Called "Ulysses," supra*, fn. 97.

[100] *People v. Kottinger, supra*, fn. 97; *People v. Padan, et al.*, G.R. No. L-7295, prom. June 28, 1957.

[101] I. CHAFEE, Z., GOVERNMENT AND MASS COMMUNICATIONS, p. 202.

[102] No Supreme Court decision has yet dwelt on a conviction of a writer or editor for obscenity.

[102a] At this writing, short story writer Estrella Alfon is under indictment for obscenity, on charges preferred by a sectarian organization, alleging her story "Stranger in the City" offensive to public morals

[102b] RADIN, M. THE LAW AND YOU (1948), p. 148

[103] *People v. Del Rosario*, G.R. No. L-2259, prom. April 20, 1950. Libel was specially developed at common law and was brought here by statute (Act 227 of the Philippine Commission, approved Oct. 24, 1901). Pertinent jurisprudence in common law countries may then be appropriately referred to in this paper.

has been repudiated. Modern legal thought justifies the law against libel on the preciosity of reputation. The right of a person to public esteem is as much a constitutional right as the possession of life, liberty or property.[104] Since libel hurts reputation, it is penalized, so that the citizen may be amply protected from harms.

The law on libel is deemed constitutional because it punishes publications not important to the purpose of a free press. No public service is rendered by defamatory imputations aimed at private persons, which are not published from any sense of social duty but to gratify personal animosity.[105] They play no essential role in the exposition of socially valuable ideas because they do not deal with public questions.[106] The limitation is then accepted as legitimate.

But what is a libel? Any unprivileged publication defamatory of a specific person, whether dead or alive, is a libel.[107] A statement or imputation is defamatory if it tends to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead. Whether a particular imputation is defamatory is, of course, a question for the courts to determine according to the circumstances of the case.[107a]

There are four requirements for the commission of a libel: (1) defamatory imputation; (2) malice, either in law or in fact; (3) publication of the imputation; and (4) identifiability and certainty of the victim.[108]

Before we proceed further, let us note the persons responsible for a libelous publication. The law makes the author, the editor of the paper and the business manager of the paper equally liable.[109] The owner of the printing press may also be held liable,[110] though not always.[111]

We shall briefly examine each of the requirements for libel.

(1) How is the defamatory effect of the imputation determined? The test used in our courts is not what the writer of the alleged libel means but what is the meaning of the words he had used.[112] That meaning is the plain and ordinary sense in which the public would naturally understand what was stated.[113] It is of no moment that the slanderer disguises his language in metaphors and other figures of speech because the courts will understand language, in whatever form it is used, as all mankind understands it.[114] Defamation may

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[104] *Worcester v. Ocampo*, 22 Phil. 42.
[105] *U.S. v. Sotto*, 38 Phil. 666.
[106] *Chaplinsky v. New Hampshire*, 315 U.S. 568.
[107] 53 C.J.S., p. 32. Art. 353 of the Revised Penal Code defines libel thus:
"A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."
[107a] For particular cases, see PADILLA, pp. 746-749.
[108] PADILLA, p. 744.
[109] Art. 360 of the Revised Penal Code states in part:
"Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.
The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine, or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof."
[110] *People v. Topacio*, 59 Phil. 356; *People v. Ortiz*, 8 Phil. 752.
[111] *Ocampo v. Evangelista* (C.A.), 37 O.G. 2196.
[112] Lord Bramwell, *Henty's Case*, 52 L.J.Q.B. 232, quoted in *People v. Encarnacion* (C.A.), 48 O.G. 1817; 53 C.J.S., p. 47
[113] 53 C.J.S. 47 et seq.; *Jimenez v. Reyes*, 27 Phil. 52; *U.S. v. Sotto*, 38 Phil. 666.
[114] Chief Justice Shaw, quoted in *U.S. v. O'Connell*, 37 Phil. 767.

be made by implication, by expression of belief or opinion, by insinuation, by mere question, by sarcasm or irony, by words of comparison, or by words or praise or congratulation.[115]

(2) Malice in the law of libel has two meanings. First, it may denote unprivileged publication of defamatory matter without lawful excuse.[116] Second, it may mean an evil motive or ill-will in making the publication.[117] The first is generally called malice in law; the second, malice in fact.[118]

Malice in law is presumed malice [119] or that which the law supposes when an injurious publication is made without justification. The law assumes that if a man publishes something bad about his neighbor, he intends the harm done, unless he shows that probably not evil intent but a better one prompted th eact. How is this done? Generally, by proof that the communication was privileged, that it falls in one of those cases where the law in the public interest exempts from liability for the harm resulting from publications. Unless a privileged occasion for publication is proved, conviction may be made without an express showing of a particular evil intent. No separate proof of malice need be made. If A, for example, calls B a Japanese tool, A becomes immediately liable the moment it is proved that A is the author of the statement and that it is defamatory.[120] Acquittal is possible only if A proves the imputation privileged.

When a libel is proved to have been made on a privileged occasion,[121] the presumption of malice disappears. To make the defendant liable, particular malice has to be proved expressly like any other fact averred and is therefore rightly called malice in fact.[122] This follows the basic theory in criminal law that an act no matter how wrongful, cannot be criminal unless the mind actuating it is criminal.[123] Malevolence or some other blameworthy attitude must attend the defamatory imputation if such is to be punishable.

(3) The third requirement is publication, which means communication of the libelous matter to at least a third person—that is, it must be known and understood by a person other than the plaintiff and defendant.[124] For editors and newsmen to be liable, however, it is not enough that the issue containing libelous matter be printed. It is required that it be circulated in public, to give reasonable probability at least that the libelous matter be exposed to be read by

[115] 53 C.J.S., p. 46.
[116] 53 C.J.S., p. 125.
[117] PADILLA, p. 750; *U.S. v. Cañete et al.*, 38 Phil. 253; 53 C.J.S. 175.
[118] PADILLA, p. 750.
[119] The reason of the law for presuming malice from the fact of a libelous publication is pretty obvious. The harm to reputation which the law seeks to prevent is done with the act of publishing and since acts do not occur of themselves but are ordinarily products of volition, voluntariness may be safely supposed. A man presumably knows what he does when he exerts the neural energy that results in an external act, save in unusual cases like insanity or epilepsy; and if harm results from what he does, he must have meant it to happen and can then be held responsible for it.
Another reason for the presumption is practical. Intent to do evil is a mental affair; and being intangible, it is sometimes impossible and at all times difficult, to demonstrate. The law then contents itself with supposing that a person who uses stinging words knows they will sting and he cannot escape liability by merely alleging his mind was pure while concocting and publishing the libel. To overcome the presumption, he must show it was made on an occasion which ordinarily calls for a more lofty motive, that is, a privileged occasion. (See Section on "Malice" HOLMES, O. W., THE COMMON LAW (1925 ed.).
[120] *Blanco v. People*, 70 Phil. 735; Art. 354, par. 1, Revised Penal Code.
[121] Proof essential since privilege is a matter of defense. *Lu Chu Sing, et al. v. Lu Tiong Gui*, 76 Phil. 669
[122] *U.S. v. Bustos*, 37 Phil. 731; PADILLA, 750.
[123] "Actus non facit reum, nisi mens sit rea."
[124] 53 C.J.S., pp. 127 and 129.

third persons.[125] As to the author, though, mere sending of a libelous item to a newspaper [126] or mere delivery of such to a typesetter,[127] constitutes sufficient publication. Publication is important because reputation which a libel is supposed to injure is the public estimate of the victim.[127a] This cannot be harmed unless the public be informed through the libelous matter that he is worse than it supposes.

(4) The last requirement for libel is that the victim of the defamation must be clearly identified.[127b] A libel attacks reputation but it must be the reputation of *some* person. It is doubtful whether a charge of "group libel", [128] which is allowed by statute in some states of the American Union, could be sustained in Philippine courts. Our law favors the theory that reputation is a quality of the individual person and never of aggregates of persons, however much they may have in common. Conviction, however, could possibly be made for some offense prejudicial to public order.[129]

Identification need not be by name.[130] It could be shown against whom the defamation was directed by the testimony of friends of the offended party [130a] or of the persons who knew the parties or the circumstances.[131] Nor is it essential to show that the defendant meant to attack the person libelled. Generally, if the public may understand that the words used referred to the plaintiff, it is immaterial that the defendant had no such intention.[132]

But where no person is specified by name or accurately described in the matter alleged to be libelous, it is not enough that the defendant recognized himself as the person attacked. At least one third person must identify him as the object of defamatory matter.[133] Where the article, therefore, is impersonal on its face and does not single out individuals, there is absent that identification or specification of the offended party which the law requires.[134]

What defenses to libel may an author or editor make? There are three,[135] aside from the general defense that no libel has been commited because the requirements laid down by law have not been met. The first two defenses cover communications made priveleged in the public interest.[136]

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[125] *Ocampo v. Evangelista, supra,* fn. 111; *People v. Atencio* (C.A.), G.R. Nos. 11351 to 11353-R, prom. Dec. 14, 1954.

[126] *U.S. v. Crame,* 10 Phil. 135.

[127] *People v. Tolentino* (C.A.), 37 O.G. 1763.

[127a] *People v. Atencio, supra,* fn. 125.

[127b] *People v. Andrada,* 37 O.G. 1783.

[128] RADIN, *op. cit.,* p. 149; *Beauharnais v. Illinois,* 343 U.S. 250, which sustained the constitutionality of the 'group libel' statute of Illinois.

[129] One of the means of committing sedition is to commit, for any political or social end, any act of hate or revenge against any social class (Art. 139, par. 4, Revised Penal Code). Incitement to this aim is punishable under Art. 142 of the Revised Penal Code.

[130] *Causin v. Jakosalem,* 5 Phil. 155; *Worcester v. Ocampo, supra,* fn. 104.

[130a] *Causin v. Jakosalem, supra,* preceding fn.

[131] *Worcester v. Ocampo, supra,* fn. 104.

[132] 53 C.J.S., p. 54.

[133] *Kunkle v. Cablenews American & Lyons,* 42 Phil. 757; PADILLA, 758.

[134] *Uy Tioco et al. v. Yang Shu Wen,* 32 Phil. 624; *People v. Andrada, supra,* fn. 127b.

[135] A previous libel will not justify another libel given in answer. *Pellicena v. Gonzalez,* 6 Phil. 50; *Causin v. Ricamora,* 5 Phil. 31; 53 C.J.S. 228. *Contra: People v. Chua Hiong* (C.A.), 51 O.G. 1932.

Belief in truth not a defense when matter is unprivileged. 53 C.J.S. 227.

Honest mistake in publication is not a complete defense but only mitigates damages. *Phee v. La Vanguardia,* 45 Phil. 211.

But a retraction containing an admission of the incorrectness of a publication, inspired by a desire to make reparation for the wrong done, and evincing candor and generosity, may constitute a defense. *Sotelo Matti v. Bulletin Publishing Co.,* ? Phil. ... *Contra:* 53 C.J.S. 228.

[136] *U.S. v. Bustos, supra,* fn. 1.

First is the defense that a report has been made of a privileged occasion and that the report is true. A privileged occasion refers not only to the official proceedings of public bodies like Congress and the courts but to the acts of public officials and employees as well.[137] How accurate must such report be? The law requires that it be substantially true. More inaccuracies, not materially affecting the purport of the article, does not render the article actionable. The requirement is met when the report narrates only that which happened in the course of the proceedings, giving an account that is fair and impartial and accurate at least to material matters.[138]

A word of caution on publishing reports of judicial or administrative proceedings touching on facts disclosed in such proceedings. A report of a privileged occasion is privileged, if true. Nevertheless, the law refuses to allow the doctrine of privileged communications to become a refuge for those who give vent to their meanness in print. It penalizes those who publish facts connected with the private life of another and offensive to the honor, virtue and reputation of said person, even though said publication be made in connection with or under the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned.[138a]

Second is the defense that comment has been made upon a matter of public concern and that the comment is fair. What subject is proper for comment? The law requires that it be such a thing as invites public attention or calls for public comment.[139] Obvious examples are the public acts of public men,[140] the reputation and qualifications of candidates for public office,[141] works of art or literature,[142] and merchandise offered for sale to the public.[143] Allowable comment on public officials should be qualified. It should not refer to the person himself but to his work. Attack on the official policy adopted or on the official act performed is privileged comment but not attack on the man himself.[144]

When is comment fair? Comment is fair and therefore privileged when it is true or when, though found false, it expresses the real and honest opinion of the author, such opinion having been formed with a reasonable degree of care and on reasonable grounds.[145] We must note an important distinction. A report, being one of fact, must be at least substantially true so as not to be actionable. But comment, being opinion, need not be correct to be innocent. It may be mistaken, as long as it is fair, and no liability will result.[146]

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[137] Art. 354 of the Revised Penal Code states in part:
"Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases: . . . (2) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings, which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions."

[138] 53 C.J.C., pp. 200-203.

[138a] Art. 357, Revised Penal Code.

[139] 53 C.J.S. 215-216.

[140] *U.S. v. Bustos, supra*, fn. 1; *U.S. v. Contreras*, 23 Phil. 513.

[141] *U.S. v. Sedano*, 14 Phil. 338.

[142] 53 C.J.S. 221.

[143] 53 C.J.S. 223.

[144] *People v. del Fierro* (C.A.), G.R. No. 3599-R, prom .July 27, 1950; *U.S. v. Contreras, supra*, fn. 140.

[145] *People v. Velasco* (C.A.), 40 O.G. 3694.

[146] *People v. Velasco, supra*, fn. 145

Either of these defenses is complete in itself and exonerates from liability, unless subsequently in the proceedings specific malice or malice in fact is proved to have been the basis of publication.[146a] The doctrine of privileged publication, does not cover cases where the harm resulting was actually intended. Public interest, even when actually promoted, cannot be made a cloak of immunity for evil words proceeding from an evil mind. The requisites of penal law as to a wrongful act and a criminal intent are satisfied and liability attaches as a consequence.[146b]

The third defense is the so-called proof of the truth of an unprivileged communication. Generally, where the privileged character of the publication is not shown, the law does not allow the truth of a defamatory imputation to be proved. There are only two cases where it so allows;[147] and even in these cases, truth alone is not a complete defense. To overcome the presumption of malice arising as a matter of law, it must be further shown that the publication, aside from being truthful, was made with good motives and for justifiable ends.[148]

What are these two exceptional cases? The first is where the bad act imputed to the person libeled constitutes a crime.[149] The reason for the exception is clear. If A calls B a thief, B will be hurt in his reputation and so the statement is defamatory. Malice on the part of A arises as a matter of law. Should the imputation be false, there is no question as to the liability of A. But suppose what A said was true? The obvious interest of the State in the apprehension of criminals and in the punishment of offenses evidently justifies taking the case out of the general rule and allowing A to show that B is in fact a thief.

The second exception is a case where the imputation shall have been made against government employees with respect to facts related to the discharge of their official duties.[150] Exposure of unpleasant facts which have a bearing on the functions of a public officer is sure to cause him harm; but the editor or newsman will be excused if truth and good motives are shown because of the obvious public interest in the competence and upright conduct of public men. If for example, a provincial governor is branded unfit to exercise his duties because he is insane, it seems pretty clear that proof of the truth should be allowed. The fact put in issue (insanity) is intimately related to the discharge of his public functions. A governor would not be able to act well in the public interest if the charge is true.

[146a] *Lu Chu Sing v. Lu Tiong Gui, supra,* fn. 121.

[146b] *People v. Topacio et al.,* fn. 110; *U.S. v. Cañete, supra,* fn. 117.

[147] Aside from proof of truth incidental to the defense of privileged report. Art. 354 (2) of the Revised Penal Code

[148] Art. 361, first par., of the Revised Penal Code states:

"In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and justifiable ends, the defendant shall be acquitted."

[149] Art. 361, par. 2, Revised Penal Code states in part:

"Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted . . ."

[150] Continuation of Art. 361, par. 2, R.P.C. as quoted in preceding footnote reads: ". . . unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties."

In both these cases, if the defendant proves the truth of the unprivileged imputation, he shall be acquitted. Art. 361, par. 3, Revised Penal Code.

Another interest which the law protects at the expense of some liberty of the press is the right of privacy.[150a] Persons are entitled to be let alone. Publication of private facts unsuited for publicity, though not necessarily libelous, causes embarrassment and may injure one's intercourse with his fellowmen. Protection from the glare of print has as a result been afforded by the law to some extent. Letters sent by one person to another become the property of the addressee but the same may not be published without the consent of the writer or of his heirs.[150b] We are now all burdened with the duty of respecting the dignity, personality, privacy and peace of mind of our neghbors and other people.[150c] Should the press misbehave so as to injure the right to be let alone, civil liability could be exacted. It is to be hoped that pecuniary damage inflicted whenever it damages the privacy of persons would improve its manners and minimize trivia. Only thus could it concentrate on its higher functions.

D. RESTRICTION IN CONNECTION WITH INHERENT POWERS OF PUBLIC BODIES:

The last fertile source of restrictions on the freedom to publish is the power of the courts and the legislature to punish for contempt. Such power is inherent in both kinds of public bodies.[151] For the courts, it is vital to their independence and integrity as well as to the orderly administration of justice.[152] For the legislature and its committees, it is an instrument of self-preservation as well as an appropriation auxiliary to the legislative function—especially in the ascertainment of facts on which future legislation may be based.[153]

Judicial contempt may arise whether a case is pending in the court offended or not.[154] When a case is pending, the basis of punishment is protection of the orderly administration of justice. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice is contempt of court.[155] Some species of such bad conduct may be mentioned. One is unfair comment—unfair in that it tends to influence unduly the judge or the court in determining the final outcome of the controversy.[156] But comment fairly made and in good faith [157] as well as a true report of nonconfidential proceedings in court [158] is privileged.

[150a] See "Right of Privacy" by Louis D. Brandeis and Samuel D. Warren, 4 HARVARD LAW REVIEW, 193-220. This essay has probably done more than any other legal writing to develop this legal concept for use in the courts. (Pollack, H. H., ed. BRANDEIS READER [1956], p. 85.)

[150b] Art. 723 of the Civi Code of the Philippines reads:

"Letters and other private communications in writing are owned by the person to whom they are addressed and delivered, but they cannot be published or disseminated without the consent of the writer or his heirs. However, the court may authorize their publication or dissemination, if the public good or interest of justice so requires."

[150c] Art. 26 of the Civil Code reads in part:

"Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons."

[151] TAÑADA AND FERNANDO, pp. 256 and 740.

[152] *In re Vicente Sotto*, prom. Jan. 21, 1949; *In re Kelly*, 35 Phil. 944; *In re Torres*, 55 Phil. 799; *In re Quirino*, 76 Phil. 630; *In re Brilliantes*, 42 O.G. 59; *In re Subido*, prom. Sept. 28, 1948.

[153] *Lopez v. de los Reyes*, 55 Phil. 170; *Arnault v. Nazareno*, 46 O.G. 3100.

[154] *People v. Alarcon*, 40 O.G. (3rd Supp.) 294.

[155] Rule 64, Sec. 3 (d) of the Rules of Court.

[156] *In re Quirino, supra*, fn. 152.

[157] *El Hogar Filipino v. Prautch, et al.*, 49 Phil. 171. In the U.S. comment on pending cases is appraised on the "clear and present danger" principle. *Bridges v. California*, 314 U.S. 252; *Pennekamp v. Florida*, 66 S. Ct. 1029; *Craig v. Harney*, 331 U.S. 367.

[158] *U.S. v. Perfecto*, 42 Phil. 113. See requisites of privileged report: Art. 354, par. 2, Revised Penal Code.

Another example of contemptuous conduct is publicity given proceedings or matters declared confidential. Proceedings for the suspension or disbarment of attorneys [159] or for the investigation of a judge of a superior court [160] belong to this class—for the obvious advantage of avoiding premature and harmful publicity of what could be a baseless charge.[161] It is not merely comment then which is forbidden. Report of such proceedings, however accurate, may constitute contempt.[162]

A third example of prohibited publications when a case is pending in court is premature disclosure of a judicial decision.[163] The reason for this rule in civil cases is to avoid giving one party pecuniary advantage through prior information as to the outcome of the case; and in criminal cases, to preclude the flight of the accused in case of conviction or affirmance thereof. Besides contempt, liability under penal law may be incurred for this act.[164]

Because of the sensitiveness of our courts to publicity on pending cases, it becomes a very important matter to know when a case is pending. The period covered seems to start from the time the court has acquired jurisdiction to act on the matter to the time the case is finally terminated. The latter does not always mean the time when the promulgation of judgment takes place. A case is not disposed of finally, so long as the judgment is still open to modification, rehearing or appeal.[165] Contempt has been found in discussing a judgment which, though promulgated, was still under the power of the court because a motion to reconsider was pending before it.[166] It seems editors and newsmen would be a lot safer if they refrained from strictures and criticism until the judgment has become final and executory. This generally is the case when the time to appeal has lapsed and no appeal has been perfected.[167]

Criticism can, of course, be allowed when the case has been finally disposed of, for then it can no longer influence the decision of the court.[168] But an insult hurled at the court, even when the case to which the comment refers has been terminated, is punishable.[169] The same rule obtains as to unfair attacks on the court, although no case is at all involved.[170] Such tends to undermine the integrity of the court and to diminish public confidence in its impartiality and competence. The power of contempt inheres in the court as a fitting instrument to preserve its independence and to enforce respect towards it. [171]

Much of what is said in the foregoing paragraph goes for Congress and its committees. There is no question that legislative con-

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[159] Sec. 10, Rule 128. *In re Abistado, supra*, fn. 65.
[160] Sec. 6, Rule 129. *In re Lozano & Quevedo, supra*, fn. 65.
[161] *In re Abistado, supra*, fn. 65
[162] In re Lozano & Quevedo, *supra*, fn. 65; *In re Abistado, supra*, fn. 65.
[163] *In re Subido, supra*, fn. 152.
[164] Art. 154, Revised Penal Code, punishes, among others:
"3. Any person who shall maliciously publish or cause to be published any official resolution or document without proper authority, or before they have been published officially."
[165] *In re Subido, supra*, fn. 152; *In re Quirino, supra*, fn. 152.
[166] *In re Quirino, supra*, fn. 152.
[167] Sec. 1, Rule 39, Rules of Court.
[168] *People v. Alarcon, supra*, fn. 154; *In re Lozano & Quevedo, supra*, fn. 65.
[169] *In re Vicente Sotto, supra*, fn. 152; *In re Brilliantes, supra*, fn. 152.
[170] *People v. Alarcon, supra*, fn. 154.
[171] TAÑADA & FERNANDO, 740; *In re Vicente Sotto, supra*, fn. 152.

tempt is incurred when Congress or its subsidiary bodies are falsely or unfairly attacked.[172] There is likewise no question that the legislature or its committees can compel under pain of penalty the divulgence of facts vital to pending or contemplated legislation.[173]

On the other hand, the efficiency of the press as fiscalizer of the government and its officers requires some secrecy as to where it gets the news. It must hold confidential its sources of information as to what happens in government offices and as to what is done or is not done by public officers and employees. Certainly, a mere clerk, for example, in a bureau would never venture to furnish inside facts on the misdeeds of his boss, if he could be exposed as the informant whenever Congress or its committees or the courts are inclined to think the revelation important. What then if these public entities insist that the source of a news item exposing an official anomaly be revealed, so that they can get to the bottom of the evil and perhaps provide a remedy?

This conflict between public power and the freedom of the press was dramatized in the case of Angel Parazo.[174] He published a news story to the effect that there was a leakage in the 1948 bar examinations. Ordered by the Supreme Court to specify the source of his information, he refused and was consequently jailed for contempt of court. Our highest tribunal of justice ruled that under the law prevailing,[175] the alleged leakage in the bar examinations affected the "interest of the State" and therefore it had the power to compel disclosure and to penalize, as it did, in case of refusal.

The resulting agitation against the decision,[176] which was felt to be a threat to press freedom, resulted in what was conceived to be a salutary amendment. As the law now stands,[177] representatives of the press cannot be compelled to reveal the source of news reports they publish. The only exception is when a court or a House or a committee of Congress finds that such revelation is demanded by the "security of the State." The substitution of the phrase "security of the State" for the much broader and more sweeping concept of "interest of the State" found in the old law, is believed to furnish more substance to the constitutional guarantee of press freedom from too much inquisition by government agencies.

The limitations on press freedom we have noted are many and care must specially be taken that these are not over-extended, that they are not pushed beyond what is necessary to protect the social ends they serve. Public opinion has not been vigorous in its defense of a free press [178] and should then be nurtured into taking greater vigilance. Not that press freedom here has not been real. Criticism

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[172] Attacking and assaulting a member of either House of Congress incapacitating him from attending sessions, may constitute legislative contempt. *Lopez v. de los Reyes, supra*, fn. 153.

[173] *Arnault v. Nazareno, supra*, fn. 153

[174] *In re Parazo*, 45 O.G. 4382.

[175] Republic Act No. 53

[176] R.A. No. 53, as amended by R.A. No. 1477, states:

"Without prejudice to his liability under civil and criminal laws, the publisher, editor, columnist, or duly accredited reporter of any newspaper, magazine or periodical of general circulation, cannot be compelled to reveal the source of any news report or information appearing in said publication which was related in confidence to such publisher, editor or reporter, unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State." (Approved June 15, 1956).

[177] *People v. Velasco, supra*, fn. 145; *U.S. v. Perfecto, supra*, fn. 158.

has been freely allowed by the courts, though there have been lapses;[179] and tolerated, despite some severity, by our public officials. In fact, it has been for quite some time now the proud boast of the government that the Philippine press is perhaps the freest in the world.[180] But much of the substance of its freedom has so far rested on judicial tolerance, when it should rest on a sensitive public opinion.

The great body of enlightened citizens in a republic should be jealous of every governmental encroachment upon a free press, whether through the legal machinery or through extra-legal means.[181] A free press is among the chief criteria which distinguish free governments from those not free.[182] Every modern dictatorship has started with emasculating, then suppressing, this freedom. If democracy as the free expression of popular sentiment in politics is to survive here, if the political decisions of citizens are to be kept intelligent and the government kept responsible, it is not the least requirement that the freedom of the press be kept real and healthy.

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[179] Fernando, E. & Quisumbing, E., *op. cit.*

[180] Statement appears in Manila *Daily Bulletin* (49th Anniv. Ed. Sec. 1, p. 12, March 28, 1949.)

[181] Pres. Magsaysay was criticized for trying to muzzle the press by favors granted newsmen and frequently, by appointing the more prominent to government positions or by placing them on the government payroll.

[182] RADIN, 148.

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