THE CONSTITUTIONAL RIGHTS OF STUDENTS

By RUBEN D. TORRES *

Time was there when the students were the masters in a university.[1] They employed professors of their choice and dismissed them according to their own rules and regulations. But times have changed. The students of contemporary universities and colleges are no longer the masters. The professors have taken over the authority. The power to admit and dismiss students now belongs to the professors.

Regardless of who holds the scepter, however, the university has always been a community of the professed and the professors. Albeit united in their pursuit of knowledge by the "love of truth," the students and the university authorities often find themselves as protagonists instead of partners.

It is the purpose of this paper to examine the conflict, the nature of the authority exercised, the rights affected and the remedies available for redress of wrongs committed by the university authorities against their students.

EDUCATION—Right or Privilege?

The complexities of modern life and the reliance on the fact that a man's education is the only and true measure of his ability to assume a responsible role in society make education today a compelling necessity. A man's future or even his very existence might depend on his education. Such is the importance of education that it occupies almost the same position as a natural right. M. Bernard Francis Loughery said that, "Each child has a natural right to be educated for social and economic adequacy according to the exigencies of the times." [2] Apropos a student's admission to a university, it was held in one case that a student has the right to be admitted to a state university. It was likewise stated in this case that "the right of admission to a state university is a right

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* Chairman, Student Editorial Board, 1965-66.

[1] The University of Bologna which existed in the Middle Ages was practically of students. In fact, it was established by the students themselves. In this university, the professors were under the control of the students. The professors were put under bond to live up to a minute set of regulations which guaranteed their students the worth of the money paid by them. (See Charles Homer Haskins. *The Rise of Universities,* Holt and Co., New York, 1923.)

[2] M. Bernard Loughery. *Parental Rights in American Educational Law,* The Catholic University Press, Washington, D.C., 1957, p. 53.

which the trustees or other officers are not authorized to abridge materially, and which they cannot as an abstract proposition rightfully deny." [3] The contrary contention maintains that education is a mere privilege and as such it may be subject to whatever conditions the grantor deems proper to impose.

Prior to the case of *Dixon v. Alabama State Board of Education*,[4] the question of whether education in a state university if a right or a privilege was vital for it determines the presence or absence of constitutional protection. It is argued that constitutional protection cannot be invoked if it is a mere privilege. In this case it was stated that "regardless of its classification, this is an interest which is entitled to constitutional protection." Hence, by virtue of the *Dixon* case ruling, students in public or private institutions are equally afforded protection by the pertinent provisions of the constitution.

THE UNIVERSITY'S POWER AND ITS LIMITATIONS

A university is the "whole body of teachers and scholars, engaged at particular place in giving and receiving instruction in higher branches of learning." [5] Specifically, the function of a university, as the University of the Philippines, is "to provide advanced instructions in literature, philosophy, the sciences and arts, to give professional and technical training, and to encourage and undertake research and contribute to the growth and dissemination of knowledge." [6]

As imparting knowledge is the essence of a university it follows as a logical consequence that it has to deal primarily with students. But the relationship between the teachers or the university and the students is more than the imparting and receiving of knowledge. The university likewise governs the students and in the process of governance, it has to promulgate rules and regulations. In view of this, conflicts arise as a matter of course between the University in exercising its power to govern and the students in the exercise of their rights as individuals and citizens.

Colleges and universities must, therefore, have the power to establish and enforce rules, both disciplinary and academic, in order

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[3] Cornel v. Gray, 127 Pac. 417, 33 Okl. 591, 42 LRA N.S. 336 Am. Case 1914 F 399.

[4] 294 F. 2d 150, 368 U.S. 930; See also: Guillory v. Administrators of Tulane Univ., 212 F. Supp. 374; University of Miss. v. Waugh, 105 Miss. 623; 62 Sc. 827; Foley v. Benedict, 55 S.W. 2d 805.

[5] *Black's Law Dictionary*, p. 1704.

[6] Art. 3, *Revised Code of the University of the Philippines.*

to further their interests.[7] University and college authorities may make all necessary and proper rules and regulations for the orderly management of the institution and the preservation of discipline therein,[8] and rules enacted in the exercise of a power so granted are of same force as would be a like enactment of the legislature, and their official interpretation by the university authorities is a part thereof.[9]

But while the rule-making power of universities is inherent, it is not absolute. Some limitations are: (1) that the rules and regulations adopted by the governing board of a college or university are subject to restrictions imposed by law;[10] (2) that such rules must not "interfere with some positive right;" [11] (3) as the rights that may be affected by university rules are those protected by the Constitution, such rules should not contravene constitutional provisions; [12] (4) "there must be a reasonable connection between the misconduct proscribed by a rule and the interest which the school is seeking to protect under the rule; [13] and (5) the punishment must fit the offense.[14]

RULE MAKING POWER OF THE UNIVERSITY OF THE PHILIPPINES

The government of the University is vested in the Board of Regents of the University of the Philippines. The Board is composed of the Secretary of Education, who is *ex officio* chairman of the Board, the Chairman of the Committee on Education of the Senate, the Chairman of the Committee on Education of the House of Representatives, the President of the University, the Director of Public Schools, and seven additional members to be appointed by the President of the Philippines.[15]

Under Section 6, sub-section (h) of the Charter,[16] the Board of Regents is empowered "to prescribe rules for its own government,

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[7] Eugene Kramer. "Expulsion of Colleges and Professional Students" — Rights and Remedies", *Notre Dame Lawyer*, Vol. XXXVIII, No. 2, March, 1963, p. 174.

[8] Waugh v. University of Mississippi, 237 U.S. 589, 59 Led 1131; State ex rel. Little v. University of Kansas, 55 Kan. 389, 40 P. 656; Woods v. Simpson, 146 Md 547, 39 ALR 1016; Foley v. Benedict, 122 Tex 193, 55 SW rel. 805, 86 ALR 477.

[9] Newman v. Graham, 82 Idaho 90, 349 P2d 716, 83 ALR 2d 492.

[10] Rheem v. Bd. of Regents of University of Oklahoma, 18 P. 2d 535, Okl. 264.

[11] Anthony v. Syracuse University, 223 N.Y. 796, 805, 33 Misc. 249.

[12] Art. III (Bill of Rights), *Constitution of the Philippines.*

[13] Knight v. State Bd. of Educ., 200 F. Supp. 174 M. D. Term, 1961.

[14] Kramer, *op. cit.*, p. 177.

[15] Sec. 4, Act No. 1870, as amended, *Charter of the University of the Philippines.*

[16] *Ibid.*

and to enact for the government of the University such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the University." The President of the University has the specific power of "supervision and control, through the Dean of Student Affairs over extra-curricular activities of students; and authority to issue adequate rules for the organization and operation of student organizations and for the election of officers thereof." [17]

As regards student organizations, it is provided that they shall "be directly under the control and supervision of the Dean of Student Affairs, college or school student organizations and class organizations shall be under the jurisdiction of the Dean or Director of the corresponding college or school. [18]

Concerning student publications, the Code provides: [19] "The publication of the *Philippine Collegian* as a newspaper for the students shall be governed by the University Code and by the rules and regulations approved by the President, who shall appoint, on the recommendation of the Dean of Student Affairs, a Faculty Adviser on the administrative and editorial work of the *Collegian.* No issue of the *Collegian* may be printed without the previous approval of the Adviser in writing. As administrative adviser, he has disciplinary power over the members of the staff; and as editorial adviser, he may at any time forbid the publication of any news item, story, article, editorial, or other matter, on grounds provided by the constitution of the *Collegian; Provided,* however, that the editor-in-chief shall have the right to appeal to the Dean of Student Affairs whose decision shall be final." For publications other than the *Philippine Collegian,* prior approval of the Dean of Student Affairs is required.[20] No student organization, club, society, fraternity, sorority, or any other form of association, whether of a permanent nature or not, shall publish, circulate, issue, or edit any publication of Student Affairs.[21]

SANCTIONS FOR VIOLATIONS

Under the Revised Code of the University of the Philippines, whatsoever without having been previously approved by the Dean the sanctions for violations of any rule of the University may be disciplinary action which may take the form of expulsion, suspension from the University, exclusion from any class, reprimand, warn-

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[17] Sub-section (k), Section 44, Revised Code of U.P.
[18] *Ibid.*, Art. 458.
[19] *Ibid.*, Art. 450.
[20] Art. 65. *Rules and Regulations on Student Organizations & Activities,* published by the Office of Student Affairs, U.P.
[21] *Ibid.*

ing, or expression of apology. The gravity of the offense committed and the circumstances attending its commission shall determine the nature of the disciplinary action or penalty to be imposed.[22]

Any student charged of personal misconduct or breaches of discipline shall be investigated by the dean or director of the college of the student and after investigation such dean or director may suspend the student for not more than one month.[23] If the Dean or Director considers the offense serious enough to necessitate suspension for more than one month, he shall submit to the President his recommendation for the student's suspension for a longer period but not more than one year. The President shall impose the penalty recommended unless it is necessary to modify or set it aside.[24] If the Dean or Director, after due investigation, finds it necessary to have the student suspended for more than one year or to have him expelled from the University, he shall so recommend to the President for further investigation of the case and final decision by the Executive Committee.[25]

THEORIES OF UNIVERSITY-STUDENT RELATIONSHIP

One of the theories concerning university-student relationship is that the university stands in *loco parentis*. Thus, the power which the officers of a college may lawfully exert to restrict and to control the actions of their students is based upon the fact that, in law, the college stands in the same position to its students as that of the parent—*in loco parentis*—and it can therefore direct and control their conduct to the same extent that a parent can.[26] In the case of *Stetson University v. Hunt*,[27] it was held that "as to mental training, moral and physical discipline, and welfare of the public, college authorities stand in *loco parentis*, and in their discretion may make any regulation for their government which a parent could make for the same purpose, and, so long as such regulations do not violate divine, or human law, courts have no authority to interfere than they have control over the domestic discipline of a father in his family." This doctrine, however, has been received with disfavor in recent decisions.[28] It is the more current view that the doctrine falters with regard to present-day stu-

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22 Art. 426, Revised Code of U.P.

23 *Ibid.*, Art. 480.

24 *Ibid.*, Art. 481.

25 *Ibid.*, Art. 482.

26 Thomas Edward Blackwell. *College Law: A Guide for Administrators.* George Banta Inc., Menasha, Wisconsin, p. 104.

27 55 Fla. 510, 102 So. 637; See also Gott v. Berea College, 156 Ky. 376; 161 S.W. 204.

28 Commonwealth ex rel. Hill v. McCauley, 3 Pa. County Ct. 77, 87-88 and cases cited therein.

dents, larger numbers of whom have reached their majority are married, and are paying for their own education.

The other theory is known as the *contract theory.* The exponents of this theory hold that upon registration and payment of fees the student and the university concluded their agreement for the latter to educate the former who will pay the required fees. The weight of authority recognizes a contractual relationship between students and university.[29] The relation of a student to the college or university which he is attending is a contractual one,[30] and the terms of the contract are to be interpreted according to their natural meaning.[31]

UNIVERSITY RULE-AFFECTED RIGHTS OF STUDENTS

One question which is still very much unsettled is whether students in a university or college can invoke his constitutionally protected rights against the university in which he is enrolled. Or put in another way, whether rules and regulations which appear to be against the constitutionally vested rights of an individual student can be declared by the courts as null and void.

Those who are concerned with the law would probably perceive that in cases involving students in a university there are a vast number of affronts to the Constitution. To dismiss a student for failure to attend compulsory religious services, or for participating in an off campus political rally, or for circulating printed materials in the campus, or for publishing a student newspaper, or for speaking for the recognition of Red China and the merits of Communism, would for instance, appear to violate the student's freedom of speech and of religion. To dismiss a student without a hearing would seem to violate procedural due process. To dismiss him without reference to some rule adequately describing the prescribed conduct would be to transgress both substantive and procedural due process. To dismiss him for reasons unrelated to his academic fitness would seem arbitrary, and a denial of equal protection.

Oftentimes the courts seem unwilling to review the acts of university officials or to declare university rules as null and void being violative of some positive rights of students despite their being patently illegal or unconstitutional. It is advanced that "the reluctance of courts to interfere in cases of college disciplinary action is founded

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[29] Steir v. New York State Education Commissioner, 271 F. 2d 12, 361 U.S. 965; Dehaan v. Brandeis Univ., 150 F. Supp. 626; Stetson Univ. v. Hunt, 55 Fla. 510, 102 So. 637; Robinson v. Univ. of Miami, Fla. 100 So. 2d 442; Stallard v. White, 82 Ind. 278 (references made to the implied promises of parties).

[30] Barker v. Bryan Mawr College Trustees, 278 Pa. 121.

[31] Iron City Commercial College Trustees, 1 Pa Dist. & Co. 283, 3 Brewst 191.

on the historical independence of universities from intervention by outsiders in their internal affairs—an independence which continues to be guarded jealously by the universities. Admittedly college officials are in a better position than the courts to administer discipline, but the attitude of judicial self-restraint in such matters should not be allowed to countenance an injustice to the dismissed student." [32]

A significant trend has been, however, established in recent years. More and more cases are being considered by the courts each year involving the relationship of students and their university. This is most noticeable in the United States. In our jurisdiction we cannot yet speak of such a trend. Presently, in the United States, a great number of courts already hold that "where a student's collegiate educational opportunities rest in the balance, the proceeding would be classified as adjudicatory even though the student's interest is not categorized as a 'legal right.'" [33] In a case, it was held that when regulations or rules are unauthorized, against common right or palpably unreasonable, the courts will annul or revise them." [34] In the same case, it was stated that in accordance with the contract theory, even in the formulation of the terms of the contract, the school is not without judicial supervision, for it cannot expel a student for breach of a rule which is held to be unreasonable, which is a question for the court even in an action for damages. What is reasonable and what is unreasonable is for the court to decide. Thus, in *Sheldon v. James E. Graham*,[35] a case decided by the Idaho Supreme Court in February, 1960, the Court held that although the "Board of Trustees had power to determine what qualifications should be required of persons admitted to Idaho State College, provided rules and regulations in that regard were reasonable and not arbitrary, and reasonableness of such regulations was question of law for the court." These decisions of various courts in the United States seem to "assure the preservation of fundamental liberties." [36]

DUE PROCESS

The Philippine Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws." [37]

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[32] Kramer, *op. cit.*, p. 175.

[33] Michae T Johns n. "The Constitutional Rights of Collegiate Students." *Texas Law Review*, vol. 42 p. 350.

[34] Kentucky Mil. Inst. v. Brambelt, 158 Ky 205, 104 S.W. 808.

[35] 82 Idaho 90, 349 P2d 716.

[36] Expulsion of Students from Private Educational Institutions. *Columbia Law Review*, vol. 35, p. 310.

[37] Art. III, Sec. 11, Sub-sec. 1, *Philippine Constitution.*

Any action by a college or university regarding disciplinary actions that would be meted out to students has a far reaching implication than mere removal from college. It is in this sense that the requirement of the observance of the procedural due process be at least followed. It must be noted that the harm to the student may be far greater than that resulting from the prison sentence given to a professional criminal. A student thus dismissed from a medical school not only is defamed without the opportunity to demonstrate his innocence but is probably barred from becoming a physician. A law-school student dismissed from cheating will not be admitted to practice even if he is able to complete his legal education.[38]

The general rule appears to be that students are entitled to some type of hearing before being dismissed, at least insofar as tax supported schools are concerned.[39] Two cases recently decided by two courts in the United States stated with emphatic vividness this requirement in the following language: "The students are entitled to a hearing before being expelled from state colleges "and the holdings are grounded on the due process requirement of the fourteenth amendment of the United States Constitution. These cases were the *Dixon v. Alabama State Board of Education*[40] and *Knight v. State Board of Education.*[41] These cases were decided in 1961.

In the *Dixon* case the Supreme Court of the Federal Government clearly pointed out that "Due process requires notice and some opportunity to be heard before a student at a tax-supported college may be expelled for misconduct." The court announced, in this case, the standards which the required notice and hearing should comply to wit: the students should be informed of the specific charges against them, and, on the particular facts of this case, they should be given the names of all adverse witnesses with a report of their testimony, and should be given an opportunity to present oral testimony or written affidavits in their own behalf.

With due process, it is even advanced by some respected jurists that the student charged must be given an opportunity to confront personally the witness against him. Warren A. Seavey, writing in the *Harvard Law Review*[42] said, "x x x when many of our

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[38] Warren A. Seavey. "Dismissal of Students 'Due Process'." *Harvard Law Review*, vol. 70, No. 8, p. 1407.

[39] "College Disciplinary Proceedings." *Vanderbilt Law Review*, vol. 70, No. 2, March, 1965, p. 820. *Citing* Due v. Flouder A & M Univ., 223 F. Supp. 396.

[40] 186 F. Supp. 945, 368 U.S. 930.

[41] 200 F. Supp. 174.

[42] Seavey, *op. cit.*, p. 1406-1407.

courts are so careful in the protection of those charged with crimes that they will not permit the use of evidence illegally obtained, our sense of justice should be outraged by denial to students of the normal safeguards. It is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play."

EQUAL PROTECTION

The equal protection clause of the American constitution has been successfully invoked in cases involving the refusal to admit qualified Negro students in colleges and universities. In *McLawin v. Oklahoma State Regents for Higher Education*,[43] it was held that "the equal protection clause of the Fourteenth Amendment entitled qualified Negro to secure a post graduate course of study in education at the state university, where such educational facilities were being offered and received by others at the state university and where it was the only state institution in the state supported by public taxation at which such facilities were offered, and state statutes, insofar as they denied or deprived Negroes of admission to university, were unconstitutional."

FREEDOM OF SPEECH AND OF THE PRESS

One of the chief aims of the guarantee of the freedom of the press is the prevention of censorship, which means the imposition of previous restraint upon publication. Censorship may come under different guises. Requiring a permit before publication or for distribution or prohibiting distribution are considered forms of censorship that is prescribed by the Constitution.[44]

In the case of *Lowell v. City of Griffin*,[45] the court said, "liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." Seen in the light of the ruling in this case, the University regulation requiring approval of the Dean of Student Affairs, before an organization can publish, circulate, issue or edit any publication, would hardly be tenable. Taken in the same manner, the provision of the Revised University Code, which states that "No issue of the Collegian may be printed without the previous approval of the Adviser in writing," and the rule that the adviser "may at any time forbid the publication of any news item, story, articles,

[43] 87 F. Supp. 526.
[44] Vicente G. Sinco. *Philippine Political Law*, p. 638.
[45] 303 U.S. 444.

editorial, or other matter, x x x," are of doubtful validity. These stringent regulations, in the words of the United States Supreme Court, "serve no purpose but that forbidden by the Constitution, the naked restriction of dissemination of ideas." [46]

WAIVER OF RIGHTS

The Revised Code of the University provides in Article 329 that every student shall, upon admission to the University of the Philippines sign the following pledge:

> "In consideration of my admission, to the University of the Philippines and of the privileges of a student in this institution, I hereby promise and pledge to abide by and comply with, all the rules and regulations laid down by competent authority in the University and in the college or school in which I am enrolled."

Refusal to take this pledge or violation of its terms shall be sufficient cause for summary dismissal or denial of admission.[47] This pledge constitutes a waiver.

This student waiver of his rights and promise to comply with the institution's rules and regulations is oftentimes resorted to bar any action against the University. It is contended, however, that the waiver covers only the rights which are not basic or constitutionally guaranteed. In the *Dixon* case it was held that "the plaintiffs showed no intent to waive these procedural rights by attending the college with knowledge of the Boards regulations that 'the college may . . . . at any time decline to continue to accept responsibility for the supervision and service to any student with whom the relationship becomes unpleasant or difficult . . .' Even assuming such intent to be shown, the state 'cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process.' " [48]

The Supreme Court of the United States, likewise ruled, that "though the school may require the student to renounce some personal privileges it may not demand the surrender of basic rights, such as freedom from impairment of reputation or rights of civil liberty." [49] In the case of *Anthony v. Syracuse University,* above cited, it was asserted that "the student could not waive her immunity against dismissal without cause, because it would be against public policy to permit the University to endow itself with the power

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[46] Martin v. City of Struthers, 319 U.S. 141, 63 S. Ct. 862.
[47] Art. 329, *Revised Code of the University.*
[48] *Dixon, supra*
[49] Anthony v. Syracuse Univ., 130 Misc. 249, 223, N.Y. Supp. 186, and Miami Mil. Inst. v. Lee, 129 Mis. 481.

to destroy her reputation. 'The right to reputation is an inalienable right, like the right to life, liberty and the pursuit of happiness . . .'"

Commenting on the practice of making students sign the pledge without explaining to them the meaning of the pledge, Seavey of Harvard University said: "a strange document for a respectable college to prepare and for a court to uphold. Bearing in mind that a University and its instructors are subject to fiduciary duties in dealing with their students, a University should at least be under a duty to explain to the student the sweeping nature of his waiver." [50]

REMEDIES FOR UNJUST DISMISSAL

The most commonly sought remedy is mandamus, which can be used either to require school officials to hold a hearing [51] for outright reinstatement [52] or to compel award of a diploma.[53] Since this legal remedy is ordinarily used to compel public officials and those of public or private corporations to perform some official duty, it is an appropriate remedy in cases involving both public and private incorporated schools. This remedy, however, has been held not to lie to enforce what were called private contract to rights against an incorporated college.[54]

Relief by way of injunction is the same as that afforded by mandamus, i.e., requirement of a hearing or outright reinstatement but an injunction will not lie where mandamus is available since in this case the remedy at law would be adequate.[55]

Under the contract theory of the university-student relationship the courts generally have held that the University cannot dismiss the student without reason. Should the student bring suit for reinstatement the University must show that it was motivated by more than caprice.[56]

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[50] Seavey, *op. cit.*, p. 1409.

[51] People ex rel. Golden Koff v. Albany Law School, 198 App. Div. 460, 191 N.Y. Supp. 349.

[52] Baltimore Univ. v. Golton, 48 Md 627, 57 Atl. 14.

[53] People ex rel. Cecil v. Bellevere Hospital Medical College, 60 Hun 107, 14 N.Y. Supp. 490.

[54] State ex rel. Burg v. Milwaukee Medical College, 128 Wis. 7, 106 N.W. 116.

[55] Knight v. State Board of Educ., 200 F. Supp. 174.

[56] "A Student's Right to Hearing on Dismissal from A University." *Stanford Law Review*, vol. 10 p. 748.