

## **ACADEMIC FREEDOM AND HIGHER EDUCATION: THE PHILIPPINE SETTING\***

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If we hold academic freedom as a value, it must be because it is good for us, for people like you and myself, and so it is useful to realize that there are all kinds of goods and there are all kinds of values, and there are all kinds of many other people, people who hold values other than ours, and therefore it is not so nice to ascribe our values to them or impose our notion of good upon them, unless of course when the community has vested us with the functions of making the decisions on these matters. Here a problem arises for people like us for whom it is not a vain conceit to say that our intellects transcend particularistic interests, so that we want to avoid the curse of that infamous quote, namely, "what is good for General Motors is good for the Country".

One aspect of academic freedom as a concept is that all of us here are familiar with what it means, or better still, what it has come to mean, but not all of us might be as familiar with its history, even in the broadest terms, of the cultural milieu in which it originated and developed, or the social political systems which resulted in the relevance of academic freedom as a good for some groups in the national society and not for others. It is natural for people to interpret the world to meet their comfort requirements, to simplify the world accordingly, to depend for their peace of mind on habit or custom and what is familiar, and therefore to avoid poking around into the background of their most cherished notions or possessions. R.H. Tawney wrote that "not all property is theft, but a lot of theft becomes property." I do not propose that we go into the background of all property holdings, although some of you might, but it might be useful for me to look into some aspects of the background of our concept of academic freedom.

Out of 42 million Filipinos, only a small number may be presumed familiar with the concept. Within this small number, I notice that the usual discussion on academic freedom is a discussion of the concept as developed and enunciated in American academic litera-

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ture and jurisprudence. If the discussant has done some research he or she would have leading cases from some American court decisions, laced with a reference or two to Cambridge or Oxford. The discussion will also usually fortify or embellish the argument by relating academic freedom to the larger issue of civil and political rights, where the literature is equally rich in eloquence and inspiration as well as in bombast and naivete.

If academic freedom is not often enough regarded historically still less is it viewed by otherwise thoughtful people from the viewpoints of sociological and cost-benefit analysis. This omission leads to a great deal of rhapsodizing about academic freedom as if it were disembodied, a concept lending to truth, freedom and beauty, and therefore it would be best for everyone to place it at the pinnacle of values and protect it against any curtailment. We do not consider which groups in society enjoy it, which do not, and who pay the costs of supporting it.

It may be useful to stress that academic freedom as we know it excites very few people in a very few countries on the planet. We do not find treatises espousing it in the mainstream of thinking in the Peoples Republic of China, or the USSR, or in the East European or Middle East countries, or in black Africa. Even in the Western countries associated with the academic freedom tradition, the elitist background of the universities cuts off the masses of the people whose children do not go to university from any commitment to that tradition. This is not to say that an idea is not important merely because the vast majority of people are not concerned with it. It is to suggest that the masses of people have values other than academic freedom. If I discuss the context of academic freedom I will necessarily consider and recognize these other values. I suppose a believer in one freedom, by virtue of this conviction, must at least respect another's belief in another type of freedom—this is the nice consequence of freedom and liberty, namely, tolerance of diversity, although there is also the not-so-nice consequence of the natural need for authority to impose order on the diversity.

Perhaps, I should next review the Anglo-American tradition of which academic freedom is so much a part, but which we rather seldom think of together. This tradition is rather peculiar, because it is a highly individualistic and libertarian tradition, very difficult from Asian culture. It regards society as composed of individuals, and confers privacy on the individual, *his* or *her* integrity or dignity. It is as if individuals actually formed a constituted society, or if there had been a benighted and unenlightened era in human history when there was no society anywhere on the planet, only

individuals who by deliberate decision, agreed or covenanted to enter into society. Of course we recognize in this the ingenious but fictive and no longer reputable social compact theory, without which an individualist theory of society cannot be possible. In fact the truth is that human beings never decide to enter society. They are in society not because they decide to be in it, but because they cannot be human outside of society. This is to say, human beings are social by nature, and that their human nature is inseparable from society. Because of this, I think we must confer primacy not on the *individual*, but on the *quality of being human*, a quality or nature that is not unique to particular persons, but a quality that is shared by all. This quality of being human exists in, and is nurtured by, society. The person outside of society, as Aristotle put it nicely, is a beast or a god.

The other peculiarity about the Anglo-American view of political society, and of most of the political ideologies that have created so much human tragedy, is that it views society, as composed exclusively of adult males. All the great propositions in the well-known political and religious philosophies reflected, and still mostly reflect, the absurd male chauvinism of pre-modern barbaric societies. John Locke's pronouncements about the consent of the people (1689) had nothing to do with a free and democratic society. Almost two centuries after him women in Britain still could not own property, or make their own wills, or vote. And the eighteenth century idea that all men are created equal, it really was limited to men, and then not even to all men. So we have a view of political society that is a violation of both modern ethics and nature. How can a society sustain itself that is made up only of adult males? Moreover, after gallantly extending the meaning of men to also include women, how about infants, older children, and young adults? A view of political society necessarily is a set of propositions on the system of rights and obligations and relations in the social order, and to exclude the larger number of human beings from being reckoned in the membership of the society implies their exclusion from the outset in society's ordering of political values. We can of course somewhat soften the ragged edges of this Anglo-American tradition, to a certain extent, we can effect some cosmetic changes to align it with modern social policy that has far out-paced constitutional and political philosophy. But the essential and fatal flaw of that tradition remains: it did not begin with a theory of the nature and origin of human society, whence would be derived a theory of rights and obligations amongst all the members of society. The concern of the founders of that tradition was to assert their

group and class rights; this done, they contrived an appropriate view of political society.

Another peculiarity of the tradition I am discussing is its transformation of the ancient concept of "right". Our word in Pilipino is "Karapatan", from "dapat", with the cognate "nararapat". Another is "Katwiran", from "tuwid". The root signifies proper, fitting, due, so that it signifies always an ethical element in whatever claim we advance. I doubt not that our other languages have the same concepts, such as in the Ilocano "Kalintegan", from "linteg", straight, which is precisely the same as the Tagalog. The English word "right" has the counterparts *recht* in German, *derecho* in Spanish, *diretto* in Italian, *droit* in French, and in the older languages, *rectus* in Latin, *origein* in Greek, and *riyati* in Sanskrit. Like our own *dapat*, suggesting the universal human sensitivity to ethics and morals, all these words mean fitting and proper, by extension from straight, erect, right. Thus the original meaning referred to right in the sense of proper, a universal norm defining bad and good, applying to all human beings, shared by all and without any sense whatsoever of such a precious thing belonging to anybody. The Anglo-Saxon meaning, illustrated in the claim of "rights" successfully extracted by a group of willful nobles against a reckless king in the so-called Magna Carta profoundly altered the concept. Thenceforth the concept of "right" as a universal norm of good which orders the lives of persons in the community disappears. It is replaced by "rights" belonging as a possession or property of individuals or groups or classes, enforceable in the courts against other human beings and against the community itself. The ethical element has been replaced by class or individual interest.

Such is the peculiar notion of political society, of the importance of individualism, and the displacement of right by class or individual interests, in the cultural tradition from which sprang the notion of academic freedom. Purely by historical accident, and neither by reason nor justice, we Filipinos were conquered and brought into the political order of that tradition. We who have been speaking its language, after a fashion, for some sixty, or seventy years, how deeply in love we are with its legacy. We cherish some of its ideals with ineradicable and grateful satisfaction, because we read in its political literature how these ideals have given hope to the other notions and peoples of our planet, and been adopted as the principles of political and constitutional philosophy by all democracy-living people throughout the civilized world. Yet, as I have indicated, the Anglo-American world and its sphere of ideological influence are but a small portion of the people of this planet. The truth is that

in the Philippines, those who accepted the principles of the West were similarly a small minority of the population the ruling classes, the privileged classes because the individualistic libertarianism of these principles legitimized their status and gave them license to aggrandize their economic interests.

I do not discount the value and the power of these principles in the struggle for our independence, and our ruling class used these principles masterfully, as the Americans used them to justify their independence from Britain. But as in America, where these same principles went well with the extermination of the Indian and the slavery of the black, those political principles in the Philippines did not encourage *social* justice. Oh yes, *social* justice entered into our political vocabulary, but the political system, with its individualistic outlook, its egoistic notions of rights and liberty, its upperclass view of society, was an unshakeable guarantee against justice in society. Indeed, our political leaders then might justifiably be regarded as the best in our old society. We therefore gave our best and finest to the running of western-type democratic institutions, and they gave it a damn good try, within their perspective, but we nevertheless wound up a classic community of the few rich and the very many deprived. Very few of us realize that this was the inevitable and necessary product of that so-called democratic system imposed upon us and accepted by our leaders. There are still many thoughtful Filipinos who deplore and disapprove of the inequality and injustice of our old society, but wish to return to the libertarian and egoistic individualism of its politics. They sincerely believe that you can put politics, economics, and ethics in separate sealed boxes. Because of their schooling they yearn to return to what they believe was a good political order, provided only that we abolish the inequality of the economic system and became more sensitive to the dehumanizing consequences of injustice. They fail to see the oneness of it all—that the upper class values that moved the political system simultaneously governed the economic and ethical systems. The upper class value that legitimizes or at least allows the continued existence of inequality and poverty is that virtue which is the twin to political liberty-tolerance. Tolerance comes naturally to the secure and the privileged, for it costs them nothing. But we also brainwashed the poor of our society into believing the virtue of tolerating not merely the grip of poverty and deprivation upon them, but also the wealth and affluence of the few.

If it is fashionable nowadays to be conscious of the environment and ecology, we must realize that the most conspicuous and enduring aspect of the human being's environment in our country has

been the environment of poverty and inequality. An egoistic individual can well afford to tolerate diversity in others, it is very different to expect a society to tolerate injustice within itself. Sooner or later we will have to face the question from those whose poverty we generously tolerate: we tolerate them, but will they tolerate us? It is this sense of the problem that President Marcos so accurately identified when he describes the democratic revolution as a struggle in behalf of the "rebellion of the poor."

The essential purpose of a revolution, in the President's view, is the transformation of the social order. Thus we regard the New Society as a promise or program of social transformation. Almost everything else is secondary. We can change our political system tomorrow, convert to a cabinet government or what-have-you, and have elections every week or month until we exhaust and impoverish ourselves—all would be meaningless if inequality and poverty were not progressively reduced. How to transform the social order? The ordering of social relationships; the hierarchy of goods and values; the production, distribution, and consumption of commodities and services; are all inextricably interlaced with the values and interests governing the political order as institutionalized in its system of rights. Thus social transformation is unattainable without a reordering of the system of rights.

A re-ordering of rights and values. A very simple proposition, and acceptable to all when it is announced that the re-ordering shall be on the basis of reason and/or justice, but inevitably, for some, a very difficult bargain when reason or justice adversely affects their rights. There was this fellow who was willing, if he had two million pesos, to part with one million to give to the poor; if he had two Forbes Park Mansions to give the other to the needy; if he had two Cadillacs to donate one to the unfortunate; but if he had two chickens, would not give one of them away to the hungry, when asked why?, he simply answered: "Because I have two chickens". It is possible, although only remotely probable that we can be more generous than this fellow.

Over the centuries, our perception of the range of rights has steadily if slowly broadened. Of course I refer to the perception of the privileged upper classes, and that of some members of the lower classes who by accident and resolve have achieved an education. The former have also extended, oftentimes because they had no alternative, the enjoyment of rights to social groups outside of their own class. These rights fall into two categories, legally enforceable, and legally unenforced rights. The first class refers to those rights which the laws categorically guarantee, and if lost the laws

recover or restitute. These are the political rights, primarily suffrage and expression, and the civil rights, primarily property rights. The second class refers to what are best described as human rights, such as the right to work for adults, the right to proper nutrition for infants and children, the right to equal opportunity for the poor, the right to education for the youth, the right to a fair share from the returns of one's efforts and labor for the worker, and so forth. It is the rights in this second class that have increased in number as a result of the centuries-old fight of the masses for recognition and justice. The richer classes seem to have embraced these rights and discourse on them prominently in political speeches, because these rights are the heart of social justice. They have even generously mentioned them in the fundamental laws, and sometimes in the statutes. But they are either indifferently enforced or totally un-enforced, because the privileged classes do not see it proper that society establish and support at public cost those institutions which will guarantee their enforcement. It is because of this consideration that I call them legally un-enforced rights.

For instance, our society maintains law schools, law research centers, investigative and apprehending agencies, prosecutors, judges and courts of all grades, and correctional institutions to protect and enforce the legally enforceable rights. Because we place the greatest value on property, we believe it proper to expend millions and millions of pesos for its protection. So, the loss of property such as the jewels of a society matron inevitably triggers the operation of our law enforcement, judicial, and penal institutions. But the right of a child of a destitute family to proteins and vitamins, essential to his or her health and humanity, or the right of a desperate unemployed head of family to a decent job are not supported and guaranteed by like institutions, for society in effect does not regard these as equally precious values. We have law professors paid by the wealth of the community to expound in the value of free expression, academic freedom, and suffrage, and crack investigating teams to track the loss of television set, and oh! the courts and prisons to dispense and implement exemplary punishment! But where did we ever pay law professors to talk on the right to good nutrition as inseparable from human development, or on employment as a right that is vital to human dignity, and we do not have detectives looking for the missing jobs and proteins, and judges and courts to enforce their enjoyment or restitution, and no prisons for those who in effect deny these basic human rights to other human beings. Or perhaps we are happy with the system and we would rather on on merrily asking for more academic freedom because after all the social system is set up in such a way as to make it im-

possible to identify anybody as legally culpable for denying any fellow human being of his nutrition or job.

Perhaps I push the point too far, Isn't it absurd to advocate that we establish law professors for proteins and that we employ detectives to go out hunting for violations of the human being's right to shelter or to a decent and honest job?

I agree that it is absurd for people like you and me. In the context of the values of our society, the entirety of our experience in trying to get ahead teaches us to get more and more of what we have and to get what we do not yet enjoy. If priests and nuns who have taken vows of poverty are concerned with getting ahead, well, we have taken no vows. If we get a good deal from society, that is not our fault. We are entitled to steady salaries, honoraria or per diems for extra work, travel allowances for assignments outside of station, sick leave and vacation benefits, retirement pay, and even longevity pay for aging on the job. The poor farmer, he is not entitled to these. Because we consume more of a wider range of goods and services, we consume more of the resources of the nation and the factories that produce for our needs generate pollution which we share with the poor. I suppose all these things are natural.

What is not natural is how we attribute to or impose upon the nation, including the poorer classes, the values that you and I regard as necessary to our class status and life styles. I suppose we treasure equality so much that we require or presume everybody to believe in and to support our values. What is not natural is how we recognize and accept inequality in the consumption of goods and services, and how we impose a sharing of the costs of our consumption upon the poor who do not enjoy what we enjoy. This is the irony of it all. Academic freedom and legal rights are dear and precious to us. Precisely because they are dear and have value, they have a cost to society. The cost of maintaining rights and freedoms includes part of the cost of establishing and maintaining the schools that teach these rights, of running the law enforcement agencies, the courts and penal institutions. In the public sector alone these costs run into the hundreds of millions of pesos. And the poor who do not enjoy these values are made to pay a share in these costs. It is readily a neat swindle.

I hope, but I doubt, that my discussion on a historical perspective of our political and civil rights tradition, which includes academic freedom was unnecessary. Because of that hope I did not anymore speak in detail on the history of universities, to which



academic freedom obviously relates. Suffice it to say that institutionally, academic freedom derives from the Anglo-Saxon "town and gown" tradition. In this tradition town respected gown, but of course this was because the families that controlled town—the aristocracy and the prelacy—were exactly the families that controlled gown. It is also obvious that the emergence of middle-class and lower-class elements in the politics of the community or town automatically thrust their values and interests into prominence alongside of the values and interests of the upper class.

Thus, if we in this hall assume that academic freedom is a value and a good, our own recognition of the existence of the lower classes, and their own political emergence independently of our recognition, projects other values and goods in society. I suggest, therefore, the wisdom of considering the possibility of a larger *net* good for society arising from a shift of emphasis from academic freedom and political/civil rights on the one hand, in favor of those so far legally unenforced rights directly meeting the welfare requirements of the more numerous and lower income classes in the community on the other.

The town and gown background of academic freedom is still relevant to us, although in a negative way. It makes sense to reserve academic freedom to university people when there are no provident learned, or educated persons outside the university. But it must be a pathetic university that, after seventy years of academic operations, has not produced a multitude of graduates, now outside the university, who by virtue of this intellectual discipline should safely enjoy equal freedom. It would seem that in the normal order of things, with so many Philippine Universities, there ought by now to be a large army of educated people in the sciences and humanities in the outer community who out-number and are just as competent and thoughtful as university academics. Conversely, universities, especially those that grant faculty tenure quite early, must in the course of time accumulate a share of people who are dangerous because of bigotry or intellectual regression. From all this it is probably fair to suggest that academic freedom be not restricted to universities, but be similarly enjoyed by non-university people, in which case academic freedom can be treated as part and parcel of the freedom of expression enjoyed by the general population that is older than children.

There is also a question of timing. We who believe in the continuing relevance of academic freedom—since nobody would admit to belief in discontinuous relevance—will have to recognize that its beneficial consequences on the lower classes are realizable only ulti-

mately, in the long run. This entails reliance upon some sort of trickle-down process in the dissemination of good, as well as some patience in the masses for deferred solutions to their immediate needs. Alternatively, is it clearly impossible that a greater or earlier net gain for the community be derived by giving immediate priority to the needs of the lower classes and setting aside claims to academic freedom? The easy answer to this question is that both the claims of university academics and the masses are not incompatible. Nevertheless, it is not idle to consider many empirical cases where academic freedom as we know it is categorically subordinated to the basic needs of the masses, and yet the societies concerned not only enjoy improved shelter, food, health, and schooling **than in the Philippines**, but have also attained success superior to ours in science, technology, and industrialization. These cases are those of the People's Republic of China, the USSR, Cuba, the German Democratic Republic, and a few others. This is not to suggest that we now ought to adopt these communist models, but it is in fact a statement that our pre-1972 system and the models it followed are not the only alternatives. We have indeed realized significant and unaccustomed success by non-traditional and Filipino-oriented approaches in a crucial sector of our national life, namely foreign affairs.

At long last I am coming directly to academic freedom. It is a right provided for in the Constitution, in this wise: "All institutions of higher learning shall enjoy academic freedom". Since we have a distinguished Supreme Court Justice in this conference, I will not go into the law on this matter. Nevertheless, it is important to know that a legal right is guaranteed by law and enforced by government. Thus if a person exercises a right in a manner that is subversive of the legal order that guarantees the right, or in rebellion against the government that enforces the guarantee, that person should not expect enthusiastic protection. In all jurisdictions without exception the exercise of rights in sedition or rebellion against the system that establishes and enforces those very rights is limited or frowned upon. Also, the existence of many other rights in society operates as another limitation on each right, on the wise rule that the recognition of one right is not a license to injure other rights. Academic freedom as a legally recognized right falls under these limitations. As the saying goes, an unlimited right, the exercise of which has consequences on others or on the community, is repugnant to a well-ordered society.

It will help the analysis to divide the areas of expression for academic freedom into two. (Where no expression is involved there

is of course no problem). These areas are non-political and political. We should expect no difficulty in the first area, which may be illustrated by scientific or scholarly research and comment on, for instance, the aquifers and other hydrological features of a river basin; the role of nutrition and genes in infant development; genetic performance of crop strains in the tropics; nitrogen fixation of organic and inorganic fertilizers; the economics of land reform transfers; management and determination of fresh-water fish; organ transplants; meson theory; engineering standards; recycling of biodegradable materials, etc. All these topics and many more are important to life, and properly excite the interest and intelligence of many academics.

On the other hand, there is also a broad field of topics, equally important, mostly in the field of politics, that have controversial aspects. These controversial aspects are due to the fact that expression on these topics is usually opinion not derived alone from the facts or proven scientific theory, but more likely dictated by personal biases and value judgments. Here the right of expression is available to all citizens, and the scientist or scholar may comment or express as fully as any citizen. Therefore the claim to an additional academic discipline is more rigorous and their personal values more and scholars must derive from some assumption or contention that they either cannot express themselves fully as citizens, or that their academic discipline is more rigorous and their personal values more reliable and sound than those of ordinary persons. These assumptions have no basis in fact. In the first place, if farmers and factory workers and nuns are free to express themselves on political issues, either for or against, there are no reasons except lack of guts or diffidence that should restrain the academic from speaking out fully. In the second place, there is no logic in treating the personal values of academics on political issues as superior to those of other citizens. As I indicated earlier, the university academic should enjoy no special privilege on expression that is not enjoyed by a humanist. Even the intellectual discipline of the university academic, which is useful in the orderly *presentation of issues* of political topics but not necessarily the source of *answers* to questions, cannot be deemed superior to the intellectual discipline of thinkers outside of the university.

Another aspect of academic freedom is the case of university academic staff speaking on sensitive political issues way outside their training and specialized discipline. Should academic freedom protect the utterances of a silviculturist or ichthyologist, for instance, on national policy governing strikes and lockouts in vital

industries? Will the training and discipline of the university ichthyologist give him insights on the matter that would be superior to those of a factory worker or employment agency manager? I doubt it very much, and for this case anyway, the silviculturist and ichthyologist already have the right to comment on strikes and lockouts in their capacity as citizens.

At this point it might be useful to summarize my argument as tending towards a view of academic freedom in which university teaching and research, as well as comment and expression by university academics on scientific and scholarly topics which are non-controversial in a political sense are acceptable and unquestioned. On the other hand, the argument suggests that comment and expression by university academics on topics in areas far beyond their respective training and specialized disciplines, and on controversial political issues, should be protected by the general right of free expression available to the citizenry and not be entitled to the special and additional right of academic freedom.

A few more relatively minor points, and I will be done. For academic freedom as for free expression, the general consensus is that there be no prior restraint. What is meant here is obviously external prior restraint. I wish merely to point out that the most effective form of restraint on free expression, and I suspect a very frequent one, is self-imposed restraint. This occurs when people who believe in something do not express their convictions because they establish in their minds a risk of adverse consequences to themselves, and then conclude that these consequences will surely happen. The mechanics of this behaviour are clear. The person creates a world in his or her mind, and this world which he or she creates immobilizes and restrains him or her in the real world. Many individuals justify their non-expression by blaming the risk which they reify in their minds. It is a very convenient alibi or escape from the reproach of one's peers, and allows the silent academic to blame the government or the world.

This behaviour is related to a view that freedom, say the freedom of expression, must be accompanied by a guarantee of immunity or relief from the consequences of the exercise of freedom. My view on this is that it entails very awkward premises. In any society the only individuals who may make utterances or expressions without being made answerable for the consequences of their actions are infants, small children, and idiots and insane persons. We cannot treat academics in like manner. They are grown-up boys and girls and are not under duress or coercion to express themselves.

If their utterances, based on conviction and deliberate decisions, affect other individuals or the community adversely, they must be answerable. The alternative is a world without risk and answerability which is not the real world. If we all reflect sufficiently, freedom has no meaning and cannot exist in a world without risk. Moreover, a society without accountability is a society where the entire system of rights is inconceivable and cannot be maintained, because then that society cannot have a notion of right.

My last point is that legal guarantees do not create freedom, justice, dignity, equality. A constitution might declare the people equal, or free, or honorable, or beautiful and gracious, but the people must first aspire to equality and make themselves truly equal in the things that matter, they must act justly, they must live freely. Institutions of higher learning must have good scholars, good libraries, good laboratories, in order to be free. An institution whose faculty and facilities are of secondary school equality can never be free in the same sense or degree that a good university can be. In the end freedom must mean the real capability to become excellent in the virtues of what an institution or individual truly is.

In the end, especially in a developing society, where we want an increasing sharing of freedom amongst our people because we do not want a society where some are free and others are not, the academic must act out his or her freedom, by living freely, and contributing to the freedom of others, not heedless but mindful of the consequences of his or her convictions, accepting the costs of freedom, but helping to create a society where the costs of living freely are bearable, in the thought that he or she is not a university academic who happens to live in society, but a human being like everybody else who happens to work in a university.