

ACADEMIC FREEDOM AND THE LARGER COMMUNITY

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UNIVERSITY AUTONOMY

Academic freedom as university autonomy is a medieval concept. It originated from the medieval universities of Europe. The concept of academic freedom was a shield used by the universities against ecclesiastical and political interference. On many campuses police were not allowed without academic consent.¹

This privilege of European universities has a long and bloody history.² In England, the medieval universities won their academic freedom only after Oxford and Cambridge successfully thwarted the attempts of James II to interfere with the universities' self-government in an effort to use them as centers for the propagation of Roman Catholicism.³

The European concept of immunity of the university has been exported to Latin American, where universities have become, by tradition, sanctuaries for the political opposition. The tradition is exemplified and formulated in the following provision of the Constitution of Venezuela:

"The university grounds are inviolable. The maintenance of order within them falls within the competence and responsibility of the university authorities."⁴

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¹ Van den Haag, *Academic Freedom in the United States*, 28 *LAW & CONTEMP. PROB.* 514 (1955).

² In 1228-29, a tavern brawl between the townspeople and the students of the University of Paris led to successive forays which caused the regents to send a company of soldiers against the students. When several students were killed, the masters suspended lecturers in protest and resolved that if justice were not done to the university within a month, they would disband it for six years. The controversy resulted in the recall of the papal legate who had advised the fatal attack and the issuance of an order from the Pope to the King that they punish the offenders. This was followed by a papal bull enlarging the privileges of the university. (HOFSTRADTER & METZER, *THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES* [1955]). In England Oxford town and gown riots began in 1355, when the Townspeople launched an organized assault in the university, resulting in the death and torture of several scholars. When the masters suspended lectures, the king ordered a commission of inquiry. Scores of townsmen were arrested and the mayor was imprisoned. A new charter was issued whereby part of the government of the town and the regulation of trade was turned over to the university.

³ *Ibid.*

⁴ Venezuelan University Law of Dec. 5, 1958, Title I, art. 6.

In practice, the above provision is directed at police and military units who are prohibited from entering the campus without the express authority of the rector, who is generally loath to grant it.⁵

In the Philippines, institutional academic freedom is a constitutionally-guaranteed right for all institutions of higher learning. Our constitution provides that "all institutions of higher learning shall enjoy academic freedom". This is a guarantee of university autonomy.

From a medieval concept, academic freedom developed in the West as a strong tradition and a legal right resting on three core concepts:

- 1) The philosophy of intellectual freedom for teachers and scholars;
- 2) The idea of autonomy for the university as a community of scholars; and
- 3) The guarantee of free expression in the Constitution.

RELEVANCE

In the Third World today, the main problem is how to adapt the concept of academic freedom to the notion of social change. This problem proceeds from the premise that institutions of higher learning have an important role to play in our national life, unlike those in Western countries where the traditional view of universities is that they are ivory towers. Indeed, in developing countries, there should no longer be any debate on whether the university should serve the nation or not. To insist that the University should not have anything to do with the goals of the larger community is to consign the university into irrelevance. It also assumes that its faculty members and students are insensitive and callous to the poverty and misery that abound in their own backyards.

We therefore proceed on the assumption that the university has a role to play in our national life. It does this by means of its two primary functions: (a) to act as a transmitter of existing knowledge, skills and values; and (b) to act as an agent to facilitate orderly change. It is in the performance of its functions that a university has to have academic freedom. These functions have been forcefully underlined by Justice Felix Makasiar in a dissenting opinion:

"x x x The educational institutions perform a more vital function than the ordinary public utilities. The institution of learning

⁵ Einaudi, *University Autonomy and Academic Freedom in Latin America*, 38 LAW & CONTEMP. PROB. 656 (1963).

feeds and nurtures the human mind and spirit to insure a robust, healthy and educated citizenry on whom national survival and national greatness depend. The ordinary public utilities merely serve the material comforts and convenience of the people, who can certainly go on living without them. But the people cannot wallow in darkness and ignorance without hastening their extermination from the face of the earth."⁶

But it is in performing its mission as an agent of change that a university needs academic freedom the most. This is because it would be necessary for the faculty and the students of the university to reexamine existing knowledge and reweigh the prevailing values so dearly cherished by the majority. To question prevailing dogmas, to probe settled principles, to criticize accepted knowledge, and even to challenge authority—these are all preconditions to intellectual ferment which will lead to change. Yet these are precisely the things which will rile an intolerant majority into suppressive acts which can range from ostracism to assault. Against such hostile acts of the majority the faculty members and the students have only the constitutional guarantee of free expression and academic freedom as shields. As the Supreme Court has reiterated:

"x x x the purpose of the Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's rights to life, liberty and property, to free speech or free press, freedom of worship and assembly, and to the fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."⁷

Martial Law

Since the foregoing postulates are recognized in the Philippines, it is understandable how the imposition of martial law has created tensions within the university by restricting academic freedom. While academic freedom is certainly not absolute, its restriction in the name of the national security should be undertaken only if faculty members and students engage in overt action constituting subversion. Faculty members with a few exceptions, are not known to be vocal and militant defenders of their own freedoms, and any action taken by the military against their own colleagues may inspire fear and apprehension among their ranks. Such action is likely to

⁶ *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, G.R. No. L-40779, November 25, 1975, 68 SCRA 277, at 297 (1975).

⁷ *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills, Co., Inc.*, G.R. No. L-31195, June 5, 1973, 51 SCRA 189, at 201 (1973), citing *American Communications Asso. v. Douds*, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925 (1950).

engender intellectual timidity and suspicion in the academic community and could stifle bold thinking and healthy skepticism.

"To repeat the reminder of Chief Justice Warren: 'Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.'"⁸

Free Expression

Furthermore, freedom of expression, as guaranteed in the Constitution, is not suspended even under martial law, in the absence of any legal justification. And faculty members and students, as citizens, enjoy this right even if they are within the university. If employees of private corporations retain their right to free expression and peaceful assembly notwithstanding their status, with more reason should teachers and students be protected in their right to freely express their opinions and the results of their inquiry. Free expression in the university is most essential under a martial law situation, as political and economic orthodoxies may be called into question.

Expression, if it is to be free, is not limited to the trivial and the inconsequential. It may strike deep at our most cherished beliefs or speak up for the most unorthodox doctrines. Expression cannot be subjected to prior censorship for fear of serious injury or controversy.⁹ This especially holds true in the university context, since

"x x x the classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection."¹⁰

This does not mean that freedom of expression is confined to the four walls of the classroom. This would be a very parochial view of free speech. The spirit of free inquiry cannot be cut off, like a water tap, once the student steps out of his classes. It is therefore important that the University encourage discussion and debate outside the classroom, for "an atmosphere and ferment in the academic community at large may be more meaningful to the student than freedom of discussions within the confines of the class."¹¹

⁸ Justice Makasiar, *dissenting*, in *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra*, note 6, citing *Sweezy v. New Hampshire*, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed. 2d 1311 (1957).

⁹ *Primicias v. Fugoso*, 80 Phil. 71 (1948).

¹⁰ *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 87 S.Ct. 675 (1967).

¹¹ Emerson & Haber, *Academic Freedom of the Faculty Member as Citizen*, 28 LAW & CONTEMP. PROB. 525 (1968).

Faculty Opinion

Expression of faculty opinion raises some problems if the forum shifts from the campus to the larger community. This is specially true where the faculty member attacks political or social dogmas which have been enshrined as tenets of the present government. It is very likely that some government officials may want to silence the dissenting voice by imposing disciplinary action against the faculty member concerned. And this is understandable from the vantage point of power; as Justice Holmes had observed, persecution for the expression of a contrary opinion is perfectly logical.

But from the long term point of view, it can be seen that the broader interests of the country dictate the preservation of the faculty member's right to freely express the results of his study wherever it may end or tend. Discoveries in science cannot be made and validity of certain philosophical principles cannot be tested without guaranteeing the dissenter's right to discuss and debate his conclusions in or out of the classroom. As long as the faculty member involved limits himself to mere expression, it is difficult to justify denial of his right to free speech as a citizen, regardless of the emergency situation that inheres in martial law.

Student Activism

As for academic freedom for students, what policy should be adopted towards student activism? Consistent with its role as an agent of orderly change, the University should not only tolerate but it should encourage activism. It should be a forum not only for the *status quo* but also for criticism and dissent. It should service not only the conformists but also the non-conformists.

Student activism is a relatively recent yet widespread phenomenon.¹² It is an index of how successful the universities have been in transmitting to the students the values of our democratic society—values like equality, social justice, sovereignty of our people, and renunciation of war. Student disenchantment with significant deficiencies in our political and economic system breeds protest activities to dramatize their grievances before the public. Unfortunately, martial law has kept the students out of the political arena.

¹² The subject has provoked considerable literature. See e.g., CALIFANO, *THE STUDENT REVOLUTION: A GLOBAL CONFRONTATION* (1970); *CONFRONTATION IN THE CAMPUS* (1969); MILLER & GILMORE (EDS.), *THE BERKELEY STUDENT REVOLT* (1965); Lipset, *Student and Politics in Comparative Perspective* (pamphlet).

Student participation in political demonstrations and other forms of assembly is part of the learning process. Aside from that it is the right of the student, as a citizen, to participate in the making of decisions that are of interest to him. "We do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom."¹³

A university campus is certainly a natural and appropriate setting for student protests and demonstrations, and there is no point in discouraging these.

"Unlike jails, public universities are perhaps the archetypal example of a public facility dedicated to inquiry and discussions; hence, demonstrations over either matters of general, social or political concern or specific campus grievances may not be barred completely from the public university."¹⁴

Legal problems arise, however, when the form of protest used by students is "speech plus" action. In such a situation, if the protest comes in conflict with legitimate interests of the larger community, this has to be regulated and even restrained in the public interest.

The courts have rejected the view that a "limitless variety of conduct can be labelled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."¹⁵

"x x x when 'speech' and 'non—speech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms."¹⁶

As regards freedom of assembly, this may be regulated in the face of governmental interest in keeping public order.¹⁷ Disruptive action may not be accorded the constitutional protection of free speech and assembly.¹⁸ The question in every situation, therefore, is whether government interest in suppression of "speech plus action" is so overwhelming as to outweigh interest in free expression.

This "balancing of interest" method of resolving the clash of interests implies that access to public roads for the purpose of

¹³ *Tinker v. Des Moines Ind. Community School District*, 393 U.S. 503, 513 (1969).

¹⁴ Comment, *Developments in the Law — Academic Freedom*, 81 HARV. L. REV. 1045, 1131 (1968).

¹⁵ *U.S. v. O'Brien*, 391 U.S. 367, 20 L.Ed. 2d 672, 88 S.Ct. 1673 (1968).

¹⁶ *Ibid.*

¹⁷ *Navarro v. Villegas*, G.R. No. L-31687, February 25, 1970, 31 SCRA 731 (1970).

¹⁸ *Sta. Maria v. Lopez*, G.R. No. L-30773, February 18, 1970, 31 SCRA 637 (1970).

exercising free speech rights cannot be constitutionally denied absolutely and broadly.¹⁹ The fact that the manner in which protest is carried out may be regulated "does not mean that it can be barred under all circumstances on publicly-owned property simply by recourse to traditional concepts of property law concerning the incidents of ownership of real property."²⁰

Discipline and Order

One area where conflict may arise between the faculty and students and the administration is the maintenance of discipline and peace and order inside the campus. This arises from the fact that the two state agencies are located within the same territory, but they have different functions to perform. In the matter of peace and order, furthermore, there are situations where the administration and the University may work at cross-purposes. What makes this possible is the fact that peace and order within the community is the primary responsibility of the administration, but the University may have other priorities. While an orderly campus is certainly necessary for education, the University, as a center for debate and inquiry, may subordinate order to intellectual ferment. Peace and order is only a means to an end to the University; to the government, it is a worthwhile end in itself. Not only is the University in duty bound to stimulate dissent and discussion, it must also cultivate a viable relationship with its students so as to carry on a continuing dialogue.

These conflicting values nonetheless, a few ground rules have been evolved as regards the problem of order on the campus:

Maintenance of peace and order on the campus, including punishment of unlawful conduct, is primarily the responsibility of law enforcement agencies.²¹

This is obvious if we take into account the fact that peace-keeping and law enforcement is one of the reasons for the existence of government. While the University is concerned mainly with the intellectual interests of the people, the government looks after the security of persons and property. The truth of the proposition stated above can be readily seen in a situation where a common crime, like theft, is committed by outsiders inside the campus. The responsibility for apprehending the thief rests with the law en-

¹⁹ *Primicias v. Fugoso*, *supra*, note 9.

²⁰ *Amalgamated Food Employees v. Logan Valley*, 391 U.S. 308, 20 L.Ed. 2d 603, 88 S.Ct. 1601 (1968).

²¹ Sherry, *Governance of the University: Rules, Rights and Responsibilities*, 54 CALIF. L. REV. 23 (1966).

forcement agencies and not with the University. For the University to play the role of a law-enforcing agent is to deviate from its educational function. As a Cornell University Commission report states,

"A second consideration of equal importance is that Cornell's educational purposes make inappropriate any extensive and continuous University assumption of varied law enforcement roles in its relations with students. Some University involvement in law enforcement is necessary... But, wherever possible, the University should eschew acting as a general law enforcer or as a de facto 'arm' or 'agent' of public agencies."²²

While the government is charged with preserving peace and order in the community, including the campus, the University has the primary responsibility to assure the continuity of the educational process.

While maintenance of law and order is the principal function of the police, the University has the essential responsibility of maintaining important educational functions which are premised on the existence of peace and order. The University has the duty, for instance, to live up to its contract with the student that it should let them carry on their learning activities without fear or hindrance. It should see to it that the only instrument in the competition of ideas is discussion and persuasion. It must assure its teachers and scholars that they are free to conduct their research and inquiry without control or pressure. It must preserve the integrity of the academic process against mass opinion, violence, intimidation, and coercion. The resources for learning and the opportunities for self-development and participation must remain open to all students and to the faculty, and not only to a few.

²² CORNELL UNIVERSITY, REPORT OF THE UNIVERSITY COMMISSION ON THE INTERDEPENDENCE OF UNIVERSITY REGULATIONS AND LOCAL, STATE, AND FEDERAL LAW, 4 (1967), quoted in McKay, *The Student as Private Citizen*, 45 DENVER L.J. 558, 562 (1968).