

STUDENT ACADEMIC FREEDOM IN INSTITUTIONS OF HIGHER LEARNING *

RAPHAEL PERPETUO M. LOTILLA**

I. STUDENT POWER AND STUDENT FREEDOM

A. *Might and Right:*

A View of the Academe

Freedom and power constitute a polar pair. Freedom is exercised against power; but the exercise of freedom requires power. Illustrations abound. The bourgeoisie began its bid for freedom relative to royalty only when the former accumulated enough coins to cover its claim. In turn, labor saw advantage in union, and accordingly fashioned some form of freedom against the cartel of capital. More fresh in contemporary minds is the coincidence of the Civil Rights Movement and Black Power, of women's suffrage and suffragettes' strength.

The correlation between *ns* of power and degrees of freedom is no less significant at the level of academic life. The academe derives power from the social value of the intellectual enterprise. Thus, society guarantees the freedom of the academe, society being the beneficiary of knowledge-generation and knowledge-transmission taking place in institutions of higher learning.

The judiciary, however, has avoided a categorical delimitation of academic freedom, perhaps out of fear of unduly constricting it.¹ Such reticence is justified by the shifting course of academic freedom, broadening its bounds as civilization advances. Authorities though are in agreement that academic freedom assures the right of scholars collectively or as

* An abridged version of this paper was presented at a convocation sponsored by the Order of Purple Feather held in the College of Law, University of the Philippines, December 3, 1982.

** Member, Editorial Board, Philippine Law Journal

¹ In discussing academic freedom, the Philippine Supreme Court has shunned the use of the phrase "academic freedom is..." Instead, it has employed the words "It [academic freedom] is more often identified with..." in *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, G.R. No. 40779, Nov. 28, 1975; 68 SCRA 277, 283 (1975). See also *Montemayor v. Araneta University Foundation*, G.R. No. 44251, May 31, 1977; 77 SCRA 321 (1977). Other legal writers have resorted to the use of phrases like "academic freedom includes..." or "academic freedom definitely grants..." Language exemplified by the above certainly affords flexibility to its user.

individuals within an institution devoted to scholarship to engage freely in the pursuit of knowledge.²

Academic freedom is primarily the freedom to learn, and freedom to learn is the freedom to ascertain the truth. No acquisition of knowledge can take place if learners were unfree, or if they were free, but only in assimilating what is untrue. The freedom to teach is therefore a derivative of the learner's freedom. The teacher must be free to inquire, and to hie after the truth in order to insure that the ideas transmitted to the learner constitute truth or approximate it. Freedom to teach seeks to secure the freedom to learn.³

² American writers have emphasized the academic freedom of the individual scholar, as reflected in the following definitions:

"Academic freedom is that freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts, and research." Fuchs, *Academic Freedom—Its Basic Philosophy, Function, and History*, 28 LAW & CONTEMP. PROB. 431 (1963).

"... put simply, but in a somewhat restrictive way, academic freedom at least means that the men of learning within an institution devoted to scholarship must be free to engage in their pursuits. In this sense, academic freedom applies to all scholars whether they be members of a faculty or student body." Morris, *Academic Freedom and Loyalty Oaths*, 28 LAW & CONTEMP. PROB. 487 (1963).

Other definitions are quoted in Murphy, *Academic Freedom—An Emerging Constitutional Right*, 28 LAW & CONTEMP. PROB. 451 (1963).

The 1968 edition of the International Encyclopedia of the Social Sciences has the following entry: "Academic freedom...in its primary sense, is the freedom claimed by a college or university professor to write or speak the truth as he sees it, without fear of dismissal by his academic superiors or by authorities outside the college...in a secondary sense, the term denotes the corporate freedom claimed by an institution of higher learning to determine its policies and practices without restraint from outside agencies...the freedom to learn has traditionally been regarded, particularly in German universities, as an inseparable accompaniment of the freedom to teach, but it has only recently received explicit attention in the United States as an element of academic freedom representing the student's right to be as free of external pressures in his learning as the professor is in his teaching." 1 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES, *Academic Freedom*, 4 (1968).

The Encyclopaedia Britannica Micropaedia has the following definition of academic freedom: "...the freedom of members of the academic community in the performance of their functions. It embraces both intellectual freedom, which is necessary to the acquisition and exchange of knowledge, and freedom of creative activity in those arts which are practiced in colleges and universities; it includes also certain personal freedoms deemed essential to faculty members and students outside their institutions." 1 THE NEW ENCYCLOPEDIA BRITANNICA MICROPAEDIA, *Academic Freedom*, 43 (1975).

A Philippine textbook in constitutional law defines academic freedom as "freedom to teach and be taught the truth." 2 TAÑADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES 1234 (1953).

For definitions which include or emphasize rights other than those of the individual scholar, see SINCO, PHILIPPINE POLITICAL LAW 489 (1962).

Academic freedom has also been defined as "that aspect of intellectual liberty concerned with the peculiar institutional needs of the academic community." Comment, *Developments in the Law—Academic Freedom*, 81 HARV. L. REV. 1045, 1048 (1968).

³ Caughey, "The Inquiring Mind, Bulwark of Democracy", unpublished article quoted in MACIVER, ACADEMIC FREEDOM IN OUR TIME 188 (1955).

The Committee on Educational Policy of the University of the Philippines' Board of Regents came out with this statement before 1940:

"Practically every battle in recent year that has been waged in the name of academic freedom has centered about the right of the teacher to teach rather than

Freedom to learn and freedom to teach together make up the personal aspect of academic freedom. Further derived from personal academic freedom is the academic freedom of the institution. In its institutional character, academic freedom is generally accepted to include the right of the educational institution, acting through competent bodies, "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught and who may be admitted to study."⁴ "Institutional autonomy" is the phrase preferred nowadays for institutional academic freedom. Like the freedom to teach, institutional autonomy is derived from the freedom to learn. Without a free teacher, there can be no free student; without a free institution of higher learning, there can be no free scholars to speak of.⁵

But while all members of the academic community rightfully share in its freedom, the actual exercise of academic rights has been determined more by the flow of power within the academe rather than by mere membership in it. Thus, at a time when Filipino students were meek and mild, they were cited as ciphers; their personality was equivalent to nil. Too weak to protect their share of the academic turf, students lost much of their opportunity to assert their claim to academic freedom. In time, however, the students' monopoly of weakness was broken. The cohesion of students created force. It was this force which sought to have the rights of students enforced on campus and beyond.

B. *Emergence of Student Rights*

Before the turn of the last century, student muscle was invariably unflexed in the Philippines. There are few records of student agitation during the Spanish occupation period.⁶ Under American colonial domination, students could no longer be described as politically static.⁷ However, the flurry of student activity was usually confined to the city of Manila or a specific institution or two. Moreover, the occasions on which student power was exercised were too scattered to indicate a continuity in its movement.

about the right of the student to learn. Recognition of the student as the center of emphasis is the first task of both the public and the teacher." Quoted in Romulo, *The Extension of Academic Freedom*, an address delivered before World War II and reprinted in UNIVERSITY OF THE PHILIPPINES, ACADEMIC FREEDOM 54 (1957). Romulo went on to declare that the protection of the teacher's academic freedom is the responsibility of the students, but he did not say that students themselves were entitled to the exercise of academic freedom.

⁴ *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, G.R. No. 40779, Nov. 28, 1975; 68 SCRA 277, 283 (1975), through Justice Enrique Fernando, quoting the concurring opinion of Justice Frankfurter in *Sweezy v. New Hampshire*, 355 U.S. 234, 263 (1957).

⁵ MACIVER, ACADEMIC FREEDOM IN OUR TIME 4 (1955).

⁶ SANTIAGO, A CENTURY OF ACTIVISM 1 (1972). The recorded few took place near the end of Spanish rule.

⁷ *Id.*, at 4-40.

The march of the sixties ushered in the phenomenon of student activism. With it, the student sector was established as a national force. Filipino students, like their counterparts throughout the world, consolidated their ranks. Within the academic community, the studentry⁸ gained new respect. Outside the academe, students were too packed with political power to be ignored. The Philippine president issued a code of student rights recognizing the limited exercise by students of the right to organize, the right to publish and issue student-controlled publications, and the right to be represented in policy-determining bodies of the educational institution whenever policies affecting students are considered therein.⁹

A National Youth Coordinating Council was established in 1967, later replaced by the Youth and Student Affairs Board, "to serve as an open channel of communication between the students and the youth and the officials of the land, and as a forum through which they may maintain a continuous dialogue."¹⁰ Student governments began to operate with minimum interference from school administrators. All kinds of student organizations proliferated, and student groups organized on a nationwide scale established chapters on many campuses. In a number of institutions, students gained unconditional representation in academic policy-formulating bodies. Campus media became freer fora for criticism of school and government officialdom.

But it pays to bear in mind that such a plethora of rights was principally grounded not on the role played by students as members of the academic community, but on the strength of students as members of society itself. As a consequence, student rights expanded as the political fortune of the student movement advanced.

The fragile character of those rights, however, was exposed by events subsequent to 21 September 1972 when Martial Law was imposed. Student activism was made one of the scapegoats for its declaration. Presidential Proclamation 1081 fingered students and specific student organizations in justifying the exercise of the president's martial law powers. Schools were closed, student organizations and student governments banned, campus media silenced, and student leaders detained. The tight squeeze on all political activities suffocated student power. Absent student power, student rights buckled under the force of repression.

⁸ "Studentry" is not among the entries in standard dictionaries of the English language. Unlike the citizenry or the faculty and the administration, students are referred to as a plurality rather than as a collectivity. Professor William Strunk, Jr. proposed "studentry" in place of "student body", because the former sounds less gruesome. STRUNK & WHITE, *THE ELEMENTS OF STYLE* xi (1972). The growing acceptance of the word perhaps indicates—not only that it is "less cadaverous"—that as a collective force, the studentry has an increasingly important role to play.

⁹ Exec. Order No. 200 (1969). Pursuant to this executive order, rules and regulations implementing its provisions were issued by the Secretary of Education on 22 July 1970.

¹⁰ Exec. Order No. 169 (1969).

*C. From Student Rights to
Student Academic Freedom*

The high risks involved in hitching one's wagon of student rights to the student movement's political star, make expedient a shift in emphasis from general student rights to student academic freedom. The departure in meaning from one to the other is not solely a semanticist's concern; that student rights can not be equated with student academic freedom is of legal significance. There can be student rights without student academic freedom. However, student rights not arising from academic freedom may have their basis in some legal relation where students are locked into place as an inferior party *vis-a-vis* other parties in the educational setting. Such is the imbalance of power under the *in loco parentis* theory where the rights of students in relation to the educational institution are rendered negligible by the status of the institution's authorities as substitute parents over the student,¹¹ or under the theory that to attend school is a privilege and not a right,¹² or under the theory of contract where the student agrees to stipulations limiting his freedom of action as a requisite for enrollment.¹³

At best, student rights dissociated from academic freedom may be founded on the ordinary civil and political liberties of the citizen. But rights of students which proceed from academic freedom are, in addition, derived from their indispensable role as members of the academic community. If a society places premium on the services rendered to it by the academe, chances are that its members would have broader bases of action than ordinary citizens do.

The freedom of the learner, however, is the least developed aspect of academic freedom in Philippine jurisprudence. Whereas academic freedom of the teacher "is accepted in law and in fact," and whereas still, institutional autonomy is "guaranteed in the constitution, has been applied by the courts and is being incorporated in legislation," the students' bid for the recognition of their academic freedom, though "strong" and "has gained ground",¹⁴ still has much more ground to cover.

A noted educator lately urged the rehabilitation of eroded academic freedom, particularly that of the students.¹⁵ However, many academicians in the Philippines have clung to the belief that academic institutions and

¹¹ The leading U.S. case is *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

¹² *Board of Trustees v. Waugh*, 105 Miss. 623, 62 So. 827 (1913), *aff'd*, 237 U.S. 589 (1915).

¹³ ALEXANDER AND SOLOMON, *COLLEGE AND UNIVERSITY LAW* 412 (1972).

¹⁴ Cortes, *Institutional Autonomy in the 1980s* (Mimeographed) 13 (1981).

¹⁵ Yabes, *The Problem is How to Rehabilitate Eroded Academic Freedom* 30 DILIMAN REVIEW 13 (1982).

individual faculty members alone dare sport the badge of academic freedom.

This paper, sensitive to student rights, explores the contrary view.

Academic freedom protects a collective interest: the free pursuit of knowledge by all members of the academe. The tendency today, though, is to fragmentize that freedom. "Whose academic freedom?", we have been conditioned to ask. Each sector of the academic community claims that freedom as exclusively its own. Thus, academic freedom acquires definitions as narrow as the sectoral interests it is called upon to protect. Teachers have defined it as the freedom of the teacher or researcher alone; heads and owners of institutions have equated it with institutional autonomy. By focusing on the freedom of the students, this paper does not intend to contribute to the further fragmentation of academic freedom, but by concentrating on a largely ignored aspect of that freedom, contribute towards making academic freedom a collective concern.

II. "SOME SAY THY FAULT IS . . ." ^{15a}

A. *An Alien Tradition*

Student academic freedom is assailed on the ground that it is alien to the Filipino academic tradition. But for those who carry that line, Filipino tradition in education is limited to that pattern of thought and action which the Philippines inherited wholesale from the United States. Read, therefore, the above objection as a reference to the absence of student academic freedom from American academic tradition.

However, while it stands uncontested that colleges and universities in the United States inherited the strong sense of paternalism prevailing at one time in the universities of England, a paternalism which flowed from "a respectful system . . . where the superiority of the teacher was assured," ¹⁶ it is equally true that the Americans were well acquainted with the nineteenth century German concept of academic freedom. An American scholar who studied in Germany could thus explain that *akademische freiheit*, the literal German translation of academic freedom, refers to the freedom of the student alone or *lernfreiheit*. ¹⁷ Within the context of the German university, *lernfreiheit* was but one of the two conditions basic to the idea of a university.

To the German mind, the collective idea of a university implies a *Zweck*, an object of study, and two *Bedingungen*, or conditions. The object is *Wissenschaft*; the conditions are *Lehrfreiheit* and *Lernfreiheit*. By *Wissenschaft* the Germans mean knowledge in the most exalted sense of

^{15a} Opening line of Shakespeare's *Sonnet XCVI*.

¹⁶ ASHBY AND ANDERSON, *THE RISE OF THE STUDENT ESTATE IN BRITAIN* 5 (1970).

¹⁷ James Morgan Hart *Compares the German University and the American College During the 1860's*, HOFSTADTER AND SMITH, *AMERICAN HIGHER EDUCATION: A DOCUMENTARY HISTORY* 579 (1961).

that term, namely, the ardent, methodical, independent search after truth in any and all of its forms, but wholly irrespective of utilitarian application.¹⁸

By *lehrfreiheit*, the university professor was free to teach and to inquire according to his personal convictions. *Lernfreiheit*, on the other hand, was the liberty of the student to learn according to his preferences, sampling academic wares free from attendance requirements and pre-determined curricula and free to decamp one educational institution for another.¹⁹

President Charles Eliot of Harvard, inspired by German academic ideals, could thus declare:²⁰

A university must be indigenous; it must be rich; but above all, it must be free... This University... demands of all its teachers that they be grave, reverent and high-minded; but it leaves them, *like their pupils*, free.

In the U.S., however, paternalism and the concept of lay government conspired to obtain the hegemony of trustees over students and teachers. The system of lay government meant that the trustees "are, in law the college or university, and that legally they can . . . make almost all decisions governing the institution."²¹ But this pattern of power distribution was not designed to endure. In the course of time, the teachers were emboldened by their ability to make or unmake an educational institution—whose reputation came to be associated with the expertise of its faculty—to assert their academic rights. They fought their war, and won it. As a consequence, they came to believe that academic freedom, as part of the spoils of war, belonged solely to themselves as victors.²² This view of academic freedom was eagerly gobbled up in the Philippines by, unsurprisingly, professors themselves. It has found expression in a Supreme Court decision which identified academic freedom with the right of the faculty member

to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic or academic establishments.²³

¹⁸ *Ibid.*

¹⁹ HOFSTADTER AND METZGER, *THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES* 383 (1955).

²⁰ Charles William Eliot, *Inaugural Address as President of Harvard, 1869*, HOFSTADTER AND SMITH, *op. cit.*, note 17 at 619. (Italics supplied).

²¹ HOFSTADTER AND METZGER, *op. cit.*, note 19 at 120.

²² GOROVITZ, *FREEDOM AND ORDER IN THE UNIVERSITY* 68 (1967).

²³ *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, G.R. No. 40779, Nov. 28, 1975; 68 SCRA 277, 283 (1975). Also *Montemayor v. Araneta University Foundation*, G.R. No. 44251, May 31, 1977; 77 SCRA 321, 327 (1977).

Security of tenure²⁴ and faculty participation in the governance of the academic community, devices which reinforce the academic freedom of the teacher, have also come to be regarded as part of that freedom.

The foundation of academic freedom in the United States are:²⁵

- (1) the philosophy of intellectual freedom;
- (2) the idea of autonomy for communities of scholars;
- (3) the freedoms guaranteed by the Bill of Rights of the American constitution as interpreted by the courts.

Based on the same principles, therefore, we can conclude that the academic freedom of teachers and educational institutions was guaranteed in the Philippines even before the promulgation of the 1935 Constitution since provisions of the American bill of rights were extended to the Philippines²⁶ through the instructions of President McKinley to the Philippine Commission in 1900,²⁷ and reiterated in the various organic acts.²⁸

B. *Demonopolisation of Academic Freedom*

Academic freedom in the United States, however, has not remained confined within the artificial banks constructed by teachers. The academic freedom of students, too, has gained recognition. In 1957, the U.S. Supreme Court stated:²⁹

Scholarship can not 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 die.

²⁴ MACIVER, *op. cit.*, note 5 at 238; Fernando, *Academic Freedom as a Constitutional Right*, 52 PHIL. L. J. 296 (1977).

²⁵ Fuchs, *Academic Freedom—Its Philosophy, Function and History*, 28 LAW & CONTEMP. PROB. 431 (1963).

²⁶ At a convocation on the Education Act of 1980 held in the University of the Philippines on 23 July 1980, Minister of Education and Culture Onofre D. Corpuz pointedly corrected a statement of University President Emanuel V. Soriano that the University of the Philippines has enjoyed academic freedom since it was founded in 1908. According to Corpuz, the U.P. started to enjoy academic freedom only upon the taking effect of the 1935 Constitution which provided thus: "Universities established by the State shall enjoy academic freedom." CONST. (1935), art. XIV, sec. 5.

But, as pointed out by the present Chief Justice, Enrique Fernando, "The correct interpretation is that respect for freedom of belief and of expression requires that all higher institutions *per se* can lay claim to academic freedom." FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 490 (1977). See also DIZON, *THE LAW ON SCHOOLS AND STUDENTS* 236 (1971).

A closer reading of the authorities would have therefore revealed to the Minister who was in need of correction.

²⁷ Instruction of April 7, 1900 to the Second Philippine Commission, 1 PUBLIC LAWS LXIII.

²⁸ Philippine Bill of 1902, Act July 1, 1902, 1 PUBLIC LAWS 1056; Jones law, Act August 29, 1916, 2 PUBLIC LAWS 237.

²⁹ *Sweezy v. New Hampshire*, 345 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). (Italics added).

Another occasion arose in 1959 which gave the U.S. Supreme Court an opportunity to assert that:³⁰

...When academic teaching-freedom and its corollary *learning freedom*, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain.

The coverage of student academic freedom parallels that of the freedom of teachers, thus:³¹ freedom of inquiry and expression in curricular activities, in extracurricular student affairs, and off-campus; due process in disciplinary actions; and participation in the governance of the institution.

The eventual recognition of student academic freedom in America is attributed to several factors:³² changes in the prevailing system of knowledge, changes in society's perception of the role of higher education, changes in the student population of institutions of higher learning, and changes in the judicial interpretation of constitutional provisions. Similar changes have taken place in the Philippine scene.

1. Masters of None

There is no doubt that knowledge covers such an expanse today that no single person can claim absolute expertise in his field of specialization, much less, mastery of the whole corpus of knowledge. Both teachers and students assume the role of learners, though they vary in the degree of information they have already acquired. There is no pressing reason, therefore, why an individual should be curtailed in his attempt to attain adequate knowledge on the poor excuse that he has much more, comparatively, to learn. The teacher can not be expected to teach a student everything that possibly could be known. The student must hence be free to inquire on his own.

Only scholars, it is claimed, are entitled to those privileges. But students are scholars. As Sir Eric Ashby has pointed out, the meaning of the word certainly includes those whom we now call undergraduate students,³³ the *de jure* status of whom is that of members of a corporation devoted to higher learning.

³⁰ *Barenblatt v. United States*, 360 U.S. 109, 79 S. Ct. 1081, 2 L. Ed. 1115 (1959). (Italics added). This case saw the Supreme Court upholding the conviction of a teacher for contempt because of his refusal to answer questions regarding his relationship with the Communist Party. But we are only interested in the Court's recognition of the freedom to learn.

³¹ See Comment, *Developments in the Law—Academic Freedom*, 81 HARV. L. REV. 1045, 1049-1050 (1968).

³² Bloustein, *The New Student and His Role in American Colleges*, in DIMENSIONS OF ACADEMIC FREEDOM 92-114 (1969); and Van Alstyne, *Student Academic Freedom and Rule-Making Powers of Public Universities: Some Constitutional Considerations*, 2 LAW IN TRANSITION Q. 1, 6-8 (1965).

³³ ASHBY, MASTERS AND SCHOLARS 2 (1970).

2. Higher Education as a Right

Social interest in knowledge has also increased such that education in institutions of higher learning is now considered a right rather than a privilege. As an American court observed in 1961:³⁴

It requires no argument to demonstrate that education is vital, and, indeed, basic to civilized society. Without sufficient education, the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.

The plaintiffs in that case were college students.

In the Philippines, the Presidential Commission to Survey Philippine Education admitted in 1970 the "virtually unanimous high regard in which schooling is held by the people, resulting in some of the highest enrolment ratios in the world, and supported by consistently high levels of public and private expenditure on education."³⁵ The middle of the 1960s saw the Philippines ranked second only to the U.S. in terms of enrolment in higher education.³⁶ In terms of expectations, therefore, the Filipino public views state support for higher learning as a necessity. The gradual change in judicial attitudes toward education in general and higher education in particular is reflected in court decisions which, as late as the 1950s, classified education as one among the ministrant functions of government peripheral to its main or constituent functions.³⁷ The constituent-ministrant dichotomy, however, was officially jettisoned by the Supreme Court in 1969,³⁸ in recognition of the growing complexities of society and the corresponding growth in the areas requiring positive government action. The numerous provisions of the 1973 Constitution on education, including higher education, provide undeniable basis for saying that higher education is a public function.³⁹ From an understanding of the public character of higher education, its appreciation as a right no longer appears remote.

³⁴ *Dixon v. Alabama State Board of Education*, 294 F. 2d 150 (5th Cir., 1961), *cert. denied*, 368 U.S. 930 (1961).

³⁵ PHIL. PRESIDENTIAL COMMISSION TO SURVEY PHILIPPINE EDUCATION, EDUCATION FOR NATIONAL DEVELOPMENT 7 (1970).

³⁶ *Id.*, at 30.

³⁷ See FERNANDO, *op. cit.*, note 26 at 111-114.

³⁸ *Ibid.*

³⁹ Constitutional provisions touching on education include:

Art. XV, Sec. 8. (1) All educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development.

(2) All institutions of higher learning shall enjoy academic freedom.

(3) The study of the Constitution shall be part of the curricula in all schools.

(4) All educational institutions shall aim to inculcate love of country, teach the duties of citizenship, and develop moral character, personal discipline, and scientific, technological, and vocational efficiency.

(5) The State shall maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level.

Higher education was indeed a privilege in the days of Spanish colonialism and in the first few succeeding years of American occupation. Enrolment in institutions of higher learning before 1898 was severely limited because higher education was primarily intended to meet the needs of the children of the Spanish colonial community. In 1799, in a national population of 1,502,574⁴⁰ only an estimated 350⁴¹ students or .023% were enrolled at the University of Santo Tomas—by then, the only university in the Philippine Islands. Out of a national population of 5,985,124 in 1866⁴², only 102,412 were in school or 1.7% of the total population. Of the latter number, only an estimated 600⁴³ were enrolled in the university or .01% of the total population and .58% of the number of students enrolled from primary to tertiary levels.

The figures presented above stand in contrast with the following figures:⁴⁴ In 1960, 1.02% of the total population or 276,271 students were enrolled in colleges and universities. This number represented 13.1% of the national population falling within the 17-20⁴⁵ years age group. In 1970, out of a population of 36,684,486, there were 623,854 who were

(6) The State shall provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students.

(7) Educational institutions, other than those established by religious orders, mission boards, and charitable organizations, shall be owned solely by citizens of the Philippines, or corporations or associations sixty *per centum* of the capital of which is owned by such citizens. The control and administration of educational institutions shall be vested in citizens of the Philippines. No educational institution shall be established exclusively for aliens, and no group of aliens shall comprise more than one-third of the enrolment in any school. The provisions of this sub-section shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

(8) At the option expressed in writing by the parents or guardians, and without cost to them and the Government, religion shall be taught to their children or wards in public elementary and high schools as may be provided by law.

Sec. 9. (1) The State shall promote scientific research and invention. The advancement of science and technology shall have priority in the national development.

(2) Filipino culture shall be preserved and developed for national identity. Arts and letters shall be under the patronage of the State.

(2) The exclusive right to inventions, writings, and artistic creations shall be secured to inventors, authors, and artists for a limited period. Scholarships, grants-in-aid, or other forms of incentives shall be provided for specially gifted citizens.

Art. II, Sec. 5. The State recognizes the vital role of the youth in nation-building and shall promote their physical, intellectual, and social well-being.

Sec. 7. The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.

⁴⁰ PHIL. NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, INTEGRATED CENSUS OF THE POPULATION AND ITS ECONOMIC ACTIVITIES 1 (1975).

⁴¹ SANCHEZ, HISTORICAL DOCUMENTARY SYNOPSIS OF THE UNIVERSITY OF SANTO TOMAS 71 (1929). The average annual number of students for the second half of the 18th century is given.

⁴² PHIL. NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, *op. cit. supra* at 1.

⁴³ SANCHEZ, *op. cit. supra*, note 41 at 71.

⁴⁴ PHIL. NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, 1981 PHILIPPINE STATISTICAL YEARBOOK 491 (1981).

⁴⁵ The average student in colleges and universities is between seventeen and twenty years old. See *Educational Structure of the Philippines, 1970* in PHIL. PRESIDENTIAL COMMISSION TO SURVEY PHILIPPINE EDUCATION, *op. cit. supra*, note 35.

TABLE 1.1

Year	Number of Students Enrolled in Institutions of Higher Learning	% of National Population	% of Total Number of Students Enrolled at All Levels	% of 17-20 Age Group	National Population	Total Number of Students Enrolled at All Levels	National Population within 17-20 Age Group ^a
1799	350 ^b	.023	—	—	1,502,574	—	—
1866	600 ^b	.010	.586	—	5,985,124	102,412	—
1903	436	.006	.122	.071	7,635,426	356,385	614,758
1918	6,257	.061	.793	.748	10,314,310	789,046	836,356
1948	83,813 ^c	.436	1.91	5.26	19,234,182	4,389,665	1,592,081
1960	276,261 ^c	1.02	6.08	12.7	27,087,685	4,541,775	2,180,309
1970	623,854	1.70	6.84	24.8	36,684,486	9,120,224	2,509,966
1975	672,854 ^d	1.61	5.84	18.2	41,831,045 ^d	11,314,001 ^d	3,692,498 ^d
1980	1,143,702	2.37	9.32	—	48,098,000	12,270,245	—

^a Only the 1975 census contained individual entries for each age level; others were extrapolated, based on a uniform distribution, from available data.

^b Estimate in SANCHEZ, HISTORICAL DOCUMENTARY SYNOPSIS OF THE UNIVERSITY OF SANTO TOMAS (1929).

^c Includes tertiary vocational but excludes state colleges and universities which failed to report.

^d Based on partial results.

Sources:

National Census and Statistics Office, Manila.
NATIONAL CENSUS AND STATISTICS OFFICE, 1981 PHILIPPINE YEARBOOK.

NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, 1977 PHILIPPINE STATISTICAL YEARBOOK.

—, 1982 PHILIPPINE STATISTICAL YEARBOOK.
—, INTEGRATED CENSUS OF THE PHILIPPINES AND ITS ECONOMIC ACTIVITIES (1975).

SANCHEZ, HISTORICAL DOCUMENTARY SYNOPSIS OF THE UNIVERSITY OF SANTO TOMAS (1929).

enrolled in higher education or 1.7% of the total population. This was 24.8% of the 2,509,966 who were within the 17-20 years age group. (See Table 1.1).

Comparable figures from the United States are shown below:⁴⁶

TABLE 1.2

Year	Number of Students Enrolled in Higher Education	% of General Population	% of 18-24 Years Age Group
1869	52,000	.1%	1.1%
1910	335,000	.4%	2.9%
1963	4,234,000	2.2%	23.3%

It remains true, however, that higher education has continuously been dominated by private institutions of learning in the Philippines. Thus, in 1945, private colleges and universities accounted for 94.10% of tertiary education enrollees while public schools took in only 5.9% of the 47,690 college students then enrolled. This ratio decreased to 84.77% for the private sector in 1955 as against 15.23% for the public institutions. In 1965, it was 90.26% for the private colleges and universities as against 9.74% for the state-supported ones. Data for 1975 based on projections showed the private schools accounting for 81.67% of the 1,001,002 students enrolled in colleges and universities, with public institutions of higher learning accomodating only 18.33%.⁴⁷

Private control of higher education does not in any way detract from the fact that, as previously pointed out, society's interest is at stake in institutions of higher learning, or that higher education is a public function. The above data only show that the government allows private individuals and institutions to act as its agents in carrying out its function of providing educational services at the tertiary level. That private schools are increasingly drawn to arrangements which require governmental financial support in one form or another, strengthens the argument that they are public agents. However, this does not justify unqualified state intervention in the academic affairs of higher institutions which is protected by institutional autonomy. Rather, it establishes the absence of a right on the part of such institutions, public or private, or on the part of the state, to prevent the application to students of constitutional guarantees enshrined in the Bill of Rights. It further supports the contention that students who

Note that while the age group used for Filipinos is 17-20, that used in the United States for the comparison of students enrolled in colleges and universities to the national population is 18-24 years. See Table 1.2.

⁴⁶ Bloustein, *op. cit. supra*, note 32 at 97.

⁴⁷ PHIL. NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, 1977 PHILIPPINE STATISTICAL YEARBOOK 559-561 (1977).

have qualified for admission into an institution of higher learning have the right to enter and remain in that institution unless academically disqualified, or if disqualified on non-academic grounds, only if the grounds for disqualification and the manner by which the decision was arrived at do not infringe the constitutional rights of those students. Within those limits at least, higher education is a right, and not a privilege which can be terminated at will by the grantor.

3. The Demise of the Surrogate

By the same arguments, the educational institution can not assert the right to carry out any act which is within a parent's power to do for his children. In the first place, the invocation of delegated parental power is grounded on the idea that only parents are interested in sending their children to institutions of higher learning. But, as this paper has argued, society has the strongest interest in the education of its people, and as higher education is made more easily accessible to the public, parents are increasingly called upon to carry out their obligation to society in seeing to it that their children pursue higher education. The rights which society extends to all its citizens, therefore, ought not to be surrendered at the doorsteps of a college or university on the strength of the *in loco parentis* argument.

Secondly, the characterization of the educational institution's authorities as surrogate parents has been subjected to question.⁴⁸ As more and more Filipino citizens are educated, and many eventually come to exercise parental authority, their attitudes toward children become more liberal, and the exercise by the latter of responsibility and freedom expands in scope. Given the variations in parental outlook, if *in loco parentis* is to be sustained, colleges and universities may eventually impose restrictions not contemplated by many parents themselves. And even if the prevailing policy among parents with respect to their children was a restrictive one, its extension to the college or university is unjustified, for the application of authoritarianism, in pure or diluted form, has always been regarded as the best bar against the acquisition of knowledge and individual identity.

The rationale, thus, for the insertion of Article 349 (2) of the Civil Code granting the right to exercise substitute parental authority to teachers and professors is unsound. Article 349 is part of an entirely new title introduced by the Code Commission for the purpose of determining "the power and duties of those persons who stand in *loco parentis*," including teachers and professors.⁴⁹ But if, as some writers⁵⁰ contend, this legal provision determines the relationship between teachers and professors on

⁴⁸ Comment, *op. cit.*, note 31 at 1144-1145.

⁴⁹ PHIL. CODE COMMISSION, REPORT ON THE PROPOSED CIVIL CODE 47 (1948).

⁵⁰ Martinez and Sales, *The Law Governing the Relationship Between Teachers and Students*, 54 PHIL. L. J. 449, 450 and 452 (1979).

one hand, and students on the other, regardless of the latter's location in the learning ladder, several problems arise. The teacher or professor only exercises *substitute* parental authority. Does this mean therefore that a student over whom parental authority has been terminated through emancipation⁵¹—either by marriage of the minor, by his attainment of the age of majority, or by voluntary concession of his father or mother who exercises parental authority over him⁵²—is not subject to any form of control or supervision by school officials? If the emancipated student is exempted from this provision, what establishes the relationship between him and the educational institution and its authorities? Substitute power can only be exercised in the absence of something to be substituted; it can not be exercised where there is none to substitute.

If Article 349 (2) applies only to students who are unemancipated minors, other objections may be raised. The legal obligation of the person exercising substitute parental authority is to exercise reasonable supervision over the conduct of the child.⁵³ But what corresponding duties does the relationship require of the child? Article 311 (2) on parental authority, which the authority of the teacher temporarily substitutes in school, states:⁵⁴ "Children are obliged to obey their parents so long as they are under parental power, and to observe respectful reverence towards them always." There may be no quarrel with the admonition to observe respectful reverence towards parents and their substitutes. But is the student in an institution of higher learning, though also an unemancipated minor, to be required to obey his teacher just as the elementary pupil is required to do? Applied specifically to the college or university setting, does not the Civil Code therefore in this case proclaim the professor's infallibility even in his patent error? An interpretation along this line would certainly blaze a new trail in the philosophy of higher education.

The failure of the Code Commission to appreciate the qualitative differences between the role played by the pupil and that by a student in a college or university accounts for generalizations with too broad a sweep in statements emanating from justices of the Supreme Court on the relationship between teachers and students. Fortunately, however, pronouncements included in that category are either in the form of dissents or in the nature of *obiter dicta*.

Interestingly enough, the Supreme Court has found occasion to discuss teacher-student relationship in cases involving the tortious liability of teachers for acts done by their pupils or students. Article 2180 of the New Civil Code provides:⁵⁵

⁵¹ CIVIL CODE, art. 327, par. 2.

⁵² CIVIL CODE, art. 397.

⁵³ CIVIL CODE, art. 349, par. 2.

⁵⁴ CIVIL CODE.

⁵⁵ CIVIL CODE, art. 2180, par. 7.

2180. xxx

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

Existing jurisprudence is at least clear on the matter. In the case of *Exconde v. Capuno*,⁵⁶ the Court pointed out, following the opinion of Manresa and Senator Ambrosio Padilla, that Article 2180 does not apply to teachers of academic educational institutions. The case involved a minor enrolled in an elementary school who was found guilty of double homicide through reckless imprudence committed on the occasion of a school-related activity under the supervision of his teachers. In a separate civil action for damages against the father of the minor, the father pointed out as a defense that liability lay somewhere else because at the time of the incident, the child was not under the control, supervision and custody of the father. The Court denied the father's contention, explaining that vicarious liability of teachers does not exculpate the father from any liability because the former attaches only to those teaching in schools of arts and trades, and not to those in academic institutions.

No less than Justice J.B.L. Reyes, however, wrote in his dissenting opinion that there is no reason why academic institutions and their teachers should be excluded from the ambit of Article 2180. In a more recent case, *Palisoc v. Brillantes*,⁵⁷ Justice Claudio Teehankee expressed in a footnote his agreement with the views of Justice Reyes in *Exconde*. This was an *obiter dictum* because *Palisoc* involved a student in a vocational institution. However, the comment would be particularly misleading if it is read together with the ruling on the issue. The Court held in that case that the teacher is vicariously liable for the acts of his student, whether or not the student is a minor. The Court stated that the rationale for the legal provision on the vicarious liability of teachers is that "they stand, to a certain extent, as to their pupils and students, *in loco parentis*."

The unfortunate attempt to define the nature of student-teacher relationship in *Palisoc* should not be applied to academic institutions. But even if teachers in academic schools should be held vicariously liable for acts of their students, the legal basis should be other than surrogate parental authority. In all instances involving student-teacher relationship in higher institutions of learning, however, the courts should steer clear of the ruling in *Palisoc*. The Court's reasoning therein, if extended to institutions of higher learning would mean that teachers stand *in loco parentis* in relation to their students, regardless of whether or not the student is a minor. The foregoing obligates teachers to act as surrogate parents, and correspondingly curtails the compass of activities the students may engage in—whether academic activities, or nonacademic but promotive of academic ends. It carries

⁵⁷ G.R. No. 29025, Oct. 4, 1971; 41 SCRA 548 (1971).

⁵⁶ 101 Phil. 843 (1957).

obviously most restrictive implications on undergraduates and graduate students particularly those who have long achieved emancipation from parental authority and who may be exercising such authority themselves in relation to their children.

Of course, the above qualifications may become necessary only should the prevailing doctrine in *Exconde v. Capuno* be overturned. But they do reveal the necessity for an uncluttered rethinking of the laws applicable to students and teachers. The nature of the study taking place in institutions of higher learning requires a substantially different treatment from those in other levels of education.

4. "Youth is [*not*] wasted on the young."

While the capacity of youth to make positive contributions to society is generally admitted, the tender age of students in institutions of higher learning remains one of the major objections to their exercise of academic freedom. But the students of today are not really so tender. They are undoubtedly more exposed to the realities of life than their sheltered counterparts ages ago. The amount of stimuli with which they are daily bombarded through complex media allows the modern student to experience directly or vicariously what the students of old would have hardly dreamed of.

The average undergraduate college student nowadays is between the ages of seventeen and twenty. The age of majority is twenty-one years.⁵⁸ Legally, therefore, the average student in Philippine college and universities is a minor, and incapacities which minority carry with it are cited against the grant of academic freedom to students. Age, however, should not be taken against a student. Precocity marches with civilization; maturity may be observed in an increasingly greater number of children. Besides, even in the universities of Medieval Scotland, students as young as fourteen years were entitled to the full exercise of the rights and responsibilities of scholars.^{58a}

One solution to the problem of minority, if indeed it is a problem, lies in the lowering of the age of majority from twenty-one years. However, the non-lowering of the age of majority should not prevent a student from asserting his right to academic freedom. The analogy may be found in the enjoyment of the rights guaranteed in the Bill of Rights. Those rights do not require full capacity to act on the part of the person who enjoys them.

Insofar as civil and criminal responsibility arising from acts of students who are minors are concerned, these are determined by law, and if the laws are unclear, then they should be amended accordingly. The solution should not be sought in the curtailment of student academic freedom.

⁵⁸ CIVIL CODE, art. 402, par. 1.

^{58a} ASHBY AND ANDERSON, *op. cit.*, note 16.

Changes in society's perception of the role of the youth argue further for student academic freedom. Thus, the 1973 Constitution "recognizes the vital role of the youth in nation-building"⁵⁹ and declares the state's commitment to the promotion of "their physical, intellectual, and social being."⁶⁰ The college or university provides the youth with the best opportunities to participate in nation-building in an atmosphere of freedom. Indeed, in what institution other than the school could the well-being of the youth be best promoted? In consonance with the policy of maximizing the participation of the youth in nation-building, the 1973 Constitution also lowered the voting age requirement to eighteen years. That an individual possesses the right of suffrage, minority notwithstanding, should buttress the students' claim to academic freedom.

The cause of student academic freedom has also found sympathizers in the Supreme Court. Justice Felix Makasiar, in his dissenting opinion in the case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*⁶¹ pointed out that like the educational institution of higher learning and its professors, students enrolled therein are equally entitled to academic freedom. In *Garcia*, a female student claiming to have been admitted into Loyola School of Theology during the summer of 1975 for studies leading to an M.A. in Theology, filed an original action in the Supreme Court for *mandamus* to compel Loyola School of Theology to admit her in the same course for the first semester, school-year 1975-1976. This was denied by the Court through Justice Enrique Fernando primarily because of the nature of the educational institution involved. Adopting the theory of the respondent, the Court explained that a seminary for the priesthood has no clear duty to admit the petitioner who was disqualified from the priesthood. Reference was also made to the academic freedom of the institution which includes the power to determine who to admit for study. But the issue of student academic freedom was not properly raised, at least the majority of the Court successfully avoided it. Justice Makasiar was able to muster his arguments around the academic freedom of the student-petitioner because he found that *she had actually been previously accepted* into Loyola School of Theology—which fact, to the majority of the Court, was a controverted one and therefore was not passed upon. The case of *Garcia* can not therefore be interpreted as a denial of the academic freedom of students. In fact, it served as a medium, though in a dissenting opinion, for the articulation of that freedom.

C. Afterthought

Student academic freedom in the United States, like the freedom of the teacher, does not go beyond the freedoms enjoyed by the ordinary American citizen, no matter how the courts emphasize the vital role of

⁵⁹ CONST. art. II, sec. 5.

⁶⁰ CONST. art. II, sec. 5.

⁶¹ G.R. No. 40779, Nov. 28, 1975; 68 SCRA 277 (1975).

academic freedom in society. The American battle for academic freedom mainly involved the problem of extending extra-campus freedoms to the campus setting. It centered on the right of scholars to have their constitutional liberties observed in the academe.

Our problem in the Philippines, of course, is of a different nature because it is the diminution of freedom outside of the campus that is sought to be applied to the academe. To argue for the non-diminution of intellectual freedom on campus while persons outside of it are deprived of the same freedom is to assert a special status for the scholar. A ticklish issue arises thus when one asserts greater rights for the man of the academe than those enjoyed by ordinary persons. The succeeding portions of this paper will touch on that issue.

III. BEYOND THE AMERICAN FRAME

A. *The Medieval Heritage*

The rise of universities in the Middle Ages is regarded as the starting point of academic freedom.⁶² Literally, the word *universitas* meant an association, community or corporation considered in its collective aspect.⁶³ It was used to denote diverse groups ranging from municipal corporations to an association of captives in war.⁶⁴ Later, it signified⁶⁵

an association in the world of learning which corresponded to a guild in the world of commerce, a union among men living in a Studium and possessing some common interests to protect and advance.

The *studium*, later called *studium generale*, was a center of learning. Students and teachers within the studia organized themselves into *universitates* in order to secure the mutual protection of their members. By the 14th century, the importance of the scholarly guilds had so increased that the word *universitas* became the equivalent of a *studium generale*.

Bologna and Paris "are the two archetypal—it might also be said the only *original* universities..."⁶⁶ The Studium Generale of Bologna was formed by *universitates* composed of foreign students. As foreigners, they were not extended the rights enjoyed by the ordinary citizens of the state in which the studium was located. The necessity for organization among the students—a need arising originally from their position of weakness—created the conditions which placed the educational institution within their control.

The masters were hardly more than the hired men of the students, to whom they were subjected to a rigid and detailed academic discipline.⁶⁷

⁶² HOFSTADTER AND METZGER, *op. cit.*, note 19 at 3.

⁶³ RAIT, *LIFE IN THE MEDIEVAL UNIVERSITY* 5 (1912).

⁶⁴ *Id.*, at 10.

⁶⁵ *Ibid.*

⁶⁶ 1 RASHDALL, *THE UNIVERSITIES OF EUROPE IN THE MIDDLE AGES* 17 (1936).

⁶⁷ HOFSTADTER AND METZGER, *op. cit.*, note 19 at 4. The University of Paris, however, was consistently dominated by the masters.

Some students were as old as forty years; others were as young as seventeen years. But students in the medieval universities were not school-boys; scholars were usually mature in outlook—some were lawyers, others were beneficed members of the clergy, and many of them came from affluent families. Hence, they were in a position to drive a hard bargain with their masters or teachers.

Students participated in the election of the university rector. The rector was the head of the institution, and he was chosen by the elected representatives of the students.⁶⁸ Technically thus, he was the representative of the students, and the requirement for masters to take an oath of obedience to the rector showed the extent to which the students dominated the campus. Student control of the university was resented by the masters who formed their own guild, but since their salaries were paid by the students, power remained in the hands of the latter.

Aside from contending with the masters, the students also had to deal with state authorities. But like the masters, state officials were held in check by the ever-present threat of students removing themselves from the locality.⁶⁹ Student migration was made convenient by the absence of permanent buildings and school equipment. The prospect of a scholar's hegira, causing economic dislocation among the townspeople who profitted from their presence, pressured city officials to give in to student demands. Scholars also eventually wangled the right to exercise the same privileges granted to citizens of Bologna so long as the students were members of a university.

Within the university itself, however, there were limitations to student action. While disciplinary regulations were democratically arrived at, students were bound to observe them. Furthermore, the teachers reigned supreme in one critical area: examinations.⁷⁰

B. *The Spanish Contribution*

1. Spain in Iberia

The Spanish concept of university education is in line with the traditions of Bologna. The constitution of the leading Spanish university during the Middle Ages, Salamanca, indicated that the student-university patterned after Bologna was adopted in Spain. According to one scholar, the liberties enjoyed by the students in Bologna were more strictly preserved in the statutes of Spanish universities than in the Italian universities of later years.⁷¹ The universities were autonomous of either ecclesiastical or royal authorities although most universities were objects of largesse from these quarters, and despite the fact that all of them were founded by the crown. *Las Siete Partidas*, a code of laws dating back to 1263, recognizes the autonomy

⁶⁸ RASHDALL, *op. cit.*, note 66 at 164.

⁶⁹ *Id.*, at 165.

⁷⁰ *Id.*, at 149.

⁷¹ *Id.*, at 72.

of these institutions although the word *studium* or *estudio* was employed instead of the term university.⁷²

The designation of the rector was the right of the students and the faculty. The students or scholars and the teachers or masters were in turn under an obligation to obey the rector. Both masters and scholars were under the jurisdiction of the rector and not of the king's courts except in criminal cases where the rector had no jurisdiction.⁷³ Obligations imposed on the students were few. Scholars were not supposed to engage in quarrels with townsmen, nor walk armed at night. They were expected to stay in their lodging houses and to devote themselves to study.⁷⁴

In the seventeenth and eighteenth centuries, however, the autonomy granted to the universities was curtailed by the government. Governance of universities was centralized. The universities were previously free to determine their methods of study. But in 1769, the king asserted his control by naming a director to supervise each university;⁷⁵ in 1770, a censor of studies was also appointed;⁷⁶ and in 1771, the plans of study in the universities were changed. The 1812 Constitution of Cadiz further strengthened the hand of the government by providing for state control of universities.⁷⁷ The academic freedom of the students was also adversely affected. On the pretext of supervising the religious doctrine of the scholars, the authorities secured a watchdog over the political activities of the students.⁷⁸

The Spanish Constitution of 1869 was a step toward decentralization of education at the tertiary level. It guaranteed the right of any Spaniard to found and maintain an educational establishment without previous license and subject only to competent governmental authority in matters involving hygiene and morals.⁷⁹ Furthermore, it provided that rights which are not expressly recognized in the Constitution but are neither expressly prohibited are to be respected.⁸⁰ The exercise of academic freedom could have been supported under this provision.

The Constitution of 1876 went a step further. Formal recognition was extended to a long-recognized essential element of academic freedom—the academic freedom of students:⁸¹

cada cual es libre de elegir su profesión y de aprenderla como mejor le parezca.

⁷² LAS SIETE PARTIDAS, partida 2ª, capítulo XXXI, in 2 LOS CODIGOS ESPAÑOLES 554 (1872).

⁷³ LAS SIETE PARTIDAS, partida 2ª, capítulo XXXI, art. 7.

⁷⁴ LAS SIETE PARTIDAS, partida 2ª, capítulo XXXI, art. 5.

⁷⁵ Cedula de 14 de Marzo de 1769.

⁷⁶ 30 ENCICLOPEDIA UNIVERSAL ILUSTRADA EUROPEO-AMERICANA, *Libertad*, 475 (1907-1930) [hereinafter referred to as the ENCICLOPEDIA UNIVERSAL].

⁷⁷ SPAN. CONST. (1812), title IX, arts. 367 and 368.

⁷⁸ ENCICLOPEDIA UNIVERSAL, *op. cit.*, note 76.

⁷⁹ SPAN. CONST. (1869), art. 24.

⁸⁰ SPAN. CONST. (1869), art. 29.

⁸¹ SPAN. CONST. (1876), art. 12(1). (Itals added).

Explaining this provision, the *Enciclopedia Universal Ilustrada* states:⁸²

[Este parrafo]...establece, como puede verse, la libertad de aprender, complemento indispensable de la de enseñar.

Although most of the above constitutional guarantees were not extended to the Philippines, the Spanish tradition of academic freedom and its revival in the second half of the seventeenth century were to have profound influences on those Filipinos who had the opportunity to study in Spain during that period.

2. Spain in the Philippines

Philippine colonial society under Spain was dominated by the religious orders. In the words of an historian,⁸³

...the clergy in the islands were more powerful than the king's official administration because the latter were so few in number and the friars played such an important role in the pacification [of the natives]

Almost every institution in the colony felt the effects of friars' rule. The universities were no exception. They, too, came under the control of the regular orders. The first college in the Philippines, the Colegio de San Jose, was established by the Society of Jesus in 1601.⁸⁴ In 1621, Pope Gregory XV issued a bull elevating the Colegio de San Ignacio, another institution belonging to the Jesuits, into a university.⁸⁵ Pope Urban VIII in 1645 reconsidered his predecessor's denial of a petition to raise the Colegio de Santo Tomas, owned by the Order of Preachers, into a university.⁸⁶ The two universities became embroiled in the quarrels between the Jesuit and Dominican orders. The Jesuits were expelled from the Philippines in 1768, and the College of San Jose was placed under the supervision of the secular priests until 1875 when control passed on to the rector of the University of Santo Tomas. From this period up to the end of Spanish rule in the country in 1898, the Dominican friars acquired a monopoly of university education by virtue of their ownership over Santo Tomas University.

Intellectual freedom, as well as other political and civil rights, were unknown, except during some brief respites, in the colonial society. The dominance of the religious orders prevented the realization of intellectual liberty within the academe. Spanish friars admitted that education, especially during the early period of colonization, was based exclusively on religion.⁸⁷

⁸² ENCICLOPEDIA UNIVERSAL, *op. cit.*, note 76 at 470.

⁸³ CONSTANTINO, *THE PAST REVISITED* 65 (1975).

⁸⁴ The ecclesiastical cabildo of Manila, a secular priest, protested to the king the plans for its establishment, but to no avail. *Letter From the Ecclesiastical Cabildo to Felipe III*, July 12, 1601, in 45 BLAIR AND ROBERTSON, *THE PHILIPPINE ISLANDS* 97 (1903-1919).

⁸⁵ 1 PALMA, *HISTORIA DE FILIPINAS* 350 (1968).

⁸⁶ *Ibid.*

⁸⁷ 45 BLAIR AND ROBERTSON, *THE PHILIPPINE ISLANDS*, *College of Santo Tomas*, 155 (1903-1919); SANCHEZ, *op. cit. supra*, note 41 at 25.

University instruction centered on dogmatic and moral theology, philosophy, the humanities (consisting of Latin and Spanish grammar, rhetoric and poetry), and the study of all branches comprised in the works of St. Thomas Aquinas.⁸⁸

The constitution of Santo Tomas was said to have been based on those of the universities of Mexico, Lima in Peru, and Salamanca. But the University of Santo Tomas was certainly no student-university. It was governed by a rector "ordinarily elected by the Chapter or Dominican Provincial Assembly or at times by the Provincial and his Council under whose orders the Father Professors worked . . ."⁸⁹ Additionally, the plan of study in the university was as fixed and inflexible as in the secondary level,^{89a} and the faculty was overwhelmingly composed of friars.⁹⁰ Students, however, enjoyed exemption from tribute and the military draft, and Rafael Palma noted that⁹¹

No existian reglas enrevesadas sobre eficiencia escolastica y disciplina que limitaran la iniciativa y la libertad individual. Cada alumno estaba libre de asistir a las clases o hacer "cuacha."

Other writers⁹² would dispute Palma's observations and certain rules did curtail even the private lives of students. They were required to lodge only with respectable houses, were prohibited from reading the works of *filibusteros* like Jose Rizal, were not allowed to marry without official permission,⁹³ were called upon to confess once a month and assist at the *salve*, processions and other religious ceremonies. *La Solidaridad* claimed that the individual freedom of professors and students alike remained at the mercy of the friars.⁹⁴ The friar-owners of the university were not subject to the university, but the university was subject to them.

The plan of the Spanish government to transform the University of Santo Tomas into a secular University of the Philippines was welcomed by liberal elements in the colony as a step toward the realization of academic freedom, but strong friar opposition prevented its implementation. Attempts toward achieving academic freedom in the Philippines under Spain hence never succeeded.

⁸⁸ BLAIR AND ROBERTSON, *op. cit. supra*, note 87 at 154-155.

⁸⁹ SANCHEZ, *op. cit. supra*, note 41 at 25.

^{89a} PALMA, *op. cit.*, note 85 at 352.

⁹⁰ *Id.*, at 26.

⁹¹ PALMA, *op. cit.*, note 85 at 352.

⁹² Among others, Jose Rizal in his novels *Noli Me Tangere* and *El Filibusterismo* vividly describes the efforts of the friars in the University to keep Filipinos from becoming enlightened.

⁹³ In fairness to the friars, this requirement was promulgated by the Crown. *Decree of Carlos IV*, June 11, 1792, in 45 BLAIR AND ROBERTSON, *THE PHILIPPINE ISLANDS* 218 (1903-1919).

⁹⁴ *La Universidad de Manila Su Plan de Estudios*, *LA SOLIDARIDAD*, December 15, 1890, p. 282, col. 2.

C. Freedom After Spain

1. Reform and Revolution

The movement for academic freedom in the Philippines coincided with the broader struggle for political and civil rights. In the nineteenth century, economic progress in the islands enabled Filipinos from wealthy families to pursue higher education in Spain. Exposed to the wave of liberalism sweeping the mother country, Filipino students and expatriates imbibed the Spanish concept of academic freedom. The Spanish constitutions guaranteeing academic freedom were not implemented in the Philippines, but the enjoyment of academic freedom by the inhabitants of Spanish Iberia made the Filipinos acutely aware of a right which they did not enjoy in their home country. Among these Filipinos were to be found fluent articulators of the desire for intellectual freedom.

The concern for education was particularly strong among members of the *clase ilustrada*. The Propaganda Movement launched in Spain to secure reforms in the Philippine Islands constantly harped on the regrettable state of university education in the Philippines.⁹⁵ Pedro A. Paterno's plan for Philippine autonomy under Spanish sovereignty, a body of proposals submitted to Spanish authorities, included suggestions for the improvement of the educational system. Among the rights he wanted secured was "*la libertad de enseñar*."⁹⁶ We find that idea reiterated in the Provisional Constitution of the Republic of the Philippines adopted at Biak-na-bato on November 1, 1898. While the Biak-na-Bato Constitution was mainly lifted from the Constitution of Jimaguayu, Cuba, it is notable that four articles not found in the latter were inserted in the former.^{96a} These "represented in their limited sense a Bill of Rights."⁹⁷ Among the rights established therein was "*la libertad de enseñanza*."⁹⁸

The draft of the Philippine Constitution prepared by Mariano Ponce in Hongkong upon orders of Aguinaldo in April 1898 provided that:⁹⁹

Son libres la asociación, la emisión de pensamiento, las reuniones, *la enseñanza*, el ejercicio de toda clase de profesión, artes, oficios é industria, en cuanto no atentan á ningún otro derecho.

Filipino writers have variously interpreted "*la libertad de enseñanza*" or "*la libertad de enseñar*" as academic freedom, freedom to teach or free-

⁹⁵ The works of Jose Rizal, Marcelo del Pilar, Graciano Lopez-Jaena and others provide abundant support in this respect.

⁹⁶ Footnote 1 "Cuestión de enseñanza," Programa Autonomico de Paterno in PLANES CONSTITUCIONALES PARA FILIPINAS 20 (T. KALAW ed. 1934) [hereinafter cited as PLANES].

^{96a} AGONCILLO, MALOLOS: THE CRISIS OF THE REPUBLIC 19 (1960).

⁹⁷ *Ibid.*

⁹⁸ Constitución Provisional de la Republica de Filipinas, art. 22, in PLANES, *op. cit.*, note 96 at 29.

⁹⁹ Constitución Provisional de Filipinas, art. 34, in PLANES, *op. cit.*, note 96 at 37. (Itals added).

dom of education.^{99a} Spanish sources give us the following explanation on the meaning and scope of that phrase:¹⁰⁰

Esta facultad [libertad de enseñanza]...supone, no sólo la libertad de enseñar, propiamente dicha, sino la consiguiente *libertad de aprender*, en cuanto el aludido propósito docente pone en comunicación necesaria las inteligencias del maestro y de los discípulos, sin cuya íntima relación no podía explicarse esta fase de la libre emisión del pensamiento.

"*La libertad de enseñanza*", therefore, guaranteed not only the academic freedom of the teacher but also that of the learner.

The Constitution of the Philippine Republic which took effect in January 1899, more popularly known as the Malolos Constitution, did not contain a specific guarantee of academic freedom. However, it did allow Filipinos to found and maintain educational institutions.¹⁰¹ It also stipulated that the enumeration of rights in the Constitution did not imply the prohibition of any others not expressly stated.¹⁰² Student academic freedom could have been sustained under this provision. But in the decree creating the Literary University of the Philippines, the election of the rector was made the prerogative of the faculty. A commission, consisting of four faculty members chosen by their peers and with the rector as its head, was responsible for the formulation of university regulations and the adoption of a plan of instruction.¹⁰³ It is, however, difficult to assess the status of student academic freedom under the Revolutionary Government because of the abnormal circumstances created by the Philippine Revolution which may explain in part the exclusion of students from the organization of the Literary University. Also, the life of the Literary University was snuffed out early by the American invasion of the Philippines, thus preventing the possible development of a firm tradition of student academic freedom.

Academic freedom is nevertheless rooted in Philippine historical reality. Certainly, there is a continuous line stretching from the Spanish tradition of academic freedom to that which the Filipinos aspired to establish. Filipinos merely continued to press for the freedom to teach and the freedom to learn under the American regime.¹⁰⁴ This line of tradition must be considered in determining the scope of academic freedom in the Philippines; otherwise, we would be disowning part of our own history.

^{99a} AGONCILLO, *op. cit.*, note 97 at 19; BERNAS, A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS 10 (1971).

¹⁰⁰ ENCICLOPEDIA UNIVERSAL, *op. cit.*, note 76 at 470. (Itals added).

¹⁰¹ Constitución de Malolos, art. 23, in PLANES, *op. cit.*, note 96 at 76.

¹⁰² Constitución de Malolos, art. 28, in PLANES, *op. cit.*, note 96 at 77.

¹⁰³ AGONCILLO, *op. cit.*, note 97 at 254.

¹⁰⁴ A notable example is the proposal to guarantee "los derechos [de]...enseñar [y] aprender" found in the document Constitución Nacional de Las Filipinas, art. XII (i) in PLANES, *op. cit.*, note 96 at 118. "Nota del editor: Proyecto de Constitución redactado por varios filipinos, entre ellos D. Cayetano Arellano, y presentado a la Comisión Filipina presidida por Jacob Gould Schurman, en 1899." Arellano became the first Chief Justice of the Philippine Supreme Court during the period of American occupation.

2. The Latin American Experience

The colonization of the New World took place well before Magellan stumbled on the Philippines. Universities were founded in South America also much earlier than in this country. Mexico and Lima came to have universities of their own in the sixteenth century. Other universities were founded within a generation or two of the Spanish conquest. Patterned after the University of Salamanca in Spain, these universities, with few exceptions, retained student participation in the governance of their affairs, and asserted their corporate autonomy against the interference of state authorities.¹⁰⁵

Our interest in South American universities, however, is not to be confined to the sixteenth century. After most of the Spanish-American nations obtained their independence from Spain early in the nineteenth century, many of the universities there were either taken over by their respective governments or closed down.¹⁰⁶ Academic freedom was not reasserted until the twentieth century with the spread of the University Reform Movement in 1918. As resurrected, it focused on two main elements: the principle of *co-gobierno* and the principle of the inviolability of the university campus. These principles may be traced to the structure of Spanish and Spanish-American universities in the Middle Ages.

Co-gobierno embodies the right of students to be represented in the governing bodies of the university. The extent of student participation varies from country to country. In Mexico under the 1929 Law, there was equal representation between teachers and students in the University Council which selected the rector from nominees of the government.¹⁰⁷ A subsequent law passed in 1944 whittled down the powers of the students by reducing the University Council into a consultative body and by decreasing student representation in that body.¹⁰⁸ In Costa Rica, there are two student representatives in the University Council which is the ruling body of the university.¹⁰⁹

The principle of the inviolability of the university campus, on the other hand, means that state authorities can not enter the university grounds without permission from university authorities. It ensures the free pursuit of knowledge by the constituents of the university in contrast to the numerous restrictions on civil and political freedoms in the society at large.

¹⁰⁵ Walker, *Comparison of the University Reform Movements in Argentina and Colombia*, in LIPSET, *STUDENT POLITICS* 293, 294 (1967).

¹⁰⁶ Einaudi, *University Autonomy and Academic Freedom in Latin America*, 28 *LAW & CONTEMP. PROB.* 636, 639 (1963).

¹⁰⁷ Sepulveda, *Student Participation in University Affairs: The Mexican Experience*, 17 *AM. J. COMP. L.* 384, 385 (1969).

¹⁰⁸ *Id.*, at 387.

¹⁰⁹ Gutierrez, *Student Participation in the Government of the University of Costa Rica*, 17 *AM. J. COMP. L.* 390 (1969).

Clearly, professors and students exercise greater rights than ordinary citizens.

IV. THE CONSTITUTIONAL MATRIX

If student academic freedom in the Philippines were to have the same foundation as the academic freedom of teachers and students in the United States,¹¹⁰ the Philippine Constitution's Bill of Rights would serve as a sufficient basis for upholding such freedom. But the Constitution is distinguished from its American counterpart by the considerable attention the former gives to education. Like in many South American countries,¹¹¹ the Philippine Constitution not only has detailed provisions on education, but

¹¹⁰ See p. 7, *supra*.

In the United States, writers who have commented favorably on student academic freedom include:

AMERICAN CIVIL LIBERTIES UNION, *ACADEMIC FREEDOM AND CIVIL LIBERTIES OF STUDENTS IN COLLEGES AND UNIVERSITIES* (1970); American Association of University Professors (AAUP), U.S. National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors, *Joint Statement on Rights and Freedoms of Students*, reprinted in *THE CARNEGIE COMMISSION ON HIGHER EDUCATION, DISSENT AND DISRUPTION* 209 (1971); Bloustein, *The New Student and His Role in American Colleges*, in *DIMENSIONS OF ACADEMIC FREEDOM* 92 (1969); Fuchs, *Academic Freedom—Its Basic Philosophy, Function and History*, 28 *LAW & CONTEMP. PROB.* 431 (1963); MACIVER, *ACADEMIC FREEDOM IN OUR TIME* 188-191 and 205-222 (1955); Metzger, *Essay II*, in GOROVITZ, *FREEDOM AND ORDER IN THE UNIVERSITY* 59-77 (1967); Moneyppenny, *Toward a Standard for Student Academic Freedom*, 28 *LAW & CONTEMP. PROB.* 625 (1963); Morris, *Academic Freedom and Loyalty Oaths*, 28 *LAW & CONTEMP. PROB.* 487 (1963); University of Illinois at Urbana-Champaign, *Faculty Senate Statement on Faculty Responsibility and Academic Freedom*, reprinted in *THE CARNEGIE COMMISSION ON HIGHER EDUCATION, DISSENT AND DISRUPTION* 283 (1971); Van Alstyne, *Student Academic Freedom and the Rule-Making Powers of Public Universities: Some Constitutional Considerations*, 2 *LAW IN TRANSITION Q.* 1 (1965).

Regarding student freedom in Great Britain, the following works are helpful:

ASHBY, *MASTERS AND SCHOLARS* (1970). Sir Eric Ashby has also been quoted by Sinco in his *PHILIPPINE POLITICAL LAW* (1962) to support his position on institutional autonomy.

ASHBY AND ANDERSON, *THE RISE OF THE STUDENT ESTATE IN BRITAIN* (1970).

The National Union of Students and the National Council for Civil Liberties, *Academic Freedom and the Law*, in *THE CARNEGIE COMMISSION ON HIGHER EDUCATION, DISSENT AND DISRUPTION* 243 (1971).

In the Philippines, student academic freedom has been mentioned in: DIZON, *THE LAW ON SCHOOLS AND STUDENTS* 228-232 (1971); CIVIL LIBERTIES UNION OF THE PHILIPPINES FREE LEGAL ASSISTANCE GROUP, *PRIMER: LEGAL RIGHTS OF STUDENTS* (1982).

Opposition to student academic freedom has come from Sidney Hook and Ernest van den Haag in their various works which view academic freedom as "reserved for those who have gnostic competence." See, for example, Van den Haag, *Academic Freedom in the United States*, 28 *LAW & CONTEMP. PROB.* 515 (1963); and HOOK, *ACADEMIC FREEDOM AND ACADEMIC ANARCHY* (1969-1970).

¹¹¹ At least the following South American countries have constitutional provisions on academic freedom and/or institutional autonomy: Costa Rica (1949), Dominican Republic (1966), Ecuador (1978), El Salvador (1962), Guatemala (1965), Honduras (1965), Nicaragua (1974), Paraguay (1967), Peru (1972), and Uruguay (1967). Other South American countries have detailed provisions in their constitutions on education but have no specific provisions guaranteeing academic freedom.

includes a specific provision on academic freedom. The Constitution provides:¹¹²

All institutions of higher learning shall enjoy academic freedom.

This is a modified version of the academic freedom clause in the 1935 Constitution which stated thus:¹¹³

Universities established by the State shall enjoy academic freedom.

The courts were given no opportunity to expound on the nature and extent of that provision in the 1935 Constitution. Neither are the transcripts of proceedings in the 1934 Constitutional Convention of any help—the amendment which introduced academic freedom for state universities was approved readily without debate.¹¹⁴ Due to the unsettled meaning of the old provision and the adoption of a parallel phraseology in the 1973 Constitution, similar problems in the interpretation of the 1973 constitutional provision have surfaced. One construction would restrict academic freedom as a specifically-mandated right in the constitution to institutional autonomy. Emphasis is given to the phrase “institutions of higher learning,” which is interpreted as a reference solely to those who in law constitute the college or university. Under the American system of institutional governance adopted in the country, this refers to the owners or trustees of the educational institution, thereby excluding the teacher or the student from the scope of the guarantee. It is advanced that personal academic freedom is adequately protected in the Bill of Rights, hence, what becomes absolutely necessary is the explicit extension of the constitutional mantle of protection over the educational establishment itself. Supporters of this view would further contend that the deliberations of the Constitutional Convention of 1971 on academic freedom focused on institutional autonomy. But this contention appears unsupported by the facts. As reported by the Constitutional Convention’s Committee on Education, the academic freedom provision ran as follows:¹¹⁵

Universities and colleges, both public and private, shall enjoy academic freedom and those duly recognized by the government shall be granted institutional autonomy subject to minimum standards and basic policies declared by law.

As formulated above, a distinction is made between institutional autonomy and the academic freedom of universities and colleges. The effect is not one of redundancy because the latter refers to the personal academic freedom of scholars within the universities and colleges. As finally written, the Constitution adopts the phraseological structure of the 1935 Constitu-

¹¹² CONST. art. XV, sec. 8, par. (2).

¹¹³ CONST. (1935), art. XIV, sec. 5.

¹¹⁴ 2 ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 630 (1949).

¹¹⁵ 1971 Phil. Constitutional Convention, Draft article on education reported by the Committee on Education, January 31, 1972.

tion, which referred to the freedom of "Universities established by the State," by referring in turn to the academic freedom of "all institutions of higher learning." Can we therefore say that the present constitutional guarantee covers only institutional autonomy? The absence in the records of the 1971 Convention of a clear explanation for the adoption of the present phraseology prevents us from agreeing with such a categorical exclusion.

A second interpretation considers the present contents of the Constitution on academic freedom as a shorthand for that which was actually approved on second reading. Then, the academic freedom provision read:¹¹⁶

All universities and other institutions of higher learning as well as faculty members and scholars therein shall enjoy academic freedom.

Thus, the guarantee covers not only institutional autonomy but also the academic freedom of "faculty members and scholars." However, according to the same view, students are not within its scope. This construction is supported by the refusal of the Constitutional Convention to specifically extend academic freedom to students. On March 28, 1972, Delegate Feliciano Jover Ledesma of the Convention's Committee on Education introduced the following:¹¹⁷ "Universities and colleges, both public and private, shall enjoy academic freedom." Delegate Jose P. Santillan proposed on April 14, 1972 to amend Ledesma's proposal by inserting "and members of their faculties" after "Universities and colleges."¹¹⁸ Delegate Emmanuel T. Santos proposed to amend it further to read "and their faculty members and *students*."¹¹⁹ Failure to reach an agreement led to the suspension of the session and deferral of the consideration of academic freedom. Delegate Santos introduced anew on April 19, 1972 the following amendments:¹²⁰

The faculty members, scholars and *students* of institutions of higher learning shall enjoy academic freedom.

Delegate Ledesma spoke against the amendments, arguing that academic freedom should be granted only to institutions of higher learning and professors and scholars who were qualified to participate in the search for truth.¹²¹ Ledesma implied that students do not possess such qualifications. The Santos amendment lost by a vote of 35 in favor to 57 against. In the afternoon session of the same day, Delegate E. Voltaire Garcia II moved to reconsider the disapproval of the Santos amendment.¹²² Again, Delegate Ledesma took the floor to speak against the motion for reconsideration.

¹¹⁶ 1971 Phil. Constitutional Convention, Amended draft article on education approved on Second Reading, May 16, 1972.

¹¹⁷ 1971 Phil. Constitutional Convention, Minutes, March 28, 1972, p. 5.

¹¹⁸ 1971 Phil. Constitutional Convention, Minutes, April 14, 1972, p. 5.

¹¹⁹ 1971 Phil. Constitutional Convention, Minutes, April 14, 1972, p. 5.

¹²⁰ 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 2.

¹²¹ 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 3.

¹²² 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 6.

He made a distinction between freedom of expression to which the students are entitled, and academic freedom which should be guaranteed only to scholars of specific disciplines who could contribute to the good of society.¹²³ The motion for reconsideration was in turn disapproved. Still later in the day, Delegate Salvador Araneta proposed this amendment:¹²⁴

Subject to the police power of the state, the objectives of education as defined in this article, and the framework of the objectives, rules and regulations of private colleges and universities, the academic freedom of professors and *students* is hereby recognized.

The Araneta proposal was about to be put to a vote when, on a point of order, Delegate Ledesma pointed out that it was in effect a second motion for reconsideration of the disapproved proposal on student academic freedom. The chair ruled that the point of order was raised too late. This victory on a technical point notwithstanding, the Araneta proposal lost.

A third construction would be Justice Felix Makasiar's position in *Garcia v. The Faculty Admission Committee, Loyola School of Theology*. Therein, he strongly insisted that the Constitutional provision recognizes not only the academic freedom of the educational establishment, but also that of its teachers and students. According to him, the guarantee is also granted in favor of the student body because all three—the administrative authorities of the college or university, its faculty, and its students—constitute the educational institution, without any one of which the educational institution can neither exist nor operate.¹²⁵ Indeed, it is the historical meaning of the phrase “institution of higher learning.” The Makasiar interpretation preserves the ancient character of the university as a corporation of individuals devoted to scholarship. As members of the same institution, they are all beneficiaries of a right which is conferred by the Constitution on the institution. A supportive argument may be found in the fact that members of the 1971 Constitutional Convention took pains to distinguish between institutional autonomy and personal academic freedom. Delegate Vicente G. Sinco explained the distinction between the two to the members of the Convention.¹²⁶ If the Convention had clear intentions of limiting the meaning of the academic freedom guarantee to institutional autonomy, then it should have employed that phrase. By opting not to use language which would have excluded personal academic freedom, the Constitutional Convention must have intended to make the same provision the basis of institutional autonomy and personal academic freedom.

Of course, the above does not confront head-on the objection that the Convention felt unfavorably toward—and did deny—the inclusion of students in the academic freedom clause of the Constitution. It can be

¹²³ 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 6.

¹²⁴ 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 11.

¹²⁵ G.R. No. 40779, Nov. 28, 1975; 68 SCRA 277, 291 (1975).

¹²⁶ 1971 Phil. Constitutional Convention, Minutes, April 14, 1972, p. 5.

clearly established, however, that what the Constitutional Convention denied was not student academic freedom, but merely the specific mention of that freedom in the Constitution. Otherwise, the Convention would have gone to the extent of expressly prohibiting student exercise of that freedom. Besides, the exclusion of students would only hold some significance if the phraseology of the academic freedom clause as approved on second reading were retained in the final draft of the Constitution. However, the unexplained dropping of the distinction between institutional autonomy and the personal freedom of faculty members and scholars pulls the rug under this objection. The final version being a general grant to "all institutions of higher learning" without specifying who can exercise personal academic freedom, *inclusio unius est exclusio alterius* as a rule of construction can not be invoked against the personal academic freedom of students. Furthermore, by not defining the meaning of academic freedom in the Constitution, the Constitutional Convention refused to nail the concept fixed to whatever notions it had of academic freedom. Considering without accepting that the Convention intended academic freedom to be inapplicable to students, it can not be successfully argued that the concept of academic freedom must forever be bound by the ideas prevailing in the Convention in 1971. The flexibility in interpretation which the language of the constitutional guarantee of academic freedom allows the courts denies the rigid character of that provision. The coverage of academic freedom can hence expand with society's progress. Finally, if we are to hold that the final version was only a shorthand for what was passed on second reading, still the academic freedom of students is comprehended by the grant of academic freedom to scholars as passed on second reading. Delegate Augusto Espiritu raised a question to clear this point, and Delegate Ledesma admitted that the word scholars could include students.¹²⁷

A fourth way of construing the academic freedom clause does not resolve the issues presented in the other three approaches. Regardless of whether or not the constitutional guarantee covers personal academic freedom, the constitutional provision has practical effects on the latter. As Fr. Joaquin Bernas explains, by expressly guaranteeing academic freedom, the Constitution establishes a distinction between the political rights contained in the Bill of Rights and academic freedom.¹²⁸

Litigation on this new freedom, therefore, will force the courts to search for standards of adjudication, standards not necessarily identical with those that have already been established for the general freedom of expression.

It is possible that the writer intended this statement to apply only to institutional academic freedom, and not to personal academic freedom.

¹²⁷ 1971 Phil. Constitutional Convention, Minutes, April 19, 1972, p. 6.

¹²⁸ 1 BERNAS, THE 1973 PHILIPPINE CONSTITUTION: NOTES AND CASES 633 (1974).

If so, then we wish to make the necessary extension—and more. The academic freedom of the student, as well as that of the teacher, benefits from the dichotomy introduced into the Constitution by the academic freedom clause. Litigation involving personal academic freedom would therefore entail the formulation of standards different from those established for other freedoms in the Bill of Rights.

V. THE VASTNESS OF STUDENT ACADEMIC FREEDOM

A. *Functions of an Institution of Higher Learning*

In fixing standards for academic freedom in general, Fr. Bernas suggests that we look into the functions of the institution of higher learning:¹²⁹

Academic freedom is freedom not just in the context of a political community but also in the context of a narrower academic community. The implication of this distinction must be explored. The search for standards for academic freedom must take into consideration not just the general theory of freedom of expression but also the functions of a university.

The same approach should be adopted for student academic freedom.

The institution of higher learning is generally conceded as performing two main functions: One is supportive of the status quo; the other is subversive of it. It is called upon to transmit existing knowledge and values to the incoming generation; it is equally called upon to reexamine such knowledge and values with a view to facilitating orderly change in society.¹³⁰

Student academic freedom, like academic freedom in general, provides the basis for defining the exercise of specific student rights. The composite of those rights, however, do not define the scope of student freedom. Student academic freedom is not by analogy a constellation of rights; more appropriately, it is the fountain from which those rights flow. The well-spring of student academic freedom is the freedom to learn. But learning is not confined to the assimilation of knowledge within the classroom. The learning process encompasses all student activities promotive of the twin ends of an institution of higher learning. What has been observed of the university is applicable to all institutions of higher learning:¹³¹

Much of the educational value of the university takes place outside of the classroom. Freedom in this area of university life is as essential to intellectual and ethical development as freedom in the classroom.

In particular, catalyzing orderly change requires the highest degree of freedom for members of the academe. To carry out this function, the

¹²⁹ *Ibid.*

¹³⁰ Emerson and Haber, *Academic Freedom of the Faculty Member as Citizen*, 28 LAW & CONTEMP. PROB. 525, 547 (1963).

¹³¹ *Id.*, at 548.

scholar needs "direct contact with the society itself."¹³² The objectives of the institution of higher learning underlined above have given rise to specific student rights deemed covered by student academic freedom. While it is not within the scope of this paper to discuss each particular right, reenumerating the general groups of student rights may serve to emphasize their relationship with the ends of higher learning:¹³³ freedom of inquiry and expression in curricular activities, in extracurricular student affairs, and off-campus; due process in disciplinary actions; and participation in the governance of the institution.

However, these rights are only good as long as intellectual liberty is enjoyed by all persons in society. Intellectual liberty is guaranteed to everyone. But if the liberty of the man on the street can be unduly restricted, the man from the academe faces the prospect of the same restrictions being applied to himself. The Philippine Constitution grants the government powers which can be, and have been, employed in the curtailment of the academic freedom of the whole academic community. Specifically, the president has been given the power to declare martial law:¹³⁴

In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

The members of the academic community in institutions of higher learning should be exempt from the effects of martial rule or other similar forms of restriction on the freedoms enumerated in the Bill of Rights and guaranteed in the academic freedom clause. The academic freedom clause, if it is to have real meaning, must be read as a limitation on the emergency powers of the government. Institutions of higher learning would therefore be unhampered in carrying out their mission despite any emergency. Only within this context would the following statements made by a lady, a former justice of the Supreme Court, become meaningful:¹³⁵

Martial law notwithstanding, dissent is not to be stifled...

I submit that the students should be allowed by the government to speak, work, and move in an atmosphere free from fear of criminal prosecution for utterances and peaceful assemblies within the territory of the University campus and purely among their own ranks which are designed to analyze, evaluate, criticize or even condemn government policies and action.

The danger to academic functions posed by government restrictions are very real. During the period of martial law, books in the University of the Phil-

¹³² *Ibid.*

¹³³ See Comment, *op. cit.*, note 31 at 1056; *supra*, p. 560.

¹³⁴ CONST. art. VII, sec. 9.

¹³⁵ Muñoz-Palma, *Do Not Lose Your Heritage of Freedom*, Commencement Address delivered on 16 April 1978 at the University of the Philippines in UNIVERSITY OF THE PHILIPPINES, HISTORICAL PAPERS AND DOCUMENTS 22, 26-27 (1978).

ippines library which were authored by Karl Marx, Mao Tse-Tung, Che Guevarra and the alleged chairman of the Communist Part of the Philippines, Jose Ma. Sison, as well as other related works, were withdrawn from the shelves and constituted into the infamous "Red Book Collection." Access to these materials was restricted to faculty members and graduate students, and where access was allowed, individuals were required to state their names and the purpose for which they were using the materials. Clearly, there was a diminution of student academic freedom. The adverse effects on the students were unimaginable—students majoring in political science, economics, history, sociology and other allied fields were denied of materials forming part of the core of their fields of study. The mere act of registering one's name, in the light of red-baiting activities and numerous arrests made among student and faculty ranks, already constituted a restriction of academic freedom. And even after martial law has been proclaimed lifted, the president retains his power to control "admission to educational institutions whose operations are found prejudicial to the national security."¹³⁶ The presence of military agents on campus further stifles academic inquiry especially in politically sensitive areas of study.

The institution of higher learning, along with its students and teachers, needs extraordinary measures to preserve its freedom from extraordinary governmental powers to restrict the freedom of everyone in general. Student activities made in the pursuit of the institution of higher learning's functions should remain unaffected by martial law or other emergency restrictions; otherwise, the institution of higher learning, as a community of scholars, can not live up to its mission.

B. A Problem in Definition

Student academic freedom as discussed in this paper properly pertains to students studying in institutions of higher learning. The Constitution refers only to the academic freedom of such institutions. Students enrolled in other types of educational institutions may also have a right to academic freedom; but their freedom is not the same as that of students in institutions of higher learning.¹³⁷ But what is an "institution of higher learning"? American writers interchangeably use that phrase with "university" or "college"—an unambiguous reference to post-secondary schools authorized to grant academic degrees and devoted to the study of the arts and sciences or the professions. In the Philippines, however, as early as 1925, there were complaints "that a great many schools of secondary grade call themselves colleges and universities."¹³⁸ There was at that time no government

¹³⁶ Pres. Decree No. 1737, sec. 2 (1980). See also Pres. Decree No. 1498 (1978) granting the president broad powers for the detention of persons.

¹³⁷ CIVIL LIBERTIES UNION OF THE PHILIPPINES FREE LEGAL ASSISTANCE GROUP, PRIMER: LEGAL RIGHTS OF STUDENTS 11 (1982).

¹³⁸ PHIL. BOARD OF EDUCATIONAL SURVEY, A SURVEY OF THE EDUCATIONAL SYSTEM OF THE PHILIPPINE ISLANDS 508 (1925).

Commonwealth Act No. 180, passed in 1936, provided that: "No institution shall

stature or regulation which defined the use of these terms. Complicating the situation further is the maintenance by legitimate universities and colleges of pre-school, primary, secondary and vocational departments. The question arises whether those enrolled in the latter departments, being enrolled in and thus technically are students of an "institution of higher learning," are also entitled to the exercise of the same degree of academic freedom as students enrolled in professional departments or in the arts and sciences are. The Education Act of 1982, "an act providing for the establishment and maintenance of an integrated system of education,"¹³⁹ avoids resolving the issue by leaving undefined what an institution of higher learning is. It does, however, define what tertiary education under the formal education system is.

"Formal education" refers to the hierarchically structured and chronologically graded learning organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to higher levels.¹⁴⁰

Tertiary education is "post-secondary schooling in higher education leading to a degree in a specific profession or discipline."¹⁴¹ At the risk of sounding tautologous, we can postulate that students in institutions of higher learning are those who are enrolled in tertiary education.

Is the student's right to academic freedom affected by the private or public character of the institution of higher learning in which he is enrolled? Public schools are educational institutions established and administered by the government;¹⁴² private schools are those maintained by private individuals or groups.¹⁴³ The duty incumbent upon individuals running public institutions of higher learning, as state officials, to observe constitutional guarantees is well-delineated. Students enrolled under them are entitled to the full exercise of academic freedom. But what of their coun-

call itself or be called a University, unless and until it shall have fulfilled the following requisites in addition to those that may be prescribed by the Secretary of Public Instruction: 1. The operation of a recognized post-graduate course in liberal arts and sciences or in education, leading to the master's degree; 2. the operation of a four-year undergraduate course in liberal arts and sciences; 3. the operation of at least three professional colleges; 4. the possession and maintenance of a professionally administered library of at least 10,000 bound volumes of collegiate books..." Com. Act No. 180 (1936), sec. 3, 2 PUBLIC LAWS COM. 142. This law applies only to private schools and it amended Act No. 2706 (1917), "An Act Making the Inspection and Recognition of Private Schools and Colleges Obligatory for the Secretary of Public Instruction, And for Other Purposes."

The writer spent his high school years in a school for boys offering elementary instruction from grades four to seven and secondary instruction from years one to four but which school proudly called itself a "college."

¹³⁹ Batas Pambansa Blg. 232 (1982).

¹⁴⁰ Batas Pambansa Blg. 232 (1982), sec. 20.

¹⁴¹ Batas Pambansa Blg. 232 (1982), sec. 20, par. 3. Differentiate from "technical-vocational education which is post secondary but non-degree program leading to a 1-, 2-, or 3-year certificate in preparation for a group of middle-level occupations." See sec. 24, par. 1.

¹⁴² Batas Pambansa Blg. 232 (1982), sec. 26, par. 2.

¹⁴³ Batas Pambansa Blg. 232 (1982), sec. 26, par. 3.

terparts enrolled in private institutions of higher learning? As pointed out earlier in this paper, higher education is a public function, and private persons engaged in higher education are agents of the state. More accurately, they are special state agents protected in their relationship with the state by institutional autonomy, but otherwise subject to the same state obligation to observe fidelity to the constitution. Hence, there is no need for distinguishing between private and public institutions in respect of student exercise of academic freedom.

However, there may arise problems peculiar to institutions of higher learning owned and operated by religious denominations. For instance, is a candidate for the priesthood in a seminary entitled to student academic freedom? In Justice Makasiar's dissent in *Garcia*, the duty of a seminary to respect the constitutional freedoms of its students was asserted. The obligation thus imposed may clash with the religious liberty of the institution's owners. However, it can be argued that the religious liberty of the individual is not curtailed because he is still free to organize an institution purposely dedicated to the advancement of his religion, only that this institution is not entitled to recognition as an educational institution, much less so as an institution of higher learning. Since higher education is a public function, an institution which refuses to respect the academic freedom of its teachers and students does not deserve the protection of the Constitution's academic freedom clause. Enjoyment of institutional autonomy carries with it the duty to recognize personal academic freedom—of which institutional autonomy is but a derivative.

C. *An Interplay of Freedoms*

Students compose one sector of the academic community whose other members, on their own right, are entitled to academic freedom. The academic freedom of the student, therefore, must contend with the freedoms of other members of the institution of higher learning. Specific instances may be cited to illustrate the interplay among them.

By virtue of its institutional autonomy, the university or college sets the standards for admission of students and for their continued stay in the educational institution. Needless to stress, such standards must be non-discriminatory, and once a student qualifies according to the standard set, he should not be denied admission nor dismissed arbitrarily. Substantive and procedural due process must be observed. In the United States, the application of the due process clause has been conditioned on state action. Due process can be invoked only against the state. The wealth of cases supporting the restrictive interpretation of that constitutional protection is based on the literal provision of the Fourteenth Amendment:¹⁴⁴

¹⁴⁴ U.S. CONST. amend. XIV, sec. 1 (Italics added).

No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In the Philippines, there may be room for the application of the due process clause without establishing state action. The Philippine Constitution's due process clause reads:¹⁴⁵

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

On its face, therefore, the Constitution does not restrict the due process protection to protection from state action. Granting, however, that this provision applies only to state action,^{145a} higher education is, as emphasized earlier, a public function and even private persons engaged in it must respect the constitutional rights of students. In a recent Court of Appeals decision on the expulsion of a student from Ateneo de Manila University, the Court said that the issue involved was "whether or not due process of law was duly observed by the defendant university in investigating and finally finding guilty"¹⁴⁶ the student concerned. The due process clause was deemed applicable to an action of the respondent which is a private institution of higher learning.

Institutional autonomy can neither be invoked in requiring student organizations to submit a complete list of their members and requiring further that such record would constitute part of the public record. This is violative of the student's right to academic privacy. Since a student's membership in an organization may be made the basis for determining his political affiliations, the "public record" requirement becomes a handy excuse for circumventing the academic privacy of the student.¹⁴⁷

The adoption of curricular standards are also clearly within the competence of the faculty and the policy-making bodies of the educational institution. However, uniformity in the application of such standards must be observed, and students given an opportunity to appeal from deviations from established standards.

¹⁴⁵ CONST. art. IV, sec. 1.

^{145a} In the case of *Fonacier v. Court of Appeals*, the Supreme Court upheld the jurisdiction of civil courts over a dispute involving the internal affairs of a private organization—the Philippine Independent Church. The Court held "that since it is claimed that the ouster was made by an unauthorized person, or in a manner contrary to the constitution of the Church, and that the ousted bishops *were not given notice of the charges against them nor were they afforded an opportunity to be heard*, the civil courts have jurisdiction to review the action regarding said ouster..." 96 Phil. 417, 426 (1955). (Italics added).

¹⁴⁶ *Guanzon v. Ateneo de Manila University*, C.A.-G.R. No. 59834-R, March 15, 1979. The case is pending on appeal to the Supreme Court.

¹⁴⁷ American Association of University Professors, U.S. National Student Association, Association of American Colleges, National Association of Women Deans and Counselors, *Joint Statement on Rights and Freedoms of Students* reprinted in THE CARNEGIE COMMISSION ON HIGHER EDUCATION, DISSENT AND DISRUPTION 209, 211-212 (1971). In the University of the Philippines, the military has taken advantage of srch public records.

The student should not be prevented by the teacher or the institution from undertaking research on his own and afterwards publishing the results of his research. But the student is under an obligation to observe administrative procedures and requirements such as the payment of fees for the use of chemicals, power, and facilities of the university—the same administrative restrictions imposed on other members of the academic community. The student is also required to observe standards of safety and hygiene. Thus, the school authorities may regulate access to laboratory facilities the use of which may pose a hazard in the hands of individuals lacking in skill. Supervision by a faculty member or an administrative assistant may be required.

An individual student's academic freedom is also limited by the freedom of other students. Where the acts of a student deny the academic freedom of other students, school authorities must step in. Included among such acts are the employment of violence, force or coercion on other members of the academic community in order that the latter will conform to a particular line of thought or adopt a particular line of action—the boot camp policy of intolerance is anathema in an institution of higher learning. Additionally, in a universe where the range of knowledge borders on the infinite, the teacher may find himself in the position of another learner, so that his freedom to learn would also have to be respected.

The student, like the teacher, has the responsibility to see to it that all of his actions are "directed towards the general welfare of the people rather than that of any particular person or interest."¹⁴⁸ This restriction applies to all activities that may be undertaken by the student or the teacher. For example, research in an institution of higher learning has to contribute toward expanding the horizons of knowledge. Research which is not intended to be shared with the rest of the academic community—such as research for the exclusive use of the military—has no place in the academe; it has to be carried out someplace else.

Students also have the added responsibility for study and learning. Within the classroom, the teacher must respect his student's right to differ, but like the teacher, the student can not insist on the adoption of his particular brand of orthodoxy. Outside of the classroom, the student opens himself through publication to possible criticism or refutation by other scholars in the academic world.

The interplay of the interests of the various sectors of the academic community must also be reflected in the governance of the academe. The right of students to participate therein is not directly founded on the Bill of Rights which nowhere guarantees student participation in the governing bodies of institutions of higher learning. However, neither is it grounded

¹⁴⁸ Muñoz-Palma, *op. cit. supra*, note 135 at 28.

solely on convenience; it stems directly from student membership in the corporation of scholars. As the most numerous, most vibrant, and most idealistic members of the academe, they are necessary in maintaining the inviolability of academic freedom.

CONCLUSION

A basic assumption of this paper, articulated at the start, is that institutional autonomy, and the personal academic freedom of the teacher and the student are all indispensable elements of the larger freedom. Intrinsically, these elements constitute a unity. They exist in tension; but they have no existence independent of each other. They have but one life force and one end: the unfettered thought in quest of learning.

The absence of one of its components makes academic freedom less than what it is. Academic freedom as a collective concern requires a mutual appreciation by all academic sectors of the freedom enjoyed by every one of them and the indispensability of each freedom in the maintenance of the collective one. The diminution of the freedom of an academic sector is an injury inflicted against the whole academic community. The other members of the academe are hence under an obligation to bring an action on the basis of that injury upon the failure of another sector to protect its freedom. To students, this means that they assume responsibility, too, for the protection of the freedom of their teachers and the institutional autonomy of their university or college, especially where the teachers and the authorities of the institution divine convenience in the non-assertion of their respective academic freedom.

Objection, however, may be raised against suits brought before the courts by students to assert their academic freedom, on the ground that litigation provides the state with an excuse for interfering in the affairs of the academe. But members of the academe themselves provide the bases for these suits because they are brought about by violations of student academic freedom. Where that freedom is respected, resort to the courts becomes unnecessary.

The historical and constitutional experience of the Filipino people support the students' right to academic freedom. That freedom includes freedom of expression which is indispensable to higher learning. Litigation revolving around student academic freedom would involve the setting up of standards different from those formulated for the freedom of expression enjoyed by ordinary persons—different at least where emergency restrictions like martial rule are involved. It is not enough to require, for example, a standard of clear and present danger because in emergency situations where every imaginable danger is perceived as present and clear, "freedom" is frozen, and "academic" alone is rendered meaningful.¹⁴⁹

¹⁴⁹ Chief Justice Fernando has written that the *Garcia* and *Montemayor* decisions recognize the force and effect of the academic freedom guarantee during the existence

But certainly, the surest guarantee that academic freedom shall be upheld is the protection of intellectual freedom for all persons in society.¹⁵⁰

The determination of standards applying to the exercise of specific rights covered by academic freedom has to be made on a case to case basis, always taking full stock of the functions of an institution of higher learning which underlie student academic freedom. Any statute or rule which undermines the pursuit of those functions are violative of that freedom.

But the matter of freedom is also a question of power. The studentry, therefore, must assert forcefully and responsibly its academic freedom, knowing that he only remains free who exercises his freedom.¹⁵¹

of martial law. But his statement was made in reference to institutional autonomy and teacher's academic freedom. See Fernando, *Academic Freedom as a Constitutional Right*, PHIL. L. J. 289, 301 (1977).

¹⁵⁰ "...Academic freedom like other freedoms, and indeed like freedom in general, is a social phenomenon whose existence is highly dependent on a complex set of institutional arrangements in society...we may say that the overall matrix or environment in which academic freedom for the individual scholar can exist and flourish may be described as the rule of law or a social order characterised, on one hand, by civil liberty, and on the other hand, by limited government..." FERNANDEZ, *Academic Freedom as a Legal Right*, Carillon, April-June 1981, p. 43.

¹⁵¹ Taken from the preamble of the Federal Constitution of the Swiss Federation.