G.R. No. 230642 (*Oscar B. Pimentel, et al. vs. Legal Education Board, et al.*); and

G.R. No. 242954 (*Francis Jose Lean Abayata, et al. vs. Hon. Salvador Medialdea, et al.*).

Promulgated on:

September 10, 2019

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CONCURRING OPINION

REYES, A., JR., *J.*:

The question in the instant case is simple- may the State, under the guise of improving the quality of legal education forbid its own citizens from pursuing a course in law?

In the instant consolidated Petitions for Prohibition, and *Certiorari* and Prohibition, under Rule 65 of the Rules of Court, the petitioners seek to declare as unconstitutional RA No. 7662, or the Legal Education Reform Act of 1993. They principally target Legal Education Board Memorandum Order No. 7, Series of 2016 ("LEBMO NO.7"), which established the Philippine Law School Admission Test ("PhilSAT"), and the subsequent Legal Education Board Memorandum Orders and Circulars issued in relation thereto, particularly Legal Education Board Memorandum Order No. 11, Series of 2017 ("LEBMO No. 11") which supplies transitional provisions for LEBMO No. 7 and Legal Education Board Memorandum Circular No. 18 ("LEBMC No. 18"), which enumerates the PhilSAT eligibility requirements for freshmen law students for academic year 2018-2019.[1]

The *ponencia* focused its scrutiny on LEBMO No. 7, Series of 2016, LEBMO No. 11, Series of 2017, and LEBMC No. 18, which were all declared to be unconstitutional. This examination was based on the assumption that the objection against the PhilSAT lies at the core of all the Petitions.[2]

I agree with the *ponencia* in striking as unconstitutional LEB Mo. No. 7, and all its adjunct orders. I further concede that they must be struck down on the basis of police power, and for being violative of the institutions' and students' academic freedom. In addition, I wish to highlight certain important matters that were not mentioned in the *ponencia*.

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1 Petition, p. 1148.

2 Main Decision, p. 15.

Reyes

The Importance of Education in the Philippine Setting

Education is a continuing concern that is impressed with public interest. The importance of education in our country is apparent from the numerous Constitutional provisions highlighting the obligation of the State to nurture and protect our educational systems, *viz.*:

> **"ARTICLE II. DECLARATION OF PRINCIPLES AND STATE POLICIES PRINCIPLES**
>
> Article II, Section 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.
>
> **ARTICLE XIV. EDUCATION**
>
> Article XIV, Section 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.
>
> Article XIV, Section 2. The State shall:
>
> 1. Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
>
> 2. Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;
>
> 3. Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
>
> 4. Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
>
> 5. Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.
>
> *Article XIV, Section 4.* The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions."

Reyes

The common thread that runs through these Constitutional provisions is the State's priority towards education. This stems from the reality that "education and total human development [are] the gateway not only to intellectual and moral development but also to economic advancement and the cultivation of the yearning for freedom and justice."[3] It leads to the promotion of "total human liberation and development."[4]

In view of the importance of education, the State is bound to protect and promote the right of all citizens to quality education, and to undertake steps to make it accessible and affordable for all.[5] Added to this, all systems of education must be relevant to the needs of the people and the society.[6]

Pursuant thereto, on December 23, 1999, Congress passed Republic Act No. 7662 or the Legal Education Reform Act of 1993. The law was created to fulfill the State's policy to uplift the standards of legal education to prepare law students for advocacy, counseling, problem-solving, and decision-making; to infuse in them the ethics of the legal profession and impress on them the importance and dignity of the legal profession as an equal and indispensable partner of the Bench.[7] To achieve these ends, the lawmakers created a Legal Education Board ("LEB"), to pursue the following objectives, to wit:

> (a) to administer the legal education system in the country in a manner consistent with the provisions of this Act;
>
> (b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;
>
> (c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;
>
> (d) to accredit law schools that meet the standards of accreditation;
>
> **(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members;**
>
> (f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by

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3 Deliberations for the 1987 Constitution, Volume IV, p. 170; Bernas, p. 91.

4 1987 CONSTITUTION, Article II, Sec. 17.

5 1987 CONSTITUTION, Article XIV, Sec. 2(3).

6 1987 CONSTITUTION, Article XIV, Sec. 2(1).

7 REPUBLIC ACT NO. 7662 – An Act Providing for Reforms in the Legal Education, Creating for the Purpose, A Legal Education Board and For Other Purposes.

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> the law schools and colleges under the different levels of accreditation status;
>
> (g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.
>
> (h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary; and
>
> (i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act. (Emphasis supplied)

Latching on to its power to prescribe the minimum standards for law admission, on December 29, 2016, the LEB released LEBMO No. 7, Series of 2016, which provides for the implementation of a nationwide uniform law school admission test – the PhilSAT. It is an aptitude exam that is designed to "measure the academic potential of the examinee to pursue the study of law," through a series of questions that gauge his/her proficiencies in communications, language, critical thinking, and verbal and quantitative reasoning."[8]

Under LEBMO No. 7, the PhilSAT shall be administered once a year on or before April 16 in Metro Manila, Baguio City, Legazpi City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City. A prospective test taker must pay a testing fee of Php 1,500.00 (later reduced to Php 1,000).[9]

Basically, the PhilSAT intends to predict the capacity of the test taker to survive in a challenging legal education program. It is surmised that if the examinee obtains a grade of 55 and above, then he/she can surely endure the rigors of law school.

In addition, it is assumed that those who graduated with honors and have been granted a professional civil service eligibility possess the basic competencies to thrive in law school. As such, they are exempt from the requirement of taking the PhilSAT, provided that they enroll in a law school within two years from their college graduation, and obtain a Certificate of Exemption from the LEB.

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8 LEBMO No. 7.

9 Id.

On the part of the law schools, they are strictly enjoined from admitting an applicant who failed to obtain the minimum required score, or an honor graduate who neglected to submit the Certificate of Exemption. Any law school who violates this rule shall be subjected to administrative sanctions, ranging from the termination or phasing-out of its law program; provisional cancellation of its government recognition and placing of its law program under Permit Status, and/or paying a fine of not less than Php10,000.00.[10]

Meanwhile, the LEB issued LEBMO No. 11, which provided for transitional provisions to LEBMO No. 7, allowing conditional admission and enrollment to those who failed to take the PhilSAT last April 16, 2017. The test takers' conditional enrollment was premised on an undertaking that they will take the next scheduled PhilSAT, and obtain the required minimum score, otherwise, their conditional admission shall be revoked. In addition, they must file a notarized application with the Chairman of the LEB, and pay an application fee of Php 300.00.

Thereafter, on June 8, 2018, LEB Chairperson Aquende issued LEBMC No. 18, putting an end to the conditional admission of students who failed to present a Certificate of Eligibility.

For sure, the LEB was properly vested with the power to prescribe minimum standards for law admission. However, this right is not unbridled, and is limited by the Constitutional admonition that said right must be exercised in a reasonable manner.[11] This means that the extent of State supervision and regulation may not transgress the cherished freedoms granted under the Constitution.

The PhilSAT is Violative of the Law Schools' Academic Freedom

Inasmuch as the State possesses the right to supervise and regulate educational institutions, the Constitution craftily ensures that the exercise thereof will not spiral into tyranny. To avoid any form of despotism in the regulation of institutions, the Constitution adds a layer of protection in favor of the academic institutions by ensuring that notwithstanding the possibility of state interference in their affairs, "[a]cademic freedom shall be enjoyed in all institutions of higher learning."[12] Law schools, as institutions of higher

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10 LEBMO No. 7; LEBMO No. 2-2013, Section 32.
11 1987 CONSTITUTION, Article XIV, Section 4(1).
12 1987 CONSTITUTION, Article XIV, Section 5(2).

Reyes

education, are the recipients of this boon.[13]

This institutional autonomy granted unto universities has been in existence as early as the 1935 and 1973 Constitutions.[14] Despite being strongly entrenched in our fundamental law, surprisingly, the body of jurisprudence on the matter of academic freedom is scarce. Noted Constitutionalist Fr. Joaquin G. Bernas, SJ theorizes that the scarcity stems from either a positive aspect - where occasions for litigation and controversy surrounding the matter are rare due to the unhampered freedom enjoyed by the academic world, or, in a negative aspect - due to a general ignorance or naivety regarding its meaning, purpose, and utility.[15] The instant case is one of the rare occasions where the issue of academic freedom comes to fore, and thus, presents an opportunity for the Court to further elucidate its meaning.

Interestingly, academic freedom is an amorphous concept that eludes exact definition. The framers of the Constitution intended it to remain as expansive and dynamic, in a desire to give the courts a wide latitude to develop its meaning further, *viz.*:

> In anticipation of the question as to whether and what aspects of academic freedom are included herein, ConCom Commissioner Adolfo S. Azcuna explained: "Since academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom."
>
> More to the point, Commissioner Jose Luis Martin C. Gascon asked: "When we speak of the sentence 'academic freedom shall be enjoyed in all institutions of higher learning,' do we mean that academic freedom shall be enjoyed by the institution itself?" Azcuna replied: "Not only that, it also includes . . . ." Gascon finished off the broken thought,— "the faculty and the students." Azcuna replied: "Yes."[16]

In Philippine jurisprudence, one of the earliest definitions of this term emerged from the case of ***Garcia v. The Faculty Admission Committee, Loyola School of Theology*** where the Court held that "the internal conditions for academic freedom in a university are that the academic staff should have de facto control of the following functions: (i) admission and examination of students; (ii) the curricula for courses of study; (iii) the appointment and tenure of office of academic staff and (iv) the allocation of

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13 *The PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co.*, 627 Phil. 669, 683 (2010).

14 *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287, 306-307 (1999).

15 Bernas, p. 1294.

16 *Ateneo de Manila University v. Judge Capulong*, 294 Phil. 654, 674 (1993).

Reyes

income among the different categories of expenditure."[17]

In the cases that followed, the parameters of academic freedom were simplified to pertain to a general liberty to decide (i) who may teach; (ii) who may be taught; (iii) how lessons shall be taught; and (iv) who may be admitted to study.[18] Certainly, "[i]t is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation; x x x an atmosphere in which there prevail the 'four essential freedoms' of a university."[19]

Accordingly, insofar as the academic institution is concerned, it possesses the general right to determine not only the subject matter, or manner of teaching, but likewise has a free reign to select its own students. This liberty was described in ***Garcia***[20] as "a wide sphere of autonomy."[21] Thus, the school has the right to decide its admission criteria for itself, in accordance with "its aims and objectives, and how best to attain them — free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint".[22] Moreover, the Court nips in the bud any attempts to curtail or limit this freedom, warning that "[t]his constitutional provision [academic freedom] is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purposes and nullify its intent."[23]

Similarly, in *Ateneo de Manila University v. Judge Capulong*,[24] the Court went further by characterizing the right of the schools to choose their own students as "inherent," explaining that,

> "educational institutions of higher learning are **inherently** endowed with the right to establish their policies, academic and otherwise, unhampered by external controls or pressure. In the Frankfurter formulation, this is articulated in the areas of: (1) what shall be taught, e.g., the curriculum and (2) who may be admitted to study."[25]

Indeed, institutions of higher learning are inherently endowed with the right to establish their own policies - academic and otherwise, unhampered by external controls or pressure. This includes the creation of their own distinct policies, standards or criteria in the selection of their

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17 160-A Phil. 929, 944 (1975).

18 *Mercado, et al. v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228, 251 (2010), citing *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000).

19 *The PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co*, supra note 13.

20 *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, supra note 17.

21 Id. at 943.

22 Id.

23 *University of San Agustin, Inc. v. Court of Appeals*, 300 Phil. 819, 833 (1994).

24 *Ateneo de Manila University v. Judge Capulong*, supra note 16.

25 Id. at 673.

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students, in accordance with their vision-mission and objectives. Remarkably, this prerogative is essential to their very functioning and identity. For sure, the schools' body politic serves as a representation of their standards, an embodiment of their vision, and a reflection of their ideals.

Equally important, in *University of San Agustin, Inc. v. Court of Appeals*,[26] the Court stressed that concomitant to the right of the schools to pursue their academic freedom, are the duties to ensure that this freedom is not jeopardized,[27] and to staunchly avert any possible encroachments thereto. They must zealously guard their liberty against the State. Correlatively, on the part of the State, it should only interfere in instances where the public welfare necessitates its intrusion.

This idea was likewise evinced by the framers of the 1987 Constitution, *viz.*:

> MR. GASCON: When we speak of state regulation and supervision, that does not mean dictation, because we have already defined what education is. Hence, in the pursuit of knowledge in schools we should provide the educational institution as much academic freedom it needs. When we speak of regulation, we speak of guidelines and others. We do not believe that the State has any right to impose its ideas on the educational institution because that would already be a violation of their constitutional rights.
>
> There is no conflict between our perspectives. When we speak of regulations, we speak of providing guidelines and cooperation in as far as defining curricular et cetera, but that does not give any mandate to the State to impose its ideas on the educational institution. That is what academic freedom is all about.[28]

In fact, even the legislative and executive branches of government protect this liberty. Particularly, under *Batas Pambansa* (B.P.) Blg. 232, as amended, the State affirms the objective of establishing and maintaining a complete, adequate and integrated system of education relevant to the goals of national development.[29] Further, Section 13(2) of B.P. Blg. 232 recognizes that to achieve this goal, the determination of admission standards should be left to the schools, and not to the State, *viz.*:

> **Sec. 13. Rights of Schools.** — In addition to their rights provided for by law, school shall enjoy the following:

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26 Supra note 23.

27 Id. at 833 citing *Licup, et al. v. University of San Carlos (USC), et al.*, 258-A Phil. 417, 423-424 (1989).

28 Deliberations for the 1987 Constitution, Volume IV, p. 441.

29 *Batas Pambansa* Blg. 232, Sec. 3. Declaration of Basic Policy.

> 1. The right of their governing boards or lawful authorities to provide for the proper governance of the school and to adopt and enforce administrative or management systems.
>
> 2. The right for institutions of higher learning to determine on academic grounds **who shall be admitted to study,** who may teach, and what shall be the subjects of the study and research. (Emphasis supplied)

Of course, this is not to relegate the State to being an impotent commander or a mere passive guardian. The State may set minimum admission requirements, provided that these are reasonable and equitable in their application, both for the school and the applicant.[30] Said standards must never transgress upon Constitutional rights.

Judged against these parameters, it becomes all too apparent that LEBMO No. 7, insofar as it imposes the PhilSAT, is a constricting regulation that binds the hands of the schools from choosing who to admit in their law program. The LEB thrusts upon the law schools a pre-selected roster of applicants, and effectively deprives them of the right to select their own students on the basis of factors and criteria of their own choosing. Consequently, the law schools are left with no choice but to elect from this limited pool. Worse, they are forbidden from admitting those who failed to comply with the LEB's requirements, under pain of administrative sanctions.

Undoubtedly, the imposition of the PhilSAT is an oppressive and arbitrary measure. The LEB is bereft of power to substitute its own judgment for that of the universities'. Rather, the universities should be free to consider other criteria (aside from the PhilSAT) in determining their prospective students' aptitude and ability to survive in law school. In fact, during the Oral Arguments held on March 5, 2019, amicus curiae Dean Sedfrey Candelaria revealed that passing the law entrance exam is not a guarantee that the student will survive through law school:

> **JUSTICE A. REYES:**
> All right. But then you would always state that it is not a guarantee that a student will pass law school because he passed the law entrance exam?
>
> **DEAN CANDELARIA:**
> I agree, Your Honor, in fact in my conversations with Father Bernas who has a longer stay with me in the law school, I think he has even said that any students catch up, let [sic] say, people who may have studied in other regions, they easily catch up once they go to Manila, at least in the Ateneo when he was Dean and I've observed this also during my tenure that there are people who have caught up with the rest come second year..."[31]

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30 Bernas, p. 1306.

31 Transcript of Oral Arguments held on March 5, 2019, p. 122.

Concededly, although the PhilSAT measures a person's aptitude or ability to cope with the rigors of law school, this is but a one-sided assessment. It fails to consider the person's diligence, drive or zeal - which are equally important in successfully obtaining a degree in law. Surely, one who may not be as proficient in language or reasoning, but is filled with a passion and a desire to learn, may perform as well as another who is innately intelligent, but who is apathetic and indifferent. There are certainly other extraneous factors, traits or characteristics that make a good student, which the law school must be allowed to consider, should it so desire.

The PhilSAT is Violative of the Students' Academic Freedom and Right to Acquire Knowledge

Article XIV, Section 5(3) of the 1987 Constitution declares that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements."

Certainly, the right to pursue a course of higher learning is supported, no less by the State. It must endeavor to ensure a becoming respect for every citizen's right to select his/her course of study. To expand one's knowledge, to obtain a degree, or to advance one's professional growth are liberties guaranteed by the Constitution. Although these rights are not absolute, they may only be curbed by standards that are "fair, reasonable, and equitable."[32]

Although the Constitution fails to specifically mention that academic freedom is equally enjoyed by students, this lacuna was supplied by the Court in ***Ateneo de Manila University v. Judge Capulong***,[33] where for the first time, the Court affirmed that academic freedom is equally enjoyed by the students.[34]

Interestingly, the modern concept of academic freedom as it applies to students has its immediate origin from a nineteenth century German term known as "lernfreiheit."[35] This term meant that students were "'free to roam from place to place, sampling academic wares,' 'free to determine the choice and sequence of course,' 'responsible to no one for regular attendance,' and 'exempted from all tests save the final examinations.'"[36] In a sense, it is an untrammeled freedom to satiate one's thirst for knowledge. Albeit a radical sense of freedom, in our jurisdiction, this so-called thirst may be curbed by

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32 1987 CONSTITUTION, Article XIV, Section 5(3).
33 Supra note 16.
34 Id.
35 Bernas, p. 1295.
36 Id.

reasonable standards.

Remarkably, the framers of the 1987 Constitution supported the idea of academic freedom as a "spirit of free inquiry,"[37] which includes the pursuit of truth and advocacy.[38] Moreover, they believed that academic freedom is essential to create an environment that will "encourage creative and critical thinking."[39] In turn, this free flow of ideas will promote the full and wholistic development of the students. Also, more than the promotion of the students' welfare, the framers even went further by saying that this freedom of thought may even lead to the country's improvement - "so far as this [academic freedom] is allowed full play in the academic institutions or in the institutions of higher learning, I think we will end up the better as people."[40]

Consequently, the framers stressed the need to protect this cherished freedom. They emphasized that the right to learn and discover, "should be protected as long as the activities fall within the canons of scholarship, and subjected as it were to the forces of the market place of ideas."[41] They believed that if the State encourages critical and creative thinking, it will naturally protect it."[42]

In addition, the law affirms the right of students to select their own course of study. This is evident from Section 9(2) of B.P. Blg. 232, otherwise known as the Education Act of 1982, as amended:

> **SEC. 9. Rights of Students in School.** — In addition to other rights, and subject to the limitations prescribed by law and regulations, students and pupils in all schools shall enjoy the following rights:
>
> 1. The right to receive, primarily through competent instruction, relevant qualify education in line with national goals and conducive to their full development as person with human dignity.
>
> 2. **The right to freely choose their field of study subject to existing curricula and to continue their course therein up to graduation, except in cases of academic deficiency, or violation of disciplinary regulations.**[43] (Emphasis supplied)

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37 Deliberations for the 1987 Constitution, Volume IV, p. 438.
38 Id. at 439.
39 Id. at 438.
40 Id.
41 Id.
42 Id. at 439.
43 *University of San Agustin, Inc. v. Court of Appeals*, supra note 23 at 832-833.

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More so, as adverted to by the *ponencia*, the Universal Declaration of Human Rights affirms that "[e]veryone has a right to education. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."[44]

Significantly, the Constitution, the law, and international conventions are one in affirming the students' right to apply to a school of their own choosing, and correspondingly, select their own course of study. Although said right of the students is subject to their compliance with the criteria dictated by the school, it must be stressed however that the student and the school are free to negotiate between themselves, without the interference of the State. This scenario should be likened to a free marketplace where the school showcases its product- its curricula, professors, environment, while a student, in turn, flaunts his/her own capabilities, skills, and talents. The parties should be left to freely decide for themselves whether they are a fit for each other. The State should not meddle, unless absolutely necessary for the public's safety and welfare. Should it decide to intervene, its power is in no way almighty, but must be circumscribed within the bounds of reasonableness.

The Right to Study law is an Adjunct of One's Fundamental Right to Acquire Knowledge. In the Same Vein, the Manner Through Which the Law School Decides to Teach the Law is an Exercise of its Freedom of Expression

This concept was broached during the deliberations for the 1973 Constitution. Delegate Vicente G. Sinco intimated that the freedom of the teacher and of the student may be anchored on the basic Constitutional guarantees of freedom, in addition to the specific guarantee of academic freedom:[45]

> by expressly guaranteeing academic freedom the new provision implicitly distinguishes academic freedom from a citizen's political right of free expression. 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. **Academic freedom is freedom not just in the context of a political freedom 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

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44 Article 26, Universal Declaration of Human Rights.

45 Bernas, pp. 1298-1299.

not just the general theory of freedom of expression but also the functions of a university.[46]

More so, beyond the Philippine laws and Constitution, the right to knowledge is a universal human right, protected no less by the International Covenant on Civil and Political Rights ("ICPR").

Specifically, Article 19 of the ICPR, affirms that:

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (order public), or of public health or morals."[47]

Indeed, freedom of expression, which includes the right to receive information and ideas of all kinds, is a civil and political right. It is an inalienable right that stems from a person's inherent dignity. It is likewise the foundation of freedom, justice and peace in the world.[48] As such, this essential guarantee may only be restricted insofar as it violates the rights and reputation of others, or if absolutely necessary to protect national security and public order.[49]

Moreover, knowledge cannot be passed without a medium. Thus, the right of the law school to teach, the information it shares, and its manner of teaching are representations of its freedom of expression. The State should only step in, should it find that "the means or methods of instruction are clearly found to be inefficient, impractical, or riddled with corruption."[50]

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46 Bernas, p. 1301.
47 Article 19, International Covenant on Civil and Political Rights.
48 Preamble, International Covenant on Civil and Political Rights.
49 Article 12, International Covenant on Civil and Political Rights.
50 *Lupangco v. Court of Appeals*, 243 Phil. 993, 1006 (1988).

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Furthermore, I wish to underscore that a distinction exists between the right to study law and the privilege to practice it. Although these two activities may be related, they are not one and the same. The study of law does not *ipso facto* lead to the practice thereof. This was a point that I stressed during the Oral Arguments on March 5, 2019:

> "**JUSTICE A. REYES:** But you are not in the pursuit of the study of law not in the pursuit of being a lawyer. Is there a need for an entrance exam if he just wants to study the law itself as a person?
>
> x x x x
>
> He doesn't want to become a lawyer, he just wants to be a student of the law. He has a lot of time on his hands, he has all the money. He just wants to study law, is there anything wrong with that?"[51]

Lest it be forgotten, the law is not only a profession, but it is first and foremost, a field of study. It is an interesting and practical science, that proves useful for everyday life, and for one's personal growth and career. For instance, the Law on Obligations and Contracts is practical for one engaged in business; Constitutional Law piques the interest of one desirous to learn about the workings of the government and the citizen's fundamental rights; and Criminal Law, inflames one curious about society's penal laws and systems. For others, obtaining a Bachelor's Degree or a Juris Doctor in Law serves as a gateway to promotion. These are but a few examples of a myriad of realities pertaining to the law's importance as an academic field.

Certainly, the State has no legitimate interest in preventing such individuals who want to learn about the law, who have free time on their hands, and who possess resources to fund a legal education. Neither does it have the right to prevent a law school that is willing and capable of teaching such persons from admitting them in their program.[52]

This concern was likewise echoed by the eminent magistrate, Justice Antonio T. Carpio, when he said:

> Preventing anyone from going to law school who can afford to go to school pay for his own tuition fees, that's unreasonable. Even if he scores only one percent (1%), if the school is willing to accept him, he is willing to pay, you cannot stop him.[53]

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51 Transcript of Oral Arguments, March 5, 2019, p. 123.

52 Id.

53 Transcript of Oral Arguments, March 5, 2019, p. 184.

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Also, as eloquently articulated by Justice Marvic M.V.F. Leonen,

> Considering, Chair, that this affects a freedom and a primordial freedom at that, freedom of expression, academic freedom, the way we teach our, as Justice Andy Reyes pointed out, the way we teach law to our citizens and therefore, to me, the level of scrutiny should not be cursory. The level of scrutiny must be deep and I would think it would apply strict scrutiny in this regard. Therefore, if there was no study that supported it, then perhaps, it may be stricken down as unreasonable, and therefore, grave abuse of discretion. x x x[54]

It is therefore apparent that an individual's right to knowledge and the manner by which such knowledge is pursued, are entitled to a high degree of protection by the State and its agencies. Our State is in no way autocratic. It is not repressive, and should not prevent its citizens from gaining knowledge that will promote their personal growth.[55] These are simple realities that cannot be ignored. To deprive a person of his right to knowledge, which is an adjunct of one's freedom of expression, may not be done under flimsy and vague pretexts. This Constitutional protection to freedom of expression enjoys an exalted place in the spectrum of rights, and is certainly entitled to the highest level of scrutiny.

A Legitimate Objective Will not in Itself Justify State Intrusion if the Means Employed Pursuant Thereto are Unreasonable and Oppressive

There is no doubt that the ultimate goal of attaining quality legal education is a legitimate and lofty objective. For sure, no country would negligently allow degenerate institutions that fail to properly educate students to persist to the detriment of the community. However, the issue is not as simple. It must be noted that the test for a valid exercise of police power is two-pronged. The presence of a legitimate State objective must be balanced alongside a reasonable means for achieving such goal. One cannot exist without the other.

Remarkably, in *Lupangco v. Court of Appeals*,[56] the Court struck down the regulation issued by the Professional Regulatory Commission which prohibited those taking the accountancy licensure examinations from attending review classes, conferences and receiving hand-outs, review materials, or tips three days immediately preceeding the examination day. The Court stressed that although the measure was backed by a noble

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54 Transcript, Oral Arguments, March 5, 2019, p. 173

55 *Lupangco v. Court of Appeals*, supra note 50 at 1005.

56 Id.

objective, this will not serve as a justification to violate constitutional freedoms, to wit:

> Of course, We realize that the questioned resolution was adopted for a commendable purpose which is "to preserve the integrity and purity of the licensure examinations." However, its good aim cannot be a cloak to conceal its constitutional infirmities. On its face, it can be readily seen that it is unreasonable in that an examinee cannot even *attend any review class, briefing, conference or the like, or receive any hand-out, review material, or any tip from any school, college or university, or any review center or the like or any reviewer, lecturer, instructor, official or employee of any of the aforementioned or similar institutions*."[57] (Emphasis in the original)

Indeed, the level of supervision and regulation granted unto the State must be reasonable. This "reasonableness" in no way grants a warrant for the State to exercise oppressive control over the schools. In the case of the PhilSAT, in addition to being arbitrary and oppressive, the LEB likewise failed to establish that the means employed will serve its purpose of improving the quality of legal education.

In fact, during the oral arguments, Chairperson Aquende admitted that the LEB issuances imposing the PhilSAT were bereft of statistical basis.[58] This presents an even greater challenge against the PhilSAT. It appears that the LEB merely operates on the hunch that the PhilSAT will improve the quality of legal education. Although I agree with the point made by Justice Alfredo Benjamin Caguioa that the schools (or the LEB) are not required to conduct statistical research regarding the effectiveness of the PhilSAT. This is only to underscore the absence of any factual basis proving the LEB's contention.

Worse, the PhilSAT renders nugatory the Constitutional provision mandating that education should be made accessible to all by limiting a legal degree to an elite few. Students who desire to obtain a degree in law are immediately barred from this pursuit, simply on their purported inanity, as determined by the PhilSAT. In effect, the State punishes the students instead of encouraging them to learn, thereby making the law a restrictive subject that is only available to an exclusive few who possess the required aptitude and wealth.

All told, this case is riddled with paradoxes. The LEB, in its desire to achieve quality legal education, bullheadedly pursued such end and trampled upon the right to accessible education. It must be stressed that quality education may not be accomplished by excluding a segment of the

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57 Id. at 1004-1005.

58 Transcript of Oral Arguments, March 5, 2019, p. 172.

population from learning. Access to education should never be sacrificed to achieve this end. Rather, these two goals should go hand-in-hand. Barring the citizens from pursuing further studies and learning more about the law, lead to stripping them of their fundamental right to knowledge. There is nothing more stifling to our democracy than repressing our own citizens' pursuit for personal growth. For sure, there are other Constitutionally permissible ways of achieving this end.

As a final note, the law is personified by Lady Justice, whose eyes are covered with a blindfold as an assurance that she will always dispense justice objectively to her suitors, regardless of their wealth and power; her scales of justice are perfectly balanced, for she delicately weighs all circumstances before her; her sword is scathing, proving that her justice is swift and firm - this is the symbol of law and justice. Ironically, however, with the PhilSAT, entry to the study of law (a field that will train one to imbibe justice and fairness) is far from objective and just. In this oppressive scenario, Lady Justice's eyes are opened wide as she peremptorily judges prospective students, barring the inane from learning the law; her scales are tilted in favor of an elite few; and her sword is sharp and piercing against those who failed to reach her criteria. This is not the law, and it should never be. **Thus, I vote to declare as unconstitutional LEBMO No. 7, and all its adjunct orders.**

ANDRES B. REYES, JR.
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court