

**KEEPING SACRED THE GROOVES OF
ACADEME:
The Legal Infirmary of CMO 46**

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Adler v. Board of Education, 342 U.S. 485 (1952)

Douglas, J. Dissenting

- What happens under this law is typical of what happens in a police state. Teachers are under constant surveillance; their pasts are combed for signs of disloyalty; their utterances are watched for clues to dangerous thoughts. A pall is cast over the classrooms. There can be no real academic freedom in that environment. Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect. Supineness and dogmatism take the place of inquiry. A "party line" -- as dangerous as the "party line" of the Communists -- lays hold. It is the "party line" of the orthodox view, of the conventional thought, of the accepted approach. A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking; she becomes instead a pipeline for safe and sound information. A deadening dogma takes the place of free inquiry. Instruction tends to become sterile; pursuit of knowledge is discouraged; discussion often leaves off where it should begin.

The Philippine Constitution (1987)

- Section 4.(1) 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.
- Section 5. (1) the **State shall take into account regional and sectoral** needs and conditions and shall encourage local planning in the development of educational policies and programs.
- (2) **Academic freedom shall be enjoyed** in all institutions of higher learning.

No CONTROL of HEIs by the State!

- Book IV, Chapter 7, Sec 38 of the Administrative Code of 1987 defines 'control' :
- Supervision and Control.—Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs.** Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word “control” shall encompass supervision and control as defined in this paragraph.

Garcia v. Loyola School of Theology,

G.R. 40779 (November 28, 1975)

Briefly put, it is the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence. It is **subject to no control or authority except the control or authority of the rational methods by which truths or conclusions are sought and established in these disciplines.**"

That is only one aspect though. Such a view does not comprehend fully the scope of academic freedom recognized by the Constitution. For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. **It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion.** That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor."

***Camacho v. Coresis*, G.R. 134372 (August 22, 2002)**

- Academic freedom also accords a faculty member the right to pursue his studies in his particular specialty. It is defined as a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalty because these conclusions are unacceptable to some constituted authority within or beyond the institution. As applied to the case at bar, academic freedom clothes Dr. Daleon with the **widest latitude to innovate and experiment on the method of teaching which is most fitting to his students (graduate students at that), subject only to the rules and policies of the university.** Considering that the Board of Regents, whose task is to lay down school rules and policies of the University of Southeastern Philippines, has validated his teaching style, we see no reason for petitioner to complain before us simply because he holds a contrary opinion on the matter.

How legislation and regulation impinge on academic freedom:

- Legislative or regulatory restrictions
- Judicial enforcement of constitutional barriers to such impairments
 - The Constitution as impeder of impeder and impediments.
- Judicial protection of academic freedom against derogation by the academic officials themselves.

Where's the rat?

- Art. I, Sec. 2: the 'multiple missions' of Philippine higher education.
- Art. II, Sec. 6: definition of quality
- Art. V: Vertical and Horizontal typology
 - Faculty qualifications
 - Objectives of core curricula
- Art. VI: Converts CHED into a virtual 'accrediting agency'
- Transitory Provisions ARE NOT transitory. They are DEADLINES FOR COMPLIANCE.

THE DOCTRINE OF VESTED RIGHTS

Zari v. Santos, G.R. 21213 (March 28, 1968)

- In *Benguet Consolidated Mining Co. vs. Pineda*, this Court explained that a vested right is "some right or interest in the property who has become *fixed* and *established*, and is no longer open to doubt or controversy"; it is an "immediate *fixed right of present and future enjoyment*"; it is to be contradistinguished from a right that is "expectant or contingent." The *Benguet* case continued on to quote from 16 C.J.S. 214-215, as follows:
 - Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested.

Farther into the rat's lair:

- The vague provisions of CMO 46 result in unequal application of the laws:
 - What equal protection requires: *Philippine Judges Association v. Prado* (1993)

According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed,¹² Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.
- CMO 46 does nothing short of organizing and structuring HEIs in violation of the Corporation Code and of the Education Act of 1982.

The DEVIL is in the DETAILS

- Look up the Guidelines appended to CMO 46.
- They prescribe, *inter alia*:
 - No. 5.1.3 prescribes how many courses ought to be offered and in what disciplines the offerings ought to be;
 - No. 5.3 is even worse: It prescribes under the guise of offering options percentages for enrollment, course offerings and research involvement.
 - No. 5.3.3 even prescribes instructional strategy: the writing of baccalaureate theses.

Our options?

- Administrative reconsideration
 - Aside from CEAP, PAASCU, concerted action particularly by HEIs.
- Legislation that overrides administrative regulation.
 - A proposed Bill of Academic Freedoms
- Judicial review: Petition for certiorari

Bases for certiorari: Grave abuse of discretion consisting in --

- Violation of academic freedom as articulated in Philippine jurisprudence
- Excess of jurisdiction (or lack thereof): Exceeding powers of CHED as provided for by R.A. 7722.
- Violation of the doctrine of vested rights through retroactive application of new and 'unreasonable' standards.
- Vagueness resulting in a violation of the equal protection clause.