Campus Press Freedom: A Right not Shed at the Schoolgate

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Introduction

It was more than two decades ago when the Supreme Court first recognized the existence of the student's right to freedom of speech within the four walls of an academic institution in the landmark case of *Malabanan v. Ramento*.[1] The Supreme Court made a pronouncement that echoed through the hallowed halls of the campus: students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[2] Though the oft-cited line is not original,[3] nonetheless, for the first time in Philippine constitutional law history, the Supreme Court recognized the existence of a right that has long been considered to exist many years before: *campus press freedom.*

Seven years after the landmark case of *Malabanan* was pronounced, Congress passed a law seeking to strengthen campus press freedom—the *Campus Journalism Act of 1991*.[4] According to this law, it is a declared state policy "to uphold and protect the freedom of the press even at the campus level and to promote the development and growth of campus journalism as a means of strengthening ethical values, encouraging critical and creative thinking, and developing moral character and personal discipline of the Filipino youth."[5] In order to achieve this end, it is the duty of the State to "undertake various programs and projects aimed at improving the journalistic skills of students concerned and promoting responsible and free journalism."[6]

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1. Malabanan v. Ramento, 129 SCRA 359 (1984).
2. *Id.* at 368 (citing Tinker v. Des Moines School District, 393 U.S. 503 (1969)).
3. It was borrowed from the opinion of Justice Fortas of the United States Supreme Court in the landmark case of Tinker v. Des Moines Community School District, 393 U.S. 503 (1969).
4. An Act Providing for the Development and Promotion of Campus Journalism and for Other Purposes, Republic Act No. 7079 [Campus Journalism Act] (1991).
5. *Id.* § 2.
6. *Id.*

However, 15 years to date, the achievements gained from the passage of the *Campus Journalism Act* leave much to be desired. Countless campus publications have ceased operations from the time the said law was passed. In fact, notwithstanding the passage of a law aimed to strengthen it, the future of campus journalism in the country appears gloomy.

According to one study,[7] despite the existence of the *Campus Journalism Act*, the state of campus journalism is degenerating. Statistics show that "about 30% of the operating campus publications in Metro Manila alone are not technically capable of producing well-versed and quality newspapers."[8] In addition, about "40-60% cannot exercise 'press freedom' because of threat from the school administration" and another 30-40% is involved in "reactive activism."[9]

Notwithstanding these disturbing figures, the landmark case of *Miriam College Foundation v. Court of Appeals*[10] gave an already limping state of campus press freedom a thunderous blow. In an apparent triumph for school disciplinary regulations and defeat for campus press freedom advocates, the Supreme Court interpreted the provision of the *Campus Journalism Act* which exempts students from liability "solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication"[11] to mean that the said provision "does not infringe upon the school's right to discipline its students."[12] The provision on the security of tenure of campus journalists does not exempt them from the regulatory arm of the school. According to the Supreme Court, in order for campus publications to remain within the scope of the school authority's disciplinary powers, Section 7 of the *Campus Journalism Act* should be construed as follows: "the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others."[13]

Some advocates consider the *Miriam College* case as a hindrance to the development of campus press freedom in the country. For school authorities, however, the case simply reveals that the reliance on the constitutionally

7. Lloyd A. Luna, *Campus Journalism in the Philippines: The Mind Gap* (unpublished research paper) (on file with the authors).

8. *Id.*

9. *Id.*

10. Miriam College Foundation v. Court of Appeals (CA), 348 SCRA 265 (2000).

11. CAMPUS JOURNALISM ACT, § 7.

12. *Miriam College Foundation*, 348 SCRA at 291.

13. *Id.* at 291 (italics in the original omitted).

recognized power of the school to discipline its students still holds a strong grip in the minds of magistrates.

It is important to remember early on that the case did not overturn *Malabanan* and expressly state that students do not possess campus press freedom. In fact, the Supreme Court recognized the existence of campus press freedom in the *Miriam College* case when it said that the school's power to discipline students "is subject to the requirement of reasonableness"[14] because "...the Constitution allows merely the regulation and supervision of educational institutions, not the deprivation of their rights."[15] However, what is debatable are the standards used by the Court to limit campus press freedom: when the articles (1) materially disrupt class work or (2) involve substantial disorder or (3) invade the rights of others.

This Article submits that the proper test to determine the validity of school disciplinary powers that limit campus freedom of speech can be attained only by re-examining the following key areas: (1) the philosophies and values that animate freedom of speech, (2) the theoretical foundation behind concepts that underlie academic freedom, and (3) the existing state of campus press freedom in the country and how it can be remedied. Such re-examination will result in the conclusion that the proper test to determine the validity of a restriction of speech and press is the same test in any restriction of this Constitutional right.

In order to arrive at this conclusion, this Article shall be divided as follows: Part I will provide a background on the source of the right to freedom of speech: the Bill of Rights. Part II will discuss the theories and prohibitions contained under the freedom of speech clause as well as their limitations, because of the simple but crucial fact that the rights and limitations under the freedom of speech likewise apply to campus publications. Part III will provide a discussion on the state of jurisprudence concerning student press rights and its counterpart: the disciplinary power of school under academic freedom. It would likewise review the various theories on the reasons why a school has the power to regulate speech inside the campus. Part IV will discuss the *Campus Journalism Act*. Part V will discuss the *Miriam College* case as well as its repercussions to campus press freedom. Finally, Part VI will present a re-interpretation of the *Miriam College* case in connection with the *Campus Journalism Act*, and the consequences of both on Philippine Law.

14. *Id.* at 288.

15. *Id.*

I. BACKGROUND ON THE BILL OF RIGHTS

A. Bill of Rights

The heart of constitutionalism lies in the protection of fundamental liberties. These fundamental liberties can be seen in the Bill of Rights. The Bill of Rights is a document that outlines the basic rights that a citizen possesses which the government cannot infringe; it serves as protection against abuse of power. All government powers are limited by the Bill of Rights. For this reason, the function of government is a "delicate art of balancing the power of government and the freedom of the governed."[16]

The purpose of the Bill of Rights is to "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts."[17] The Bill of Rights governs the relationship between the individual and the state. It declares some forbidden zones in the private sphere inaccessible to any power holder.

Nonetheless, it is important to remember that these rights are not absolute. It may not be exercised arbitrarily to the point that it harms the rights of others. These rights are therefore, *limitable rights.*

B. Classification of Freedoms

In his sponsorship speech to the Bill of Rights during the deliberation of the Constitutional Commission, Father Joaquin G. Bernas, S.J. classified, though the distinction may be thin, three traditional freedoms protected by the Constitution: civil liberties, political freedoms, and economic freedoms.[18] Under the first classification, *civil liberties* include freedom from arbitrary confinement, inviolability of the domicile, freedom from arbitrary searches and seizures, privacy of correspondence, freedom of movement, free exercise of religion, and free choices involving family relations.[19] Under the second classification, *political freedoms* include the freedoms involving participation in the political process, freedom of assembly and association, the right to vote, the right of equal access to office, the freedom to participate in the formation

16. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 94 (1996 ed.) [hereinafter BERNAS COMMENTARY].

17. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 51 SCRA 189, 202 (1973).

18. I RECORD OF THE CONSTITUTIONAL COMMISSION 674 (1986).

19. *Id.*

of public opinion, and the non-establishment of religion.[20] Under the last classification, *economic freedoms* include free choice of profession, free competition, free disposal of property, and free pursuit of economic activity.[21]

Based on the above classification, the freedom of speech, press, and assembly for redress of grievances against the government can be classified as *civil liberties.*

C. Hierarchy of Rights

The Constitution provides that "[n]o 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."[22] Based on this sentence, one can see that there are three basic areas protected by the Bill of Rights: life, liberty, and property. However, it is erroneous to think that the constitutional protection to these areas is equal.

Under the doctrine of *Hierarchy of Rights*, even if the three areas are protected by the Constitution, nonetheless, not all rights are created equal. Under this doctrine, property rights rank lower than civil liberties and political freedoms. As explained by the Court in one case:

> *While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized*. Because these freedoms are 'delicate and vulnerable, as well as supremely precious in our society' and the 'threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,' they 'need breathing space to survive,' permitting government regulation only 'with narrow specificity.'
>
> Property and property rights can be lost through prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs—political, economic or otherwise.
>
> *In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position,* as they are essential to the preservation and vitality of our civil and political institutions; and such priority 'gives these liberties the sanctity and the sanction not permitting dubious intrusions.'
>
> The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means

20. *Id.*

21. *Id.*

22. PHIL. CONST. art. III, § 1.

> employed by the law and its object or purpose—that the law is neither arbitrary nor discriminatory nor oppressive—would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil, which the State has the right to prevent.[23]

However, the doctrine of *Hierarchy of Rights* does not mean that property rights are not protected at all. Father Bernas opined, "[e]xperience does teach a very clear lesson that property is an important instrument for the preservation and enhancement of personal dignity. The poor are oppressed precisely because they are poor. In their regard therefore property is as important as life and liberty."[24] The reason for regulation of property is to make it beneficial to all. Under the Constitution, property is protected because it portrays a social function. "Property is more closely regulated not in order to oppress the owner but in order to impress upon him the social character of what he holds."[25]

II. FREEDOM OF SPEECH, PRESS, ASSEMBLY

A. Historical Background

The right to freedom of speech, press, and assembly is contained in one sentence in the Bill of Rights: "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."[26] A right unknown to Filipinos prior to 1900, it was introduced to the Philippines by President McKinley's Instruction to the second Philippine Commission.[27] It was patterned after its American Constitutional Law equivalent, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*"[28] Because of its

23. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 51 SCRA 189, 202-03 (emphasis supplied).

24. BERNAS COMMENTARY, *supra* note 16, at 104.

25. *Id.*

26. PHIL. CONST. art. III, § 4.

27. BERNAS COMMENTARY, *supra* note 16, at 204.

28. U.S. CONST. amend. I (emphasis supplied).

American law origin, American jurisprudence on the subject matter has likewise been carried in the Philippine jurisdiction.[29]

The early case of *United States v. Bustos*[30] gave a historical account of the origin of freedom of speech in this country:

> Turning to the pages of history, we state nothing new when we set down the freedom of speech as cherished in democratic countries was unknown in the Philippine Islands before 1900. A prime cause for revolt was consequently ready made. Jose Rizal in '*Filipinas Despues de Cien Anos*" describing "the reforms *sine quibus non*,' which the Filipinos insist upon, said:
>
> 'The minister...who wants his reforms to be reforms, must begin by declaring the press in the Philippines free and by instituting Filipino delegates.'
>
> The Filipino patriots in Spain, through the columns of '*La Solidaridaa*' and by other means invariably in exposing the wants of the Filipino people demanded. The Malolos Constitution, the work of the Revolutionary Congress, in its Bill of Rights, zealously guarded freedom of speech and press and assembly and petition.
>
> Mention is made of the foregoing data only to deduce the proposition that a reform so sacred to the people of these Islands and won at so dear as one would protect and preserve the covenant of liberty itself.
>
> Then comes the period of American-Filipino cooperative effort. The Constitution of the United States and the State constitutions guarantee the right of freedom of speech and press and the right of assembly and petition. We are therefore, not surprised to find President McKinley in that Magna Charta of Philippine Liberty, the Instruction to the Second Philippine Commission, of April 7, 1900, laying down the inviolable rule "That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances."
>
> The Philippine Bill, the Act of Congress of July 1, 1902, and the Jones Law, the Act of Congress of August 29, 1916, in the nature of organic acts for the Philippines, continued this guaranty. The words quoted are not unfamiliar to students of Constitutional Law, for they are the counterpart of the first amendment to the Constitution of the United States, which the American people demanded before giving their approval to the Constitution.
>
> We mention the foregoing facts only to deduce the proposition never to be forgotten for an instant that the guaranties mentioned are part and parcel of the Organic Law — of the Constitution — of the Philippines Islands.

29. *See* United States v. Bustos, 37 Phil. 731 (1918).

30. *Id.*

> These paragraphs found in the Philippine Bill of Rights are not threadbare verbiage. The language carries with it all the applicable jurisprudence of great English and American Constitutional cases.[31]

Because of the importance of freedom of speech and the role that it played in the shaping of the nation, subsequent jurisprudence considered freedom of speech as a *preferred right*, which means it enjoys greater protection than other rights when confronted by police power.[32]

B. Power of the Government to Regulate or Shape Thought

A constitutional democracy is founded upon the belief that people are governed best when they choose their own form of government.[33] It respects and protects all viewpoints as a means of promoting active choice, demands a tolerant citizenry, well educated in judging between competing arguments.[34]

Because of the nature of liberty and the respective rights of social institutions, governmental power is prohibited to *homogenize* the beliefs and attitudes of the populace.[35] The liberty of individuals guarantees that the State may not declare how a person should think, thereby closing out his doors to opposite views, which are divergent with how the State wants its citizens to think. Because of the dangers of government control over the

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31. *Id.* at 738 (citations omitted).

32. *See, e.g.*, Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 51 SCRA 189 (1973).

33. Gregory A. Clarick, Note, *Public School Teachers and the First Amendment: Protecting the Right to Teach*, 65 N.Y.U. L. REV. 693, 733 (1990).

34. *Id.*

35. The early cases of *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) provided the jurisprudential roots for this concept. *Meyer* held that a law which prohibited the teaching of any subject in any language other than the English language in any school, or the teaching of languages other than the English language below the eighth grade was unconstitutional because the State may not foster a *homogenous* people by foreclosing their right to decide for themselves through the means of a law prohibiting the teaching of foreign language. Meanwhile, *Pierce* held that a law a law requiring every parent, guardian, or other person having control or charge or custody of a child between eight and sixteen years of age, to send him to a public school for the period of time a public school shall be held during the current year in the district where the child resides is unconstitutional because the fundamental theory of liberty excludes the state from *standardizing* its children by forcing them to accept instruction from public teachers only.

value accorded to ideas, the government's right to silence speech should be strictly limited.[36]

The Constitution has enumerated specific categories of thought and conscience for special treatment: religion and speech. The reason for this is too obvious to understate: *it strikes at the very core of democracy.* As the oft-cited quotation from the United States Supreme Court in the case of *West Virginia State Board of Education v. Barnette*[37] goes: "If there is any fixed star in our constitutional constellation, *it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.*"[38]

C. Philosophies and Values Underlying Free Speech

There are three theories which provide a philosophical justification for freedom of speech. Under the first theory, the *theory of individual self-development*, a mature person's self-respect is derived from the ability to exercise capacities central to human rationality.[39] What this theory says is that the function of freedom of speech in individual self-expression and the role that it portrays in the development of individual potential should not be ignored. Central to the development of human rationality is the capability to express and create symbolic systems, which includes speech, writing, expression, art, music, and other forms of communication. When freedom of speech is restrained, an individual's self-development is undermined since the denial of the avenues for self-expression diminishes the development of human rationality. The intellectual maturity of the person is stunted. This will eventually lead to an intellectually immature citizenry forming a fragile social order with feeble cultural development.

Under the *individual autonomy theory*, meanwhile, "freedom of expression exists to permit citizens to regard themselves as autonomous, rational beings.... [P]eople must perceive themselves as free to determine what to believe and to balance competing interests to act."[40] For this reason, "autonomous people cannot blindly accept the judgments of others... without their own independent determinations and deliberations."[41] *Under this theory, it is only by creating a marketplace of ideas where the autonomous*

36. Clarick, *supra* note 33, at 735.

37. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

38. *Id.* at 641 (emphasis supplied).

39. Helene Bryks, Comment, *A Lesson in School Censorship*: Hazelwood v. Kuhlmeier, 55 BROOK. L. REV. 291, 310 (1989).

40. *Id.* at 311.

41. *Id.*

individual, free from State censorship and the fetters of suppression of ideas by his fellowmen, can freely decide which idea is true; anything less than that can amount to the suppression of truth. The philosopher John Stuart Mill, in his essay *On Liberty*,[42] enumerated the following reasons for the recognition of the necessity of freedom of opinion:

> First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.
>
> Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.
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> Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.[43]

Under the third theory, the *self-government theory*, value of free expression rests on a system of democracy and self-government. This theory states that citizens are generally self-governing. Thus, "self-governing persons must be subjected to a variety of facts and opinions in order to make educated choices in the governing process."[44] Consequently, this theory asserts: "[p]ersons may not be precluded from speaking because their views are false or dangerous. Rather, these ideas must be presented in order for governing persons to evaluate them."[45]

These are only some of the theories offered for the existence of freedom of speech and expression in a society. Regardless of which theory is prevalent in the Philippine constitutional system, the important thing to

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42. John Stuart Mill, *On Liberty*, *in* JOHN STUART MILL, THREE ESSAYS 1-141 (Richard Wollheim ed. 1975).

43. *Id.* at 65.

44. Bryks, *supra* note 39, at 310.

45. *Id.*

remember is that freedom of speech and expression is a *preferred* right[46] whenever it is at odds with the State's exercise of police power.

D. Scope of the Rights

The protection of freedom of speech and expression includes all forms of expression and communication, such as, but not limited to: oral speech, written, recorded, music, movies, as well as *symbolic speech* such as the wearing of an armband as a form of political protest.[47]

Nonetheless, it is important to remember that not all forms of speech enjoy the same degree of protection since freedom of speech was formulated primarily for the protection of *core speech* – speech which communicates political, social, or religious ideas. Commercial speech is also protected but is a notch lower from core speech. Commercial speech connotes a communication for a commercial transaction, such as advertisements for sale of goods and services in print, radio, and broadcast media. In order to be protected by the freedom of speech clause, commercial speech must not be false or misleading and should not propose an illegal transaction.

E. Prohibitions under Free Speech and Press Clause

There are two prohibitions under the free speech and press clause:[48] the prohibition against *prior restraint*, and the prohibition against *subsequent punishment.*

Under the first prohibition, *prior restraint* means official governmental restrictions on the press or other forms of expression ahead of actual publication and dissemination.[49] Simply put, *it is a prohibition against censorship.* Nonetheless, the prohibition against prior restraint is not absolute – any system of prior restraint comes to court bearing a heavy presumption against its constitutionality.

Under the second prohibition, freedom of speech also prohibits systems of subsequent punishment, which have the effect of unduly curtailing expression. The reason is obvious: "the prohibition of government interference *before* words are spoken or published would be an inadequate protection of the freedom of expression if the government could punish without restraint *after* publication."[50]

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46. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 51 SCRA 189 (1973)

47. *See* West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).

48. PHIL. CONST. art. III, § 4.

49. BERNAS COMMENTARY, *supra* note 16, at 205.

50. *Id.*

In the evolution of jurisprudence on the subject matter, three tests have emerged to determine the validity of laws imposing subsequent punishment on speech. These are: (1) the dangerous tendency rule, (2) the clear and present danger rule, and (3) the balancing of interests test.

Under the *dangerous tendency rule*, speech may be curtailed or punished when it creates a dangerous tendency, which the State has the right to prevent.[51] Simply, all it requires is that there be a rational connection between the speech and the evil apprehended. This doctrine is considered by many to be obsolete.

On the other hand, under the *clear and present danger rule*, the speech must be analyzed as to whether "the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is an analysis of *proximity* and *degree*."[52] In other words, under this rule, the court is required to determine the *gravity* of the *evil* discounted by its improbability, and invasion of freedom of speech is justified insofar as is necessary to avoid the danger sought to be prevented.

Meanwhile, under the *balancing of interest test*, the assailed curtailment of freedom is scrutinized as to the interest it seeks to serve. On the one hand is public interests served by the law, and on the other hand is the freedom affected by it. The function of the court is to balance one against the other and arrive at a judgment where greater weight shall be placed.[53]

Considering the present state of jurisprudence, it is evident that the Philippine Supreme Court rarely resorts to the dangerous tendency test; and because of the restoration of democracy under the 1987 Constitution, it has favored the clear and present danger rule and the balancing of interest test.

F. Limitations on Freedom of Speech and Press

The liberties protected by the Bill of Rights, being inalienable rights, belong to man by his very nature and cannot be taken away without his consent. Nonetheless, it is important to remember that these liberties are not absolute; man cannot abuse his freedom at will. These liberties are, therefore, *limitable rights*, and society has to be protected from abuse of the use of this right.

In his highly influential essay *On Liberty*, the utilitarian philosopher John Stuart Mill posited that individuals may conduct themselves according to their own intelligent judgment as long as they do not adversely affect others

51. *Id.* at 218 (citing People v. Perez, 45 Phil. 599 (1923)).

52. *Id.* at 218–19 (citing Schenck v. United States, 249 U.S. 47, 52 (1919)).

53. *Id.* at 221.

who may not approve of the same. He pronounced the following test to determine the validity of a law which infringes human freedom:

> That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to *prevent harm to others*... To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. *Over himself, over his own body and mind, the individual is sovereign.*[54]

Thus, following this principle, even if freedom of speech and press is a preferred right, it is important to remember that this right is not absolute. It may not be exercised arbitrarily to the point that it harms the rights of others.

There are six traditionally recognized limitations on the freedom of speech and press. These are (1) obscenity, (2) national security, (3) privacy, (4) sedition, (5) libel, and (6) contempt of court. The first three – obscenity, national security, and privacy – are allowable exceptions to prior restraint. Whereas, the last three – sedition, libel, and contempt of court – are allowable exceptions to subsequent punishment.

1. Obscenity

According to the theory of Sir Patrick Arthur Devlin, the concept of morality is an integral part of the social community. Therefore, it should be supported by the use of those instruments without which morality cannot be maintained.

> Society means a community of ideas; without shared ideas on politics, morals and ethics, no society can exist. Each one of us has ideas about what is good and what is evil; they cannot be kept private from the society in which we live. If men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; having based it on common agreement, the agreement goes, the society will disintegrate.
>
> For society is not something that is kept together physically; it is held by invisible bonds of common thought. If the bonds were too relaxed, the members would drift apart. A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price.[55]

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54. Mill, *supra* note 42, at 15 (emphasis supplied).

55. Jose L. Sabio Jr., *Morality: Towards a Rational Basis for Law*, 48 ATENEO L. J. 612, 615 (2003) (quoting Lord Devlin, *Morals and the Criminal Law in* PHILOSOPHY OF LAW 223-39 (Joel Feinberg & Hyman Gross eds., 5d ed. 1995)).

Morality then is a bond that holds society together. Without morality, society will disintegrate.[56] "In fact, a close examination of what the law is really all about will show that the law may not be divorced from moral principles without rendering basic laws insensible or unjust or even absurd."[57] In Lord Devlin's terms, the enforcement of morals is more than the use of law to provide a *psychic fulfillment* to the community body. It is in this context that the laws prohibiting obscenity were enacted, as a means to uphold society's moral bonds.

According to the old case of *People v. Kottinger*,[58] the word *obscene* means something offensive to chastity, decency, or delicacy. Indecency is an act against good behavior and just delicacy. However, the fundamental flaw of this definition is that it is "very broad, very un-technical, and most unhelpful. Subsequent definitions have not added to it anything in the way of improvement."[59] For this reason, the above definition is no longer the accepted standard. The current standard may be found in the case of *Miller v. California*,[60] which provides:

> The basic guidelines for the trier of facts must be: (a) whether "the average person, applying contemporary community standards" would find the work, taken as a whole, appeals to the prurient interest... (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[61]

Nonetheless, for Father Bernas, the *Miller* doctrine suffers from three deficiencies. The first of these is its *subjectivity* since it uses the standard of the *average person* as the basis. However, whose perception can be said to be that of an average person? The second deficiency is the concept of *contemporary community standard* as the basis. Again, this suffers from the same problem as that of the first one – subjectivity. "Which community should be standard – the community of artists or the Catholic Women's League?"[62] Finally, the last deficiency of the *Miller* doctrine is its reliance on the standard of *serious literary, artistic, political, or scientific value*. This suffers from the subjectivity problem similar to the first two. "Should established literary critics or artists

56. *Id.* 614.

57. *Id.*

58. People v. Kottinger, 45 Phil. 352 (1923).

59. BERNAS COMMENTARY, *supra* note 16, at 259.

60. Miller v. California, 413 U.S. 15 (1973).

61. *Id.* at 24-25.

62. Joaquin G. Bernas, S.J., *Let's Talk Obscene*, TODAY, Mar. 25, 2001, at 8.

or political thinkers or scientists be the arbiters of what the people may or may not see, read or hear? For that matter, should moral guardians be the arbiters?"[63] Father Bernas does not expect easy answers to these questions; and there will probably never be common answers in the first place. In all likelihood, there would always be an opposing view to the majority view. However, it is not for the majority to silence the lips of the opposing view.

Obscene speech can be censored as an allowable exception to prior restraint. Communication which advocates immorality is not constitutionally protected speech in order to protect society's moral fabric. If a purported obscene speech is not barred, it will amount to tolerance of deviant behavior which can rupture society's moral fabric. If a specific conduct, like bad odor, is psychologically revolting, the community may apply its most fearsome sanctions to cleanse the irritant.[64] Laws prohibiting obscene speech are cleansers to the irritant known as immoral conduct.

2. National Security

Another exception to prior restraint is the communication of a state secret since national security is at stake with its disclosure. In common law, a governmental privilege against disclosure is recognized with respect to *state secrets* bearing on military, diplomatic and similar matters. This privilege is based upon public interest of such paramount importance as in and of itself transcending the individual interests of a private citizen, even though, as a consequence thereof, the plaintiff cannot enforce his legal rights.[65]

In the case of *United States v. Nixon*,[66] the rationale for this exception was explained as follows:

> The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.... The privilege is fundamental to the

63. *Id.*

64. *See* Arden Doss Jr. and Diane Kaye Doss, *On Morals, Privacy, and the Constitution*, 25 UNIV. MIA. L. REV. 398 (1971).

65. Almonte v. Vasquez, 244 SCRA 286 (1995).

66. United States v. Nixon, 418 U.S. 683 (1974).

> operation of the government and inextricably rooted in the separation of powers under the Constitution.[67]

The defense of national security is an allowable limitation to the right to information on matters of public concern.[68] The government has the right to prohibit the disclosure of information which affects national security. Another related concept is the *doctrine of confidentiality of judicial deliberations*, which states that the deliberations, working papers and judicial notes of the Supreme Court and lower appellate courts have traditionally been treated as confidential.[69] Similarly, there is a statutorily constructed privilege, which grants the government privilege to withhold the identity of persons who furnish information regarding violations of laws.[70]

If national security is an allowable exception to prior restraint, national security is likewise an allowable exception for the disclosure of information considered as privileged matter under the *Newspaperman's Privilege Law*.[71] The pertinent provision provides as follows:

> The publisher, editor or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news report or information appearing in the said publication which was related in confidence to such publisher, editor or reporter unless the court or a House Committee of Congress finds that such revelation is demanded by the security of the State.[72]

Note that the original text of the *Newspaperman's Privilege Law* states, "…unless the court or a House or committee of Congress finds that such revelation is demanded by the *interest of the State*" but the term "interest of the State" has been changed to the more restrictive term "security of the State" under the amendment.

3. Right of Privacy

Privacy has become the object of considerable concern because of the intrusions inherent in a compact and interrelated society. Because of these

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67. *Id.* at 708.

68. *See* Chavez v. Presidential Commission on Good Government, 299 SCRA 744 (1998).

69. *Almonte*, 244 SCRA at 295-96.

70. *Id.*

71. An Act to Exempt the Publisher, Editor or Reporter of any Publication from Revealing the Source of Published News or Information Obtained in Confidence, Republic Act No. 53, as amended by Republic Act No. 1477 [NEWSPAPERMAN'S PRIVILEGE LAW] (1946).

72. *Id.* § 1 (emphasis supplied).

inherent intrusions in society, the demand for privacy has become a difficult juggling act. On one side of the spectrum, there are increasing demands for intensified protection of privacy because of new threats. On the other side, there are those who regard privacy as simply *but a grab-bag of unrelated goodies.*

Arguably, the most influential definition of the right to privacy was penned by Samuel Warren and Louis Brandeis in their ground-breaking Harvard Law Review article entitled *The Right to Privacy.*[73] In that compact 27-page article, the authors argued that common law had nurtured a new right, known simply as privacy, which demanded acceptance in American jurisprudence. The Warren and Brandeis definition of the right to privacy, a definition first coined by Cooley, is simply the "right to be let alone."[74]

According to Warren and Brandeis, common law secures to each individual the right of determining "what extent his thoughts, sentiments, and emotions shall be communicated to others."[75] The individual is entitled "to decide whether that which is his shall be given to the public. No other has the right to publish his productions in any form, without his consent."[76] The right to determine what information shall be given to the public is wholly independent of the material or the means by which, the thought, sentiment, or emotion is expressed. The right is lost only when the author himself communicates it to the public – through publication. "The statutory right is of no value, *unless* there is a publication; the common-law right is lost *as soon as* there is a publication."[77]

A possible remedy for the violation of this right is an action for torts. And more important to the concept of freedom of speech and press, is the remedy of *injunctive relief*—the person has the power to prohibit a possible invasion of his right of privacy. The latter remedy has been recognized in our jurisdiction in the case of *Lagunzad v. Vda. de Gonzales.*[78]

Nonetheless, even if privacy is recognized as an enforceable right, it too has recognized limitations. The most important limitation to this is that it *does not prohibit any publication of matter which is of public or general interest.* This is more commonly known as the *public figure exception.* The reason for this limitation is that the general object in view is to protect the privacy of

73. Samuel Warren and Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890), *available at* http://www.lawrence.edu/fac/boardmaw/Privacy_brand_warr2.html (last accessed Feb. 9, 2006).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Lagunzad v. Vda. de Gonzales, 92 SCRA 476 (1979).

private life. When a man's life *ceases to be private* before the publication under consideration is made, protection to that extent is withdrawn. An individual's right of privacy is not necessarily superior to the rights of the public, and the right is not so extensive as to prevent the publication of matter which is of public or general interest or benefit, particularly if such matter concerns a person *who has become a public personage or character.*

However, the mere fact that an individual is a public figure does not *ipso facto* mean that he loses all of his privacy. There are still some limitations on the right to intrude upon his privacy. Those which concern the *private life, habits, acts, and relations of an individual, and have no legitimate connection with his fitness for a public office which he seeks* as well those that have *no legitimate relation to or bearing upon any act done by him in a public or quasi-public capacity* may still be repressed. However, the right to be let alone is not equivalent to hermitic seclusion.

As recognized in the case of *Ayer Productions v. Capulong*,[79] the right of privacy or *the right to be let alone*, like the right of free expression, is not an absolute right. A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute matters of a public character. Succinctly put, the right to privacy cannot be invoked to resist publication and dissemination of matters of public interest. The interest sought to be protected by the right of privacy is the right to be free from "unwarranted publicity, from the wrongful publicizing of the private affairs and activities of an individual which are outside the realm of legitimate public concern."[80]

In the same case, the Court, quoting from William Prosser,[81] gave the definition of a *public figure* in order to be considered as falling under the exception:

> A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer.... It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short,

79. Ayer Productions v. Capulong, 160 SCRA 861 (1988).

80. *Id.* at 870.

81. PROSSER AND KEETON ON TORTS 859-61 (5d ed. 1984).

> anyone who has arrived at a position where public attention is focused upon him as a person.[82]

Other limitations to this right are: (1) it does not prohibit the communication of any matter, though in its nature private, when the publication is made under circumstances which would render it a privileged communication according to the law of slander and libel, and (2) the right of privacy likewise ceases upon the publication of the facts by the individual, or with his consent.

4. Libel

The law defines libel as a "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."[83] It is classified as a crime against honor.

In order that an utterance be considered as libelous, the following elements should be present: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance; (2) the imputation must be made publicly; (3) it must be malicious; (4) the imputation must be directed at a natural or juridical person, or one who is dead; and (5) the imputation must tend to cause the dishonor, discredit or contempt of the person defamed. Thus, the essential elements are *imputation*, *publication*, *malice*, and *damage*.

The element of malice presents different evidentiary requirements depending on its character. *Malice in law is presumed from every defamatory imputation*. There is no need for the prosecution to present evidence of malice and it is sufficient that the alleged defamatory or libelous statement be presented to the court verbatim. Under the *Revised Penal Code*,[84] every defamatory act is presumed to be malicious, even it be true, if no good intention and justifiable motive for making it is shown *except*: (1) a private communication made by any person to another in the performance of any legal, moral, or social duty, and (2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement,

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82. *Ayer Productions*, 160 SCRA at 874-75.

83. An Act Revising the Penal Code and Other Penal Laws, Act No. 3815, as amended, art. 353 (1932) (REVISED PENAL CODE).

84. *Id.*

report, or speech delivered in said proceedings, or of any other act performed by public officers in the performance of their official functions.[85]

Proof of malice in fact becomes necessary only if the malice in law has been rebutted. Otherwise, there is no need to adduce evidence of malice in fact. Therefore, while malice in law does not require evidence, malice in fact requires evidence.

It is quite difficult to overturn the presumption of malice in law as provided for by the *Revised Penal Code*. Malice in law can be negated by evidence that, in fact, the alleged libelous or defamatory utterance was made with good motives and justifiable ends or by the fact that the utterance was privileged in character, which may either be absolute or conditional.

An example of absolute privilege is the privileged communication by members of Congress.[86] Examples of qualified privilege can be found in the first and second paragraphs of the above mentioned provision of the *Revised Penal Code* because in these cases, malice is not presumed. The alleged defamation will not be actionable unless accompanied by *actual malice*.

There are some exceptions to this limitation on the freedom of speech and press which coincide with that of the right to privacy. Note that in very few instances, libel will not lie if the accused is able to put up the defense of *truth*. In the following instances, the defense of truth is applicable: (1) when the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer; and (2) when the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided it is related to the discharge of his official duties.

As can be seen from the above enumeration, the defense of *public figure exception* is likewise applicable under the law on libel. The reason for this is that article 354 (2) is not an exclusive list of qualifiedly privileged communication. Fair commentaries on matters of public interests are likewise privileged. The concept of privileged communications is implicit in freedom of the press. Fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel.[87]

Thus, in cases of libel of public officials and public figures relating to official conduct, in order for the suit to prosper, it must be shown that the

85. *Id.* art. 354.

86. PHIL. CONST, art. VI, § 11.

87. *See* Borjal v. CA, 301 SCRA 1 (1999).

defamation was done with *actual malice—i.e.*, with knowledge that it was false or with reckless disregard of whether it was false or not.[88]

5. Sedition and Inciting to Sedition

Sedition in its general sense is the raising of commotions or disturbances in the State. Its ultimate object is the violation of public peace. It is a crime against public order.

The reasons for committing acts of sedition are: (1) to prevent the promulgation or execution of any law or the holding of any popular election; (2) to prevent the national government or any provincial or municipal government, or any public officer from exercising its or his functions or prevent the execution of an administrative order; (3) to inflict any act of hate or revenge upon the person or property of any public officer or employee; (4) to commit, for any political or social end, any act of hate or revenge against private persons or any social classes; and (5) to despoil for any political or social end, any person, municipality or province, or the national government of all its property or any part thereof.

Related to unprotected speech is the crime known as inciting to sedition.[89] The acts amounting to this crime are: (1) inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.; (2) uttering seditious words or speeches which tend to disturb the public peace; and (3) writing, publishing, or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace.

The elements of inciting to sedition are: (1) the offender does not take direct part in the crime of sedition; (2) he incites others to the accomplishment of any of the acts which constitute sedition; and (3) inciting is done by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending towards the same end.

Under the present state of jurisprudence, commentators are unanimous that the applicable standard to determine seditious speech is the *clear and present danger rule*, thereby abandoning the old case of *People v. Perez*,[90] which used the dangerous tendency rule.

The reason why seditious utterances are prohibited is to forbid the advocacy of a doctrine designed and intended to overthrow the government

88. *See* New York Times v. Sullivan, 376 U.S. 254 (1964).

89. REVISED PENAL CODE, art. 142.

90. People v. Perez, 45 Phil. 599 (1923).

without waiting until there is present and immediate danger of success of the plan advocated. If the State is compelled to wait until the apprehended danger became certain, then its right to protect itself will come into being simultaneously with the overthrow of the Government, when there will neither be prosecuting officers nor courts to enforce the law. Thus, essentially, it is designed for the State's *self-preservation.*

6. Contempt of Court

This power is provided for by Rule 71 of the Revised Rules on Civil Procedure. However, without this rule, courts can still wield this power. The power to punish for contempt is inherent in all courts of superior jurisdiction independently of any special expression of statute.[91]

It is understood as the power to discipline any person who is found by the court to be offensive to the honorable bench which it represents. Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated because if well founded it may enlighten the court and contribute to the correction of an error committed. However, if it is not well taken and obviously erroneous, it should, in no way, influence the court to reverse or modify its decision.

The power of contempt is a way through which courts are protected, thus:

> the Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this court and believe that they can not expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos would be the result.[92]

At the same time it is also a limitation on press freedom:

> The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. *In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications, which reasonably*

91. *See* In Re: Vicente Sotto, 82 Phil. 595 (1949).

92. *Id.*

> *tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of the constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.*[93]

Specifically applied to freedom of speech, there are two kinds of contempt by reason of publications relating to court and to court proceedings: (1) a publication which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding, constitutes criminal contempt which is summarily punishable by courts; and (2) a publication which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute, constitutes likewise criminal contempt, and is equally punishable by courts.[94] In the first kind, what is sought to be shielded against the influence of newspaper comments is the all-important duty of the courts to administer justice in the decision of a pending case. There can be no contempt where there is no action pending, as there is no decision which might in any way be influenced by the newspaper publication. In the second kind, the punitive hand of justice is extended to vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them. There can be contempt, with or without a pending case, as what is sought to be protected is the court itself and its dignity. Courts would lose their utility if public confidence in them were destroyed.

III. STUDENT RIGHTS IN THE CAMPUS: PEOPLE VERSUS POWER

A. Academic Freedom and Student Rights in the Campus

Academic Freedom is a right that belongs to various elements in an institution of higher learning – to the institution itself, to faculty, *and to students*.

Academic freedom is a right recognized in the Constitution. Section 5 (2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself its aims and objectives, and

93. People v. Alarcon, 69 Phil. 265, 271 (1939) (emphasis supplied).

94. In re: Jurado, 243 SCRA 299 (1995).

how best to attain them free from outside coercion or interference save possibly when overriding public welfare calls for some restraint. [95]

It is the business of an institution of higher learning to provide an atmosphere which is most conducive to speculation, experimentation and creation. To this end, essentially, academic freedom of institutions of higher learning involves four fundamental freedoms to determine for itself on academic grounds: (1) who may teach, (2) what may be taught, (3) how it shall be taught, and (4) who may be admitted to study.[96]

In the context of campus press freedom, academic freedom plays a vital role considering the fourth fundamental freedom of institutions of higher learning: who may be admitted to study. Because of academic freedom, it has been recognized in a long line of jurisprudence that institutions of higher learning have the inherent *right to discipline its students.* Academic freedom includes the authority to exclude students for disciplinary reasons.[97] As held by the Supreme Court in the case of *Licup v. University of San Carlos:*[98]

> True, an institution of higher learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, *when a student commits a serious breach of discipline or fails to maintain the required academic standard,* he forfeits his contractual right; and the courts should not review the discretion of university authorities.[99]

This doctrine has been sustained by the Supreme Court in several cases. For example, in *Tangonan v. Pano,*[100] the right of the school to dismiss a student for academic deficiencies has been sustained. In *Ateneo de Manila v. Court of Appeals,*[101] the right of the school to dismiss a student for disciplinary reasons has been sustained. Recently, in *Ateneo de Manila University, et al. v. Judge Capulong, et al.,*[102] the Supreme Court sustained the power of the school to dismiss students for an accidental death in a fatal fraternity initiation. In fact, the right of the school to take disciplinary action against students for out of campus but school related activities has been sustained.[103]

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95. Tangonan v. Pano, 137 SCRA 245, 256-57 (1985).

96. *See* Garcia v. Faculty Admissions Committee, 68 SCRA 277 (1975).

97. BERNAS COMMENTARY, *supra* note 16, at 1122-23.

98. Licup v. University of San Carlos, 178 SCRA 637 (1989).

99. *Id.* at 644 (emphasis supplied).

100. *Tangonan,* 137 SCRA at 245.

101. Ateneo de Manila University v. CA, 145 SCRA 100 (1986).

102. Ateneo de Manila University, et al. v. Judge Capulong, et al., 222 SCRA 643 (1993).

103. Angeles v. Sison, 112 SCRA 23 (1982).

The reason for the expanding concept of academic freedom and the coverage of the power of the school to discipline and even dismiss its students has been explained as follows:

> In an attempt to give an explicit definition with an expanded coverage, the Commissioners of the Constitutional Commission of 1986 came up with this formulation: 'Academic freedom shall be enjoyed by students, by teachers, and by researchers.' After protracted debate and ringing speeches, the final version which was none too different from the way it was couched in the previous two (2) Constitutions, as found in Article XIV, Section 5 (2) states: 'Academic freedom shall be enjoyed in all institutions of higher learning.' 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.*'
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> x x x
>
> Since *Garcia v. Loyola School of Theology*, we have consistently upheld the salutary proposition that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right. While under the Education Act of 1982, students have a right 'to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation,' such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution.
>
> 'For private schools have the right to establish reasonable rules and regulations for the admission, discipline and promotion of students. This right . . . extends as well to parents . . . as parents are under a social and moral (if not legal) obligation, individually and collectively, to assist and cooperate with the schools.'
>
> Such rules are 'incident to the very object of incorporation and indispensable to the successful management of the college. The rules may include those governing student discipline.' *Going a step further, the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.*
>
> Within memory of the current generation is the eruption of militancy in the academic groves as collectively, the students demanded and plucked for themselves from the panoply of academic freedom their own rights encapsulized under the rubric of 'right to education' forgetting that, in Hohfeldian terms, *they have a concomitant duty, and that is, their duty to learn under the rules laid down by the school.*[104]

104. *Ateneo de Manila University, et al.*, 222 SCRA at 662-64 (emphasis supplied).

Nonetheless, this does not mean that the power of the school to discipline its students is absolute. As with all other rights, it too has limitations. In *Malabanan v. Ramento*,[105] the Supreme Court ruled that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[106]

In *Malabanan*, certain officers of the Supreme Student Council of Gregorio Araneta University Foundation sought and were granted by the school authorities a permit to hold a meeting from 8:00 a.m. to 12:00 p.m. Pursuant to such permit, along with other students, they held a general assembly in a place in the university, which is different to the one indicated in the permit. At such gathering they manifested in vehement and vigorous language their opposition and pleas to the school. Thereafter, they marched inside the campus and continued their rally, which was already outside the area covered by their permit. They continued their demonstration, giving utterance to language severely critical of school authorities and using megaphones in the process. As a result, there was disturbance of the classes being held. For this reason, they were charged for violating school rules for their illegal assembly. Thereafter, they were imposed of the penalty of suspension for one academic year. The student opposed their suspension claiming that being the same violates their constitutional rights of freedom of peaceable assembly and free speech.

The Supreme Court ruled that the students are entitled to their constitutional rights. They enjoy the freedom to express their views and communicate their thoughts to those disposed to listen in their gatherings, such as was held in this case. While the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards. The Court ruled that speech inside the school can only be curtailed if the act materially disrupts classwork or involves substantial disorder or invasion of the rights of others. Otherwise, the power of the school to curtail speech will be invalid. Taking into consideration all the foregoing facts, the Supreme Court ruled that the penalty of one-week suspension would be sufficient.

The value of *Malabanan* in recognizing the students' rights to freedom of speech, press, and assembly is undeniable. It recognizes that the mere fact that the students are under the care of the school does not give the latter absolute discretion to discipline the former. The power of the school to discipline is not insulated from court review. In addition, it lays down the standard in determining whether the acts of the students can be subject to

105. Malabanan v. Ramento, 129 SCRA 359 (1984).

106. *Id.* at 368 (citing Tinker v. Des Moines Community School District, 393 U.S. 503, 507 (1969)).

discipline: if the act materially disrupts classwork or involves substantial disorder or invasion of the rights of others. Finally, the penalty that the school may impose can be tempered considering the facts and circumstances of the case.

The doctrine in *Malabanan* that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" was subsequently applied in *Villar v. Technological Institute of the Philippines*,[107] *Arreza v. Gregorio Araneta University Foundation*,[108] and *Guzman v. National University*.[109] In *Guzman*, the Supreme Court reiterated the rule that a school can impose disciplinary sanctions to erring students. However, the exercise of the same is not absolute since it must rely on valid substantive grounds. Moreover, it must observe the following procedural due process requirements: (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[110] These established requirements for due process must be observed together with the rights of the students to free speech and assembly.[111]

B. Theories on the Power of the School to Regulate Speech

As already explained above, concomitant to the academic freedom of institutions of higher learning is its power to regulate speech. The power to regulate speech is an aspect of the school's power to discipline its students, which in turn is derived from the fundamental freedoms *who will be taught and how the students will be taught.*

> A school certainly cannot function in an atmosphere of anarchy…The establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property.

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107. Villar v. Technological Institute of the Philippines, 135 SCRA 706 (1985).

108. Arreza v. Gregorio Araneta University Foundation, 137 SCRA 94 (1985).

109. Guzman v. National University, 142 SCRA 699 (1986).

110. *Id.* at 414-18.

111. Non v. Dames, 185 SCRA 535 (1990).

> Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom 'what to teach.'[112]

Discipline is considered as the *means* through which schools can shape and mold its students as mature citizens.[113] However, the power to discipline is only one of the considerations affecting the power of the school to regulate speech. One must also consider the individual rights of the students concerned as well as the community values sought to be sustained or enhanced by the action of the school. In fact, sometimes the conflict would only revolve around the student's claim for freedom of speech and the school's power to inculcate community values.

Theoretically, the mission of institutions of higher learning is not only to impart the necessary training and skills required for the student's professional career later on in his life. It likewise includes the duty to transmit a common core of values to each succeeding generation; educational institutions are also mediums to spread ideologies and values. In practice, this results to an inherent tension between individual freedom and collective interests. In other words, there is an expectation that education serves both individual interests founded in liberal philosophy and the communitarian goals founded in democratic theory. Schooling is designed to socialize, to convey the prevailing values and attitudes of the sponsoring community while at the same time opening the intellect to new options and new possibilities beyond those encountered in the home.[114]

Based on the foregoing considerations, there are various bases upon which the school can claim the power to regulate speech.

As mentioned above, the first basis by which the school can claim its power to regulate speech is the school's role of inculcating community values. Since the school functions as a transmitter of community values, it may disassociate itself from student speech that is devoid of any community value. However, though this approach may be one means by which a school may inculcate values, it also places the school in the precarious position of imparting community values as a substitute to the student's right to intellectual self-determination. In short, if the inculcation of community values will be the only basis for the power to regulate student speech, the

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112. Miriam College Foundation v. CA, 348 SCRA 265, 285 (2000).

113. *See* Angeles v. Sison, 112 SCRA 23, 37 (1982).

114. *See* Rosemary C. Salomone, *Free Speech and School Governance in the Wake of* Hazelwood, 26 GA. L. REV. 253, 257 (1992).

school would be nothing but a campus thought police—in Orwellian terms, a *campus big brother*.

Another basis for the power of the school to regulate speech is the *liability theory*. This proposes that those who dictate the content of a publication will have *financial* liability for any *tortious* material published in it.[115] For this reason, schools may be discouraged in struggling with the editorial board for the content of the latter's publications. The *Campus Journalism Act* is clear on this – the editorial board has the sole control over the content of its publication as an element of its editorial policy.[116] Interference by the school is limited to technical advice in elementary and high-school level publications.

Meanwhile, under the *official publication theory*, a distinction is made between an official publication and a non-official underground one. A student affiliated with and working for an official publication will have to sacrifice his editorial freedom in exchange for advantages which an underground publication cannot provide. In an official publication, the student will continue to receive credit for his participation and will have access to a journalism advisor thereby having the benefit of a professional supervising the development of his writing and reporting skills.[117] In stark contrast, a student affiliated with an underground publication is forced to sacrifice credit and educational input, but has unbridled discretion in terms of editorial freedom. The underground editor experiences freedom of speech at his apogee.[118] In official publications, the school administration has the power of censorship insofar as a legitimate pedagogical concern is put into play. But for underground publications, "the publication will not be part of the school's curriculum or funded by the school. Therefore, school control will be limited to the administrators' ability to intercept the publication before its dissemination to students on school grounds."[119]

These are some of the theories offered as to why schools have the power to regulate student speech.

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115. *See* J.M. Abrams & M. Goodman, *The End of an Era? The Decline of Student Press Rights in the Wake of* Hazelwood School Dist. v. Kuhlmeier, 1988 DUKE L. J. 706 (1988).

116. CAMPUS JOURNALISM ACT, § 4.

117. Abrams & Goodman, *supra* note 115, at 722.

118. *Id.*

119. *Id.*

C. *Standards for Regulating Free Expression*

Although Philippine jurisprudence has scarce case law on matters concerning student speech inside the school, American jurisprudence is replete with case law discussing the same. Evidently, an examination of the same is proper in order to give a scholarly discussion on the subject of student press rights. It would likewise be useful in examining the present Philippine jurisprudence on the matter. A comparison with the same is but only proper.

There are three strains of jurisprudence that provide the standard by which the exercise of the school's power to regulate speech is tested. These are: (1) the Substantial and Material Disruptions Test, (2) the Offensive or Vulgar Speech in a School-Sponsored Activity Test, and (3) the Legitimate Pedagogical Concerns Test. These are the three circumstances in which student speech rights may be restricted without violating the student's freedom of speech and press.

1. *Tinker v. Des Moines School District*: the Substantial and Material Disruptions Test

The first test was established in *Tinker v. Des Moines School District*.[120] Under this test, when the speech could substantially and materially disrupt the educational environment or interfere with the rights of other students, the said speech can be regulated.

The facts of the case show that a group of adults and students in Des Moines held a meeting and determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting. Petitioners, who were students, and their parents had previously engaged in similar activities, and they decided to participate in the program. The principals of the Des Moines schools became aware of the plan to wear armbands. They met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted. Petitioners wore black armbands to their schools. However, they were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired.

The United States Supreme Court, through Justice Fortas, ruled that, in the absence of demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material

120. Tinker v. Des Moines School District, 393 U.S. 503 (1969).

interference with, school activities or any showing that disturbances or disorders in school premises actually occurred when students wore black armbands on their sleeves to exhibit their disapproval of Vietnam hostilities, regulation prohibiting wearing armbands to schools and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion.

> The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—*materially disrupts classwork or involves substantial disorder or invasion of the rights of others* is, of course, not immunized by the constitutional guarantee of freedom of speech.[121]

Verily, it can be seen that *Tinker* represented a shift in judicial attitude that favors student rights. It is a libertarian approach to remedy that class between the school's power to regulate speech and the student's right to express the same. Rather than balance the student's speech interests against the school's interests in inculcating values, the Court implicitly embraced the progressive notion that schools should encourage students to participate in the learning process. *In other words, conflict generated through the student's interaction with the school environment actually advances the student to higher developmental stages*. The Court also seemed to indicate that schools were no longer a parental or loco-parental zone deriving their power from the parents.[122] The next two tests, however, can be seen as a departure from the libertarian attitude in *Tinker*.

2. *Bethel School District No. 403 v. Fraser*: The Offensive or Vulgar Speech in a School-Sponsored Activity Test

The second test was enunciated in *Bethel School District No. 403 v. Fraser*.[123] Under this test, when speech that is offensive or vulgar occurs during a

121. *Id.* at 512-13 (emphasis supplied).

122. Salomone, *supra* note 114, at 262.

123. Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986).

school-sponsored activity, the school has the prerogative to impose sanctions upon a student uttering the repulsive language.

The facts of the case show that a public high school student delivered a speech nominating a fellow student for a student elective office at a voluntary assembly that was held during school hours as part of a school-sponsored educational program in self-government. It was attended by approximately 600 students, many of whom were 14 year-olds. During the entire speech, respondent referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.[124] Some of the students at the assembly hooted and yelled during the speech, some mimicked the sexual activities alluded to in the speech, and others appeared to be bewildered and embarrassed.

Prior to delivering the speech, the student discussed it with several teachers, two of whom advised him that it was inappropriate and should not be given. The morning after the assembly, the assistant principal called the student into her office and notified him that the school considered his speech to have been a violation of the school's *disruptive-conduct rule*, which prohibited conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures. He was given copies of teacher reports of his conduct, and was given a chance to explain his conduct. After he admitted that he deliberately used sexual innuendo in the speech, he was informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises. Review of the disciplinary action through the School District's grievance procedures resulted in affirmance of the discipline but the penalty was reduced to only two days of his suspension. The student, accompanied by his father, filed a suit contesting the decision, alleging a violation of his right to freedom of speech and seeking injunctive relief and damages.

The United States Supreme Court ruled that the Constitution does not prevent the School District from disciplining him for giving the offensively lewd and indecent speech at the assembly. Differentiating the case from the libertarian attitude of *Tinker*, the Court leaned in favor of the rule of the school in inculcating community and social values rather than the student's freedom of speech, *viz*:

> These fundamental values of 'habits and manners of civility' essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. *But these 'fundamental values' must also take into account consideration of the*

124. The student referred to a student candidate as *firm in his pants* and going to the *climax* for students.

> *sensibilities of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior.* Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.[125]

According to the United States Supreme Court, under the Constitution, adults may not be prohibited from using an offensive form of expression in making a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board. First Amendment jurisprudence recognizes an interest in protecting minors from exposure to vulgar and offensive spoken language, as well as limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children. For this reason, the School District acted entirely within its permissible authority in imposing sanctions upon respondent in response to his offensively lewd and indecent speech, which had no claim to constitutional protection.

In the words of Chief Justice Warren Burger, freedom of speech "does not prevent the school officials from determining that to permit a vulgar and lewd speech…would undermine the school's *basic educational mission.*"[126] The said court differentiated itself from *Tinker*. In the latter, the student's words were characterized as a "political position, a non-disruptive passionate expression,"[127] while in the former, the student's speech which was laced with sexual innuendoes was held to be "lewd and obscene."[128]

Verily, it can be seen in *Fraser* that judicial attitude is leaning away from the libertarian approach enunciated in *Tinker* and is beginning to favor the school's role in inculcating community and social values. In addition, the test used by the Court did not only focus on the speaker but took great pains in emphasizing the effects it had in the listeners. The Court is beginning to focus on the forum and not the speaker. This judicial attitude was solidified in the next case, which provided an entirely different view from *Tinker*.

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125. *Bethel School District No. 403*, 478 U.S. at 681 (emphasis supplied).

126. *Id.* at 685.

127. *Id.* at 680.

128. *Id.*

3. *Hazelwood School District v. Kuhlmeier*: The Legitimate Pedagogical Concerns Test

The third test was enunciated in *Hazelwood School District v. Kuhlmeier*.[129] Under this test, *all school sponsored activities* are subject to regulation and censorship if the said activity bears no relation whatsoever to a *legitimate pedagogical concern.*

The facts of the case show that former high school students who were staff members of the school's newspaper filed a suit against the school district and school officials for violation of their press freedom. They alleged that the school violated their rights by deleting from a certain issue of the paper two pages that included an article describing the students' experiences with pregnancy, and another article discussing the impact of divorce on students at the school.

The newspaper was written and edited by a journalism class, as part of the school's curriculum. Pursuant to the school's practice, the teacher in charge of the paper submitted page proofs to the school's principal, who objected to the pregnancy story because the pregnant students, although not named, might be identified from the text, and because he believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students. The principal objected to the divorce article because the page proofs he was furnished with identified by name the students involved, which was deleted by the teacher from the final version. It also included stories about a student who complained of her father's conduct, which the principal believed should not be included because the student's parents were not given an opportunity to respond to the remarks or to consent to publication. Believing that there was no time to make necessary changes in the articles if the paper was to be issued before the end of the school year, the principal directed that the pages on which the articles appeared be withheld from publication even though other, unobjectionable articles were included on such pages.

The United States Supreme Court ruled that the students' press freedom was not violated. The Court ruled that the rights of students in public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.[130] Moreover, the school newspaper here cannot be characterized as a forum for public expression.

129. Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1998).

130. *Id.* at 266-67.

School facilities may be deemed as public *fora* only if school authorities have by policy or by practice opened the facilities for indiscriminate use by the general public, or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, communicative or otherwise, then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. The school officials in this case did not deviate from their policy that the newspaper's production was to be part of the educational curriculum and a regular classroom activity under the journalism teacher's control as to almost every aspect of publication. The officials did not evince any intent to open the paper's pages to indiscriminate use by its student reporters and editors, or by the student body generally. Accordingly, school officials were entitled to regulate the paper's contents in any reasonable manner.[131]

Finally, the Court ruled that the standard for determining when a school may punish student expression which occurs in school premises is not the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are *reasonably related to legitimate pedagogical concerns.* As stated by the Court:

> Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. *Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.*
>
> This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges. *It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so 'directly and sharply implicated as to require judicial intervention to protect students' constitutional rights.*[132]

131. *Id.* at 270–71.

132. *Id.* at 272–73 (emphasis supplied).

4. A Post-*Hazelwood* Discourse

As consequence of the *Hazelwood* decision, several theories have been forwarded. The common stand is that the *Tinker* doctrine wherein the only speech that may be curtailed is speech that materially disrupts or interferes with the rights of other students became limited to *non*-pedagogical concerns. As long as there appears to be no pedagogical concern to be served by a student's speech then it can be curtailed and censored by the school administration, and for as long as it is as school sponsored activity. "Unfortunately, *Hazelwood* has taught our youth that our democratic society, through its schools, no longer affords the freedoms on which it once prided itself, but rather, envisions schools as mere instruments through which to inculcate community values."[133] But *Hazelwood* is not a bad doctrine altogether. It balances *Tinker's* strict limitation to the school's power to censor by favoring inculcation over students' liberties.

The strict standard for regulation laid down by *Hazelwood* as applied to legitimate pedagogical concerns or educational mission *must* be limited only to *school sponsored activities*. The decision itself is explicit on this matter.[134] Hence, activities which are *not* school sponsored fall outside of the seemingly wide latitude of regulation accorded to schools under *Hazelwood*. If the speech does not fall under *Tinker* or *Fraser* then freedom of speech cannot be curtailed or interfered with.

There are two theories offered for the analysis of regulatory standards for school sponsored speech.[135] In the *content-based* theory, speech which relates to pedagogical concerns can be curtailed regardless of who uttered it. On the other hand, from the *vieu-point* based theory, certain perspectives on any topic may immediately be curtailed regardless of the content of the speech. Both of these theories proceed from the premises laid down in *Hazelwood:* that a school has the responsibility to educate and inculcate values and that there is a great tendency that student speech has a great proclivity to being perceived as bearing the imprimatur of the school,[136] hence the need for regulation.

The view-point based theory is often dissected further to distinguish between speech uttered in a public forum and speech uttered in a nonpublic forum. A public forum is defined as a facility that is open for indiscriminate

133. Bryks, *supra* note 39, at 325.

134. *Hazelwood,* 484 U.S. at 272.

135. *See* Samuel P. Jordan, *Viewpoint Restrictions and School-Sponsored Student Speech: Avenues for Heightened Protection,* 70 U. CHI. L. REV. 1555 (2003).

136. *See generally Hazelwood,* 484 U.S. at 271.

use by the public.[137] Speech uttered in a public forum is often protected. "Content-neutral restrictions on time, place, and manner of expression are permissible if they are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."[138] Speech in nonpublic *fora* are easily restricted and such are sustained by the courts.[139]

The *Hazelwood* court regarded the forum in the said case as nonpublic because the school paper was not opened to public participation or discourse, but was reserved for a curricular purpose.[140] *Cornelius v. NAACP Legal Defense and Educational Fund*[141] established that restrictions on speech in a nonpublic forum may be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.[142] Viewpoint neutrality is thus unambiguously required under the standard nonpublic forum analysis. If that analysis applies to school-sponsored speech, then viewpoint neutrality must be a prerequisite of any limitation of such speech.[143] However, other jurisprudence suggests that *Hazelwood* does not require viewpoint neutrality.[144]

A commentator suggests some guidelines in the application of the standard enunciated in *Hazelwood*. *First*, the legitimacy of pedagogical concerns must be evaluated in light of the restriction sought.[145] Avoidance of controversy should not be considered a legitimate pedagogical purpose when viewpoint restrictions are contemplated. *Second,* an examination of the motives of the school in restricting speech is necessary for the pedagogical concern to be considered legitimate.

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137. Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 47 (1983).

138. *Id.* at 45.

139. *Id.*

140. *Hazelwood*, 484 U.S. at 270.

141. Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788 (1985).

142. *Id.* at 806.

143. Jordan, *supra* note 135, at 1563.

144. *See* Planned Parenthood v Clark County School District, 941 F.2d 817 (9th Cir. 1991).

145. Jordan, *supra* note 135, at 1573-74.

IV. THE CAMPUS JOURNALISM ACT

The *Campus Journalism Act* was envisioned as the law that will answer the clamor of Filipino campus journalists to have stronger rights to free speech and press by possessing more autonomy in the determination of their respective editorial policies and management of publication funds, protection from retaliation for the articles published thereon, as well as insulation from the prying eyes of school authorities.

The *Campus Journalism Act* has the commendable objectives of protecting freedom of the press. It seeks to improve journalistic skills of students and promote responsible and free journalism.[146] It also aims to promote the development and growth of campus journalism as a means of strengthening ethical values, encouraging critical and creative thinking, and developing moral character and personal discipline of the Filipino youth.[147]

The concept of *autonomy* can be described as the animating principle by which student publications operate under the *Campus Journalism Act*. For one, the student publication[148] is separate from the school. The editorial board[149] is not selected by the school but rather is selected through fair and competitive examinations.[150] Moreover, once the publication is established, the editorial board is free to determine its editorial policies[151] and manage

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146. CAMPUS JOURNALISM ACT, § 2.

147. *Id.*

148. *Id.* § 3 (b). (The provision provides: "Student Publication. — The issue of any printed material that is independently published by, and which meets the needs and interests of, the studentry").

149. *Id.* § 3 (d). The provision provides:

> Editorial Board. — In the tertiary level, the editorial board shall be composed of student journalists who have qualified in placement examinations. In the case of elementary and high school levels, the editorial board shall be composed of a duly appointed faculty adviser, the editor who qualified and a representative of the Parents – Teachers' Association, who will determine the editorial policies to be implemented by the editor and staff members of the student publication concerned. At the tertiary level, the editorial board may include a publication adviser at the option of its members.

150. *Id.* § 4.

151. *Id.* § 3 (e). (The provision provides: "Editorial Policies. — A set of guidelines by which a student publication is operated and managed, taking into account pertinent laws as well as the school administration's policies. Said guidelines shall determine the frequency of the publication, the manner of selecting articles and features and other similar matters").

the publication's funds.[152] The subscription fees collected by the school administration shall be released automatically to the student publication concerned.[153]

Notice must also be made of the fact that the *Campus Journalism Act* does not mention the role or the power of the school over student publications; the only incidental role the school plays is to serve as collector of funds[154] and in some instances, as *technical* adviser through the faculty adviser in the case of elementary and high school level publications, and at the tertiary level in case the editorial board exercises its option.[155]

In fact, the best proof of the independence of the student publication is in Section 7 on Security of Tenure, which provides that a student shall not be expelled or suspended solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication.[156] It gives student journalists the protection against retaliatory measures of the school authorities on the basis of the articles the student journalists wrote or in the performance of his duties in the student publication.

Several years after the passage, many are wondering as to the correct interpretation of Section 7 of the *Campus Journalism Act* because the provision, as worded, appears to be absolute in nature – the student journalist cannot be suspended or expelled for any of the articles he wrote or for any position he handled in the publication. This issue was addressed in the landmark case of *Miriam College Foundation v. Court of Appeals.*[157]

V. THE MIRIAM COLLEGE CASE AND ITS CONSEQUENCES

"Kaskas…Kapirasong Tela…Kabayo…." These four words have nothing in common except that they all start with the same letter. And perhaps, the tendency to invoke the prurient interest. But taken independently and without a context, they seem perfectly fine. *Kaskas* as a verb can refer to any action requiring a back and forth motion. *Kapirasong Tela*, a noun, simply denotes a piece of cloth. *Kabayo* is just, well, a horse. Put together and woven into an entirely lewd context, these neutral words depict a sexual experience. But will the fact that in the ears of the uninitiated the phrase is

152. *Id.*

153. *Id.* § 5.

154. *Id.*

155. *Id.* § 6.

156. *Id.* § 7.

157. Miriam College Foundation v. CA, 348 SCRA 265, 291 (2000).

obscene be enough to disregard its literary value? In addition, will it remove the same from the protective mantle of freedom of speech? These were the underlying, though unaddressed, issues in the *Miriam College* case.

The essential facts of the case show that the editors and staff of Miriam College's student publication published a literary compendium of stories, poems and essays that delved on the matter of sex. Various literary pieces evoked complaints from members of the Miriam College community and a concerned Ateneo Grade Five student. A complaint was lodged against them for disciplinary action by the school. When asked for comment, the students refused to answer citing Section 7 of the *Campus Journalism Act* as their basis. After the investigation proceeded *ex-parte*, the verdict was that some students were expelled while others were suspended by the school based on the theory that as a school of higher learning, they enjoy the power to discipline, which is corollary to the principle of Academic Freedom under the Constitution. The students brought their case to court, contending that the literary pieces are protected speech under the right to press freedom. Moreover, they argue that Section 7 of the *Campus Journalism Act* prohibits the expulsion or suspension of a student solely on the basis of articles he or she has written.

The Supreme Court sustained the school. According to the Court, the power to investigate is an adjunct of its power to suspend or expel. It is corollary to the enforcement of rules and regulations and the maintenance of a safe and orderly environment conducive to learning. That power, like the power to suspend or expel a student, is an inherent part of the academic freedom of institutions of higher learning, guaranteed by the Constitution. However, their power to discipline is not all encompassing. Under Section 7 of the *Campus Journalism Act*, the law prohibits the expulsion or suspension of a student solely on the basis of articles he or she has written. Thus, to harmonize the academic freedom of the institution and the students' freedom of speech, Section 7 of the law should be construed to mean that the student can only be punished if the published work (1) materially disrupts class work, (2) involves social disorder, or (3) invades the rights of others.

In effect, this judicial interpretation reverted to the old *Tinker* doctrine in that there must be a *right* that is violated in the utterance of a speech, and that it *materially* disrupts the exercise of this right for the speech to be placed beyond the protection of the freedom of speech. Thus, *Miriam College* clarified that the standard to be used in this jurisdiction is the standard in *Tinker*. All over the *Miriam* decision are badges of the libertarian ruling in *Tinker*. Implicit in this doctrine transplant is that the courts in this

jurisdiction agree that students do *not* shed their Constitutional rights as they enter the school gate.[158]

VI. A REINTERPRETATION FOR CAMPUS PRESS RIGHTS

"*Dahil para saan pa ang libog kung hindi ilalabas?*"[159] Stated with less candor, what is the point of an idea that one can be so passionate about, if it will not be articulated? One of the underlying theories of the freedom of speech is the marketplace of ideas and opinions or the theory of individual autonomy.[160] And among the great concerns of our time is that our young people, disillusioned by our political processes, are disengaging from political participation.[161] The autonomous individual must be free from State censorship and the fetters of suppression of ideas by his fellowmen in order to maintain a healthy democratic society. That "universities are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes; may, the development, or flowering if you will, of the total man."[162] The free flow of opinion is essential so that this task can better be played by schools. An individual has the liberty to decide what is true, anything less than that can amount to a suppression of truth. And that the truth is left unfettered is all the more critical in schools. How can it educate properly if it seeks to *suggest,* no, to oblige, certain points of view? Today's truths may be tomorrow's falsehoods. As stated by the Supreme Court in one case:

> The heresies we may suppress today may be the orthodoxies of tomorrow. New truth begins always in a minority of one; it must be someone's perception before it becomes a general perception. The world gains nothing from a refusal to entertain the possibility that a new idea may be true. Nor can we pick and choose among our suppressions with any prospect of success. It would, indeed, be hardly beyond the mark to affirm that a list of opinions condemned in the past as wrong or dangerous would be a list of the commonplaces of our time.[163]

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158. Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969).

159. *Miriam College Foundation*, 348 SCRA at 270.

160. Bryks, *supra* note 39, at 310.

161. Nadine Strossen, *Students' Rights and How They are Wronged*, 32 U. RICH. L. REV. 457, 461 (1998).

162. *Miriam College Foundation*, 348 SCRA at 287 (citing Ateneo de Manila University v. Capulong et. al, 222 SCRA 643 (1993)).

163. Garcia v. Faculty Admissions Committee, 68 SCRA 277, 296 (1975) (Makasiar, J., dissenting) (citing LASKI, LIBERTY IN THE MODERN STATE 75, *cited in* TAÑADA AND FERNANDO, CONSTITUTION OF THE PHILIPPINES, 316-17 (1952 ed.)).

Indeed, corollary to the students' Constitutional rights is the school's academic freedom, the oft invoked power to discipline, and therefrom, the power to regulate speech. But the power to discipline is not the only medium to inculcate values. In fact, inculcating community values is not the only role of the school. Its bigger role is to provide its students an atmosphere where they can mature intellectually and morally, learning to decide for themselves which will be better for their maturity as persons. This can only happen in a school where a marketplace of ideas is left unfettered.

In addition, one cannot help but notice an apparent clash in theories between the *Campus Journalism Act* and the *Miriam* case. Under the *Campus Journalism Act*, the student publication's editorial policies should take into account pertinent laws *as well as the school administration's policies*, as seeming reference to the restrictive concept in *Hazelwood* that a school can regulate for as long as there are "legitimate pedagogical concerns." On the other hand, the *Miriam* case follows the more liberal interpretation in *Tinker* wherein speech can only be regulated when the speech could substantially and materially disrupt the educational environment or interfere with the rights of other students. Perhaps the next case involving the *Campus Journalism Act* will be able to address this latent contradiction.

Nevertheless, it is suggested that if a school wishes to avail of the *Hazelwood* doctrine and invoke its educational mission in its censorship of student speech, due regard must be made of the fact that the only extent to which the *Hazelwood* doctrine applies in this jurisdiction is only insofar as the *Campus Journalism Act* enjoins the suspension or expulsion of a student on the sole basis of what he or she wrote. The school cannot hide behind *Hazelwood* in an attempt to regulate the publication's contents, especially if the publication is exclusively student funded.[164] The *Campus Journalism Act* itself clarifies the role of the school: it is only a *collector of publication funds*—its role is merely *ministerial*.[165] It collects from the student body and it has the absolute responsibility of transmitting to the editorial board whatever amounts they have collected without delay.[166] It merely enforces the autonomy of student publications from the school which it purports to

164. CAMPUS JOURNALISM ACT, §5 (under § 5 of the Campus Journalism Act, the student publication has the following various sources of funds: (1) savings of the respective school's appropriations, (2) student subscriptions, (3) donations, (4) subscription fees collected by the school administration and other sources of funds).

165. *Id.*

166. *Id.*

represent.[167] Indeed, the school is not precluded from appropriating a portion of school funds for the student publication, but their power to regulate is only based on the *liability* which they might incur, in the remote possibility that the views of the editorial board might be misconstrued as bearing the imprimatur of the school administration.

Student publications are *not school-sponsored activities but are student-funded publications.* The only role of the school is to collect the funds to be kept in trust and later on, to give to the student editors. Thus, they cannot use the rules that they themselves made against the students and in their own favorable interpretation.

For this reason, any interpretation should be construed in the light of the ultimate objective of the *Campus Journalism Act – strengthening campus press rights by granting them more autonomy as well as to protect both the existence of the publication and student journalists' tenure.*

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years."[168]

Nevertheless, one must remember that even without the *Campus Journalism Act*, students would still have their freedom of expression and of the press. It is an inherent right; and further, it is covered by the Bill of Rights. The Constitution, in this matter, makes no distinction as to where the speech was uttered, whether in school or in some other public setting. The freedom of speech protects the speaker, not the forum. It protects the lips of the speaker and not the ears of the listener. It does not distinguish between a student, a teacher, or a bystander.

In fact, one can even disregard the *Tinker* doctrine altogether and the students' campus press rights would still be protected. As mentioned above, if there is no distinction between speech done inside the school and speech done outside it, students have more than enough protection. Thus, for example, if an article in a student newspaper is allegedly obscene, as in the *Miriam* case, the students can be made liable, not because it materially disrupts class or invades the rights of others but simply because obscene speech in not protected speech. The *O'Brien Test*[169] is more than sufficient

167. The autonomy of the editorial board is reinforced by the Campus Journalism act through its various provisions such as the tax exemption in §9, the security of tenure in §7, and the source of funds provision in §5.

168. Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969).

169. *See* United States v. O'Brien, 391 U.S. 367 (1968).

to cover alleged obscene speech whether uttered inside the school or outside of it.

The cases on student speech inside the school give too much faith in the schools. They even state that the courts should respect the expertise of schools in inculcating values and teaching good conduct. But over-reliance on this concept in lieu of student rights is erroneous. The school can and indeed has the power to inculcate values and discipline students in relation thereto but it should always be remembered that such should not amount to placing an additional burden to the student's right to free speech. *There can be no more additional limit beyond what the allowable prohibitions under the law and established jurisprudence are.* Remember that freedom of speech is a preferred right, which means that it is superior to the ordinary exercise of police power; instilling disciplinary measures and school regulations in order to enforce values education is no more than an exercise of police power *intramural.* Even if in the course of the student's interaction with the school environment conflict is generated because of the speech, one must remember that through the conflict, the students mature and develop.

VII. CONCLUSION

Going back to the *Miriam College* case, the Court upheld that disciplinary sanctions are not being criticized. Instead, the understanding thereof must be re-oriented. Freedom of speech is indeed not absolute. It is subject to limitations. There should be no distinction between student speech and non-student speech. There should be no additional or a separate set of rules for student speech. The standards in determining the legality of speech restriction imposed by schools must be the same standards used in restriction of any other exercise of speech, by any other individual, student or otherwise.

The *Miriam College* doctrine seems to follow the *Tinker* doctrine rather than the *Hazelwood* doctrine. It limits student press rights more than is actually necessary. However, there is no need to abandon the *Miriam* doctrine altogether, if only to remind us that students will always have their Constitutional freedoms even if they are inside the school, and even if they are taking part in a school sponsored activity. This is the triumph of *Tinker.* Its wisdom is not in laying down one of the three standards for regulating students' speech. Rather, it reminds us that constitutional rights are attached to the person, regardless of the forum.

It is indeed high time to remind student journalists of the limitations regarding their freedoms. True, indeed, that the perfection of humanity is not possible without freedom for the individual. Thus, the existence of social institutions and all political organizations and relationships are justified insofar as they have for their primary aim the defense and protection of

freedom. However, it is important to remember that these rights are not absolute. It may not be exercised arbitrarily to the point that it harms the rights of others. These rights are, therefore, *limitable rights*.

These principles of freedom are not something that conflicts with or cuts across constitutional philosophy; rather, when the constitutional philosophy is seen in its entirety, this principle is part and parcel of it. Thus, since constitutional rights are limitable rights, it is important to remember that the best safeguard in protecting and enforcing these rights is *prudence*, *i.e.*, carefulness and good faith in exercising these rights.

In the performance of duties as student journalists and editors, the students should always observe the standards of good faith in the exercise of rights and performance of duties; standards that can be traced as early as Roman Law: every person must, in the exercise of his rights and the performance of his duties act with justice, give every man his due, and observe honesty and good faith.