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ATENEO LAW JOURNAL

THE NOLI - FILI LAW

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HISTORICAL BACKGROUND

AMONG the many illustrious Filipinos who have distinguished themselves in the service of their country, the highest place of honor belongs to Dr. Jose Rizal. And justly so; for Rizal possessed to an eminent degree those virtues which together make up true patriotism. He loved his country not in word alone but in deed. He devoted his time, his energies and the resources of his brilliant mind to dispelling the ignorance and apathy of his people, and combating the injustices and inequalities under which they labored. When these salutary activities fell under the suspicion of the colonial government and he was condemned to death as a rebel, he generously offered his blood for the welfare of his country.¹

But although his love for his country was great, it was not a blind, unreflecting love. It was not the inordinate love which so often passes for patriotism, whereby one regards one's native country as perfect beyond criticism, and attributes all its ills to the tyranny and greed of strangers. Rizal's balance of judgment saved him from this pernicious error. He clearly saw and boldly proclaimed the fact that while the Filipino people suffered from colonial rule, they were as much the victims of their own vices and defects.² In dedicating his novel, *Noli Me Tangere*, to his beloved country, he addressed her as follows:

Desiring your health which is also ours, and seeking the best means of restoring it, I shall do with you what the ancients did with their sick; they brought

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¹ STATEMENT OF THE PHILIPPINE CATHOLIC HIERARCHY ON THE NOVELS OF DR. JOSE RIZAL par. 1 inserted as part of the SENATE CONGRESSIONAL RECORD VOL. 3 No. 59 at 9455.

² *Id.* par. 2.

them to the steps of the temple that all who came to invoke the god might stop to suggest a remedy . . . I shall lift a portion of the bandage which hides the disease, sacrificing all to the truth, even my personal pride, for as a son of yours I am not exempt from your defects and weaknesses.³

Thus, while Rizal was fearless in denouncing the evils of the colonial administration of his time, he was no less fearless in pointing out to his countrymen "our own mistakes, our own vices, our supine and culpable acquiescence to these evils."⁴

As a fitting tribute to Dr. José Rizal, Senator José P. Laurel on April 17, 1956 sponsored a bill in the Senate making compulsory the reading of *Noli Me Tangere* and *El Filibusterismo* in both public and private schools, colleges and universities in the Philippines. The bill was known as Senate Bill No. 438 or better known as the *Rizal Bill*.⁵ Immediately after the filing of the bill parties representing Catholic Organizations started making rounds of Senate offices seeking the defeat of the bill.⁶

Catholic officials were ready to oppose any move because the two novels severely assailed important religious orders in the country. These two books bitterly criticized the Catholic clergy of the time and censured those citizens who were serving the ruling Spaniards.⁷

In the Senate the Catholic stand was expressed by Senator Francisco Rodrigo, former ranking official of The Catholic Action of the Philippines who voiced the reasons why the Catholic Church opposed the measure. He was, however, in favor of the reading of Rizal's books as a *required reading, but not as compulsory reading matter*.⁸ "Compulsion makes even the most desirable things repulsive," he explained.⁹

Compulsion was the main objection to the Bill. José Ma. Hernandez, president of the Catholic Action of the Philippines, argued that the bill violated academic freedom because of the compulsory element.¹⁰ The other objection which was a necessary consequence of the first was that the bill was "an invasion of the conscience of an individual."¹¹

Other members of the Senate who were opposed to the bill were Senators Decoroso Rosales and Mariano J. Cuenco. These gentlemen are not only ranking Catholic but brothers of two of the highest officials in the Catholic Hierarchy of the Philippines.¹²

³ RIZAL, *NOLI ME TANGERE* 3 (Nueva Era ed.)

⁴ W. E. RETANA, *VIDA Y ESCRITOS DEL DR. JOSE RIZAL* 126 (Madrid, 1907).

⁵ 3 S. CONG. REC. 866 (1956).

⁶ *Congress at work*, Philippine Free Press, April 21, 1956, p. 14.

⁷ STATEMENT OF THE PHILIPPINE HIERARCHY, *supra* note 1, at 945.

⁸ 3 S. CONG. REC. 939 (1956).

⁹ *Id.* at 942.

¹⁰ Locsin, *The Battle Over the Books*, Philippine Free Press, April 28, 1956, p. 2.

¹¹ *Id.*

¹² Senator Decoroso Rosales is the brother of Archbishop Julio Rosales of Jaro; Senator Mariano Jesus Cuenco is the brother of Archbishop Jose Ma. Cuenco of Cebu.

Those favoring the bill on the other hand, contended that the purpose in drafting the said bill was to foster better nationalism. The majority of the members of the Senate backed Senator Laurel in deploring the lack of national pride and integrity and further stressed the need for revitalizing the national character by "drawing inspiration from the works of our heroes."¹³

Laurel argued that the books did not attack the Church. "He (Rizal) merely took to task the agents of the Church."¹⁴ Letters asking for a public hearing were sent to the Senate by such organizations like the Knights of Columbus, the Archdiocesan Union of the Holy Name Society of Manila, the Young Ladies Association of Charity, the Catholic Physicians' Guild and the Legion of Mary. Due to the pressure being exerted by the Catholic groups, Senator Laurel agreed to conduct a public hearing before the Senate Committee on Education.¹⁵

As the days went on, the debates became more intense and the controversy began to draw the nation's interests. Debates in the Senate were aired over the local radio stations, and the newspapers screamed day by day of the developments on the question. Both sides continued in their relentless efforts to achieve their objectives.

Those interested in the passage of the *Rizal Bill* sought to strengthen their stand by sponsoring a move to provide or authorize funds with which to procure books on the matter. Senator Gil J. Puyat stated that the measure would be weakened if there would be no funds to allow the public institutions to purchase the books of the national hero.¹⁶

Mayor Arsenio Lacson, of the City of Manila, over the radio commented that it would be silly to honor Rizal, and keep the people away from reading his books. About 4,000 aged veterans of the Revolution of 1896 gathered at Imus, Cavite to protest against the opposition to the Bill. Senator Lorenzo Tañada, a good Catholic, stated that we should welcome the bill because it would give us a chance to know and answer certain criticism against the Church.¹⁷

On the opposition side, the Knights of Columbus, through its Grand Knight, Guillermo Dy Buncio, wrote a letter asking the members of the Committee on Education to exert their efforts to desist on further consideration of the bill. The Young Ladies Association of Charity and the Legion of Mary, claiming membership of over 500 and 8,000 respectively, also wrote letters trying to influence the legislators.¹⁸

All the archbishops, bishops and other ranking prelates of the Catholic

¹³ 3 S. CONG. REC. 939 (1956).

¹⁴ *Id.* at 870.

¹⁵ Manila Daily Bulletin, April 19, 1956, p. 1, col. 2.

¹⁶ 3 S. CONG. REC. 906 (1956).

¹⁷ *Id.* at 903.

¹⁸ Manila Daily Bulletin, April 19, 1956, p. 19 col. 3.

¹⁹ *The Church and Rizal*, Philippine Free Press, April 28, 1956, p. 3.

Church in the Philippines came out flatly against the bill. While expressing its unshakeable loyalty to the fatherland and lawful authority, the Catholic Hierarchy insisted that the mere fact that Rizal is a hero is no reason to approve of all that he said or did.¹⁹

The Catholic Church vehemently opposed the *Rizal Bill* on the following grounds:

1. It is pedagogically unsound on the ground that the youth enrolled in the country's colleges and universities are immature and incapable of understanding Rizal's novels.
2. Sabotaging the Roman Catholic religion because Rizal's novels directly attack dogmas and practices of the Church.
3. It is a violation of academic freedom.²⁰

Among those who championed the defeat of the measure during the public hearings were: Dr. José Ma. Hernandez, president of the Catholic Action of the Philippines; Dr. Antonio Mesina, representing Letran College; Pedro Campos of the Knight of Columbus; Ariston Estrada, Catholic Teacher's Guild; and Narciso Pimentel, Jr. Catholic Speakers and Writers Bureau Representative.²¹

Those speaking for the bill were: Guillermo Guevara, President of the Spirit of 1896; Nieves Baens del Rosario of the Panitikang Kababaihan; Marcelo Arana, of the Alagad ni Rizal; Magtanggol Asa, Book Lovers Society; the Rev. Jose Yap, executive secretary of the Federation of Christian Churches, and Francisco Zamora, representing the Free Masons.²²

The twenty-one senators who endorsed the bill were of the opinion that with certain modifications it would ultimately be approved. The proposed modifications were: 1. The inclusion of footnotes or annotations in the unexpurgated editions of the *Noli* and *Fili*. Laurel, Recto, Puyat, Cea, Lim and Pelaez were in favor of this modification. 2. Another change advocated by Senator Emmanuel Pelaez was to soften the idea of compulsion which the opponents of the bill were bitterly attacking.²³

Meanwhile in the lower house, the *Rizal Bill* controversy started to take roots and finally evolved in the form of a similar bill sponsored by Rep. Jacobo Gonzales of Laguna who filed his bill on April 19, 1956. The measure also required compulsory reading of the two works and punished the violation of the law by any teacher with dismissal or disqualification from further practising the profession.²⁴

By this time, the whole nation's interest was focused on the deliberations in the Senate on the proposed measure. Several organization registered their approval or disapproval of the bill. For instance, the Cavite Rotary

¹⁹ 3 S. CONG. REC. 1153 (1956).

²¹ *Congress at Work*, Philippine Free Press, April 28, 1956, p. 14.

²² *Id.*

²³ *Id.*

²⁴ Manila Daily Bulletin, April 20, 1956, p. 19, col. 4.

Club passed a resolution supporting and endorsing the bill on the ground that it would foster greater nationalism.²⁵

Influential Civic Societies met in special sessions on April 22, pledging their support for the *Rizal Measure*. Considered most potent in the group was the Philippine Public School Teachers Association which concluded their three day convention by approving a resolution endorsing the measure. At the same time the executive branch of the Rizal Center Fraternity, an honor society of the University of the Philippines, met in a special session to support the bill. The members based their stand on the growth of nationalism and further proposed a compilation of all of Rizal's works. In Manila, civic and student groups were making plans to make a mammoth demonstration at Plaza Miranda, Quiapo, to denounce the opposition to the bill and urge its passage.²⁶

In the meantime, in Congress, the discussions were growing heated as Senator Rodrigo lashed at the authors of the Bill stating that the motive was not nationalism but an attempt to embarrass the incumbent President of the Republic, Ramon Magsaysay.²⁷

Then for the first time, it appeared, as though from the Catholic ranks at least, one was in favor of the bill, as Rev. Joaquin Jaramillo, a teacher of the Academia de Cervantes urged its passage commenting that most of the secular priests were in favor of the bill.²⁸ But the Catholic Welfare Organization disowned the pronouncements of Jaramillo, announcing that he was never authorized to talk for the measure.²⁹

The proponents of the bill gained further ground when the Student Council Association of the Philippines and the College Editor's Guild passed resolutions urging the passage of the bill, retaliating the statement by the opposing group that the students were immature to appreciate the hero's works.³⁰

As a last resort, Senator Francisco Rodrigo proposed a closed door conference with the Catholic Hierarchy to find a solution to the controversy. Senators Tañada and Lim objected, and, in order to avoid the proposal, approved the amendment by Senator Primicias to refer the bill to the Committee on Education.³¹ The Senate had therefore, repudiated Rodrigo's proposal for a secret consultation.³²

Senator Claro M. Recto hurled charges that the ecclesiastical authorities are sabotaging Rizal's memory by opposing the bill. He denounced the pastoral letter setting the reason for the opposition.³³

²⁵ *Id.*

²⁶ Manila Daily Bulletin, April 23, 1956, p. 1 col. 3.

²⁷ See note 4, *supra*.

²⁸ *Id.*

²⁹ Manila Daily Bulletin, April 26, 1956, p. 1, col. 4.

³⁰ Manila Chronicle, April 24, 1956, p. 1, col. 1.

³¹ 3 S. CONG. REC. 986 (1956).

³² *Id.*

³³ See note 29, *supra*.

Public opinion and reaction had already hit its climax at about this time. Residents of San Leonardo, Cabanatuan, Nueva Ecija, members of the Bathalismo endorsed the bill. The provincial board of Batangas passed a resolution favoring the same.³⁴

At the same time, Senator Rosales stated in the course of his speech that over 600 schools would have rather shut down than allow Rizal's works to be read.³⁵ Reports were received from Cebu that the San Carlos University, a big Catholic University in the Visayas, was threatening to shut down. Archbishop Jose Ma. Cuenco, was also reported to have instructed his parish priests to devote their sermons, meetings, and talks to inform the people of the Catholic Church's stand. Reaction, however, showed a favor for the measure despite the pastoral letter of the opposition.³⁶

The lay leaders of the Catholic Church launched a multipronged campaign to forge a solid front against the bill. The campaign got underway at a symposium and open forum held by the Catholic Action at the De La Salle College.³⁷

Despite the fight exerted by the proponents, the bill was headed for defeat in the Senate as a new threat to its passage loomed in the form of an amendment. The amendment in the Senate was proposed by Senators Rodriguez, Cipriano Primicias, Gil Puyat, and Emmanuel Pelaez together with Senator Edmundo Cea.³⁸

Senator Recto still maintained his stand that it was the clear duty of the State to supervise and control all schools, private as well as public, to carry out the clear mandate of the Constitution of moulding the character of the citizens.³⁹

In the Senate, the compromise bill was designed to make Rizal's works reading matter in all grades in the school system in a form suitable for students. The unexpurgated versions would be made available as required reading in the colleges and universities in the form decided by the National Board of Education.⁴⁰

Notwithstanding the fate which faced the bill, public opinion still rose in unshakeable approval and vehement disapproval. The Student Catholic Action units for Eastern Visayas and Mindanao with about 2,500 members threatened to stage a mass school boycott in protest. In Sorsogon, members of various religious organizations burned copies of the Manila Chronicle and an effigy of a newspaper columnist, I. P. Soliongco, obviously an advocate of the bill.⁴¹

At this juncture, members of the Senate began doubting the authenticity of

³⁴ Manila Times, April 27, 1956, p. 4, col. 3.

³⁵ 3 S. CONG. REC. 1156 (1956).

³⁶ Manila Daily Bulletin, May 2, 1956, p. 1, col. 1.

³⁷ Manila Times, May 3, 1956, p. 1, col. 3.

³⁸ *Id.* at p. 3, col. 4.

³⁹ *Id.*

⁴⁰ Manila Daily Bulletin, May 4, 1956, p. 17, col. 1.

⁴¹ *Id.* at 23.

the pastoral letter, because it contained no signature of any of the archbishops and bishops who composed the Catholic Hierarchy.⁴²

Adding one big impact against the bill was the announcement made by Bishop Manuel Yap in Bacolod when he warned that the legislators voting for the bill would be punished at the next elections. This item was reported by the Philippine News Service.⁴³ At the same time, Archbishop Rufino J. Santos of Manila, announced that the Pastoral Letter, the authenticity of which the Senate had previously doubted, was authorized by the Hierarchy.⁴⁴ With these two occurrences, a reverberating repercussion resounded the defeat of the bill. As a reaction to the pronouncements of Bishop Yap, the members of Congress flayed at Catholic officials for meddling in a bitter antagonistic manner. It caused a lot of them to change their minds and vote for the bill.⁴⁵

The Committee on Education authorized Senator Laurel to draft a substitute bill so as to insert the objections of a powerful Church interest. The criteria were the following:

1. Prescription of the *Noli* and *Fili* as courses of study in the schools, colleges and universities.
2. Designation of the Board of National Education as the government agency to implement the purposes of the law.
3. Appropriation of ₱300,000 for the printing of books for various grades.
4. Prescription of the two novels in the unexpurgated version, although footnoted, as courses of study in the collegiate level.⁴⁶

The same happened in the lower house, though it resulted in a fist fight between certain members, after a heated discussion.⁴⁷

At long last, after one month of heated, passionate discussions, the Senate approved the *Rizal Bill* on May 12, 1956 and brought to a culmination the bitter nation wide controversy.⁴⁸ Likewise the *Gonzales Bill* in the lower house was amended and approved on May 14, 1956.⁴⁹

The bills, in both houses, as amended did not compel the reading of the two novels but merely an inclusion of the courses in the life, works and writings of Rizal. The unexpurgated versions of the novels were made basic texts in the collegiate level. Catholic students under the bill could be exempted from reading by filing sworn statements that the reading would be violative of their faith, however, they were still obliged to take the prescribed courses on the life, works, and writings of Rizal.⁵⁰

⁴² Manila Daily Bulletin, May 5, 1956, p. 13, col. 2.

⁴³ Manila Chronicle, May 7, 1956, p. 1, col. 3.

⁴⁴ *Id.*

⁴⁵ Manila Times, May 8, 1956, p. 1 col. 1.

⁴⁶ *Id.*

⁴⁷ Manila Daily Bulletin, May 10, 1956, p. 23, col. 4.

⁴⁸ 3 S. CONG. REC. 1643 (1956).

⁴⁹ Manila Daily Bulletin, May 15, 1956, p. 1, col. 2.

⁵⁰ R. A. No. 1425.

Thus with its approval, Senate Bill No. 438, brought to a close, the turmoil, heated public opinion, possible bifurcation of the nation which it scattered by its inception. Anyone during those days, young and old, gave his own stand and his own reason. It could be said, though, that much of the confusion was due to passionate impulses rather than cool deliberate consideration. Both sides had good arguments but necessarily one had to win and the other to yield. And it so happened that the Catholic group had won. Though we may not term as a defeat the fate which the bill suffered, yet, it could be practically said that both sides gave each one its due.

Anybody who witnessed the tension and the passion at those public hearings; anyone who saw the conduct and comportment of the spectators in the gallery who clapped and booed and hissed would only say that never in the history of the country was there much controversy over a bill such as the *Rizal Bill*. It revealed the reverence which the nation has for its National Hero and at the same time the tenacity with which the citizens clung to their religion.

It was even reported that at the time, Rizal's works, the *Noli* and the *Fili*, which had been scarcely borrowed from libraries was much in demand. People from all walks of life began to wonder what those books contained as to give reason to the legislator to pass a measure compelling their reading and to arouse much opposition from the Catholic group. To those who witnessed the tension those days will find words too little to express and describe the bitter, antagonistic feelings from both quarters. It meant a matter of life or death on either side.

Each won and each lost.

SENATE BILL No. 438

1. *Senate Bill No. 438.*

The *Rizal Bill* was introduced by the Committee on Education with the policy of the law stated in its "Explanatory Note" as follows:

Today, more than at any period of our history, there is a need for a rededication to the ideals of freedom and nationalism for which our heroes, from Dagohoy and Lapulapu to Rizal, Del Pilar, Bonifacio and Mabini, lived and died. The words of these nationalists have impressed upon our history the stamp of undying glory. It is therefore, meet that in recalling them, particularly the national hero and patriot, Jose Rizal, we remember with special fondness and devotion their words that have shaped the national character.

It is for this purpose that this Bill is presented. Many speak of Rizal as if they had read and understood him. His *Noli Me Tangere* and *El Filibusterismo*, the greatest Philippine social documents live only as names to be mentioned on auspicious occasions, but are not read and studied. It is a national shame

that in an area such as this, the works of Jose Rizal are not as assiduously read in his own country as they are in some countries of South America. To ignore them, as most of us do, is to ignore Rizal and what he stood for. To praise him without taking the trouble to study that which elicits our praises is to be hypocritical.

Noli Me Tangere and *El Filibusterismo* must be read by all Filipinos. They must be taken to heart, for in their pages we see ourselves as in a mirror; our defects as well as our strength, our virtues as well as our vices. Only then would we become conscious as a people, and so learn to prepare ourselves for painful sacrifices that ultimately lead to self-reliance, self-respect, and freedom.

AN ACT TO MAKE *NOLI ME TANGERE* AND *EL FILIBUSTERISMO* COMPULSORY READING MATTER IN ALL PUBLIC AND PRIVATE SCHOOLS, COLLEGES AND UNIVERSITIES AND FOR OTHER PURPOSES.

SECTION 1. Jose Rizal's *Noli Me Tangere* and *El Filibusterismo* are hereby declared compulsory reading matter in all public and private schools, colleges and universities in the Philippines.

SEC. 2. The works mentioned in Section 1 of this Act shall be in the original editions or in their unexpurgated English and National Language versions.

SEC. 3. The Department of Education shall take steps to promulgate rules and regulations for the immediate implementation of the provisions of this Act.

SEC. 4. No provision of this Act shall be construed as prohibiting or limiting the study of the works of other Filipino heroes.

SEC. 5. Any public or private college or university found violating, failing to comply with, or circumventing the provisions of this Act shall be punished accordingly:

(a) The Head of any public college or university charged with implementing the provisions of this Act, who shall have been found guilty of violating, failing to comply with, or circumventing the provisions thereof, shall be dismissed immediately from the service and shall be disqualified from teaching in any public or government-recognized private school, college or university.

(b) Government recognition of any private college or university found violating or circumventing the provisions of this Act shall be immediately withdrawn, and the responsible Head and professors concerned shall be disqualified from teaching in any Government recognized college or university.

SEC. 6. This Act shall take effect upon its approval.

2. *Means Proposed Criticized.*

The purpose of the Bill is found in the Explanatory Note. Stated briefly, it seeks to arouse in every Filipino student love of country, the civic virtues, and the spirit of liberty. There can be no question about its nobility and righteousness. But is the means proposed reasonable, just, and constitutional? Will Congress be acting within the limits of its power, within its sphere to legislate, and in accordance with the spirit of true liberty, the spirit that gives due respect for the opinion of others, when it imposes the compulsory reading of Rizal's novels upon the Filipino youth? Is not compulsion the very antithesis of liberty?

3. Threat to National Unity.

Indeed there was once a threat — a real one — to national unity generated by the heated and inflammatory discussion on the *Rizal Bill*.⁵¹ But actual disunity would have necessarily followed, and this with reasonable certainty, were the Bill approved without amendment, for then the religious feelings of millions of Catholic students and parents would have been offended. Conflict would arise between loyalty to country and loyalty to religion.⁵² The Catholic student must make a choice. This problem was vividly presented by Senator Emmanuel Pelaez⁵³ in his speech in Congress just before the Senate passed the amended *Rizal Bill*. He stated that . . .

We are not, by our amendment, prohibiting or discouraging the reading or use of the unexpurgated or original editions. We are simply providing a means to protect that sacred thing called conscience. I, for one, would not want to stand accused of consenting to a law that would violate the conscience of any man.

My friends, you and I are affected by this measure in a very personal sort of way. You have children, I have children. I have told myself: I will try to have my children learn patriotism and civic virtues, but one thing I will not do is to use compulsion on them. Your children and mine are going or will be going to school.

Suppose this measure is enacted into law as it is. We would then be placing our own children in that terrible dilemma wherein he must violate either the law or his conscience.

One day, your child will come home to you, and tell you, "Father, my religious belief teaches me that I should not read the unexpurgated edition of the *Noli*, because in that edition the sacrament of Holy Communion which you, as a Catholic, have taught me to hold sacred, is made light of as 'eating God'; because in that book some characters make fun of the Pope, saying that he says mass lying down and with a fan; because in some parts it is irreverent towards my religion.

Yet because of the law you have approved, I must read these things against my conscience. Why have you done this to me?" Would you not reproach yourself for having allowed this terrible thing to happen to the heart and conscience and soul of your own child?

4. Unjust to Both Sides.

Senator Francisco Rodrigo pointed out the "irreparable injustice" being committed against both sides. He observed that . . .

Even now, injustices are being committed against those who have registered objections against the bill. Even if their objections are limited only to the element of compulsion; even if the only ground they invoke is the constitutional

⁵¹ "... We can no longer close our eyes to this threat to our unity as a people. One has but to glance at newspaper headlines; or listen to inflammatory radio commentaries; or hear the discussions and conversations of our countrymen in all walks of life, to realize that a serious rift, an alarming cleavage is rearing its ugly head in our beloved native land." Speech of Sen. Rodrigo on April 23, 1956 in the Senate. 3 S. CONG. REC. 939 (1956).

⁵² *Id.* at 940.

⁵³ *Id.* at 1625.

and democratic guarantee of freedom; even if they try their utmost to explain that their objection to this bill does not mean objection to Rizal.

And injustices are being committed also against the other side. I have already heard some people attributing ulterior political motives to the filing of this bill. They say that this bill was filed not really for the sake of Rizal, but for the sake of political expediency.⁵⁴

Whether these charges were founded or not, the fact remain that they were hurled by both sides against each other. It was evident that some on either side were not content in discussing the merits of the bill. They had to go further and search for motives, thus creating chaos and confusion.

5. The Philippine Hierarchy Speaks.

On April 21st, 1956, the Philippine Hierarchy broke its customary silence and officially released its "Statement of the Philippine Hierarchy on the Novels of Dr. José Rizal *Noli Me Tangere* and *El Filibusterismo*." This statement appeared in several Manila dailies, including the *Sentinel* which became a daily by force of circumstances.⁵⁵

The Catholic Hierarchy advocates an intelligent honoring of Jose Rizal, saying: "Let us therefore by all means honor Rizal, but for the right reasons: first of all for his unselfish devotion to his country, and secondly, for the depth of insight with which he examined and analyzed our national problems."⁵⁶ The Church, as a general rule, prohibits the reading of Rizal's two novels for they contain "derogatory" passages against Catholic beliefs and practices as such.⁵⁷ Passages "against Catholic dogma and morals" abound therein. Repeated attacks are made against the Catholic religion in general, against the possibility of miracles, against the doctrine of Purgatory, against the Sacrament of Baptism, against Confession, Communion, Holy Mass, against the doctrine of Indulgences, Church prayers, the Catechism of Christian Doctrine, sermons, sacraments and books of piety.⁵⁸ There are even passages casting doubt on the omnipotence of God, the existence of hell, the mystery of the Most Blessed Trinity and the two natures of Christ.⁵⁹ The *Statement* further states that "We view with alarm any obligatory reading of these objectionable passages for they can be easily exploited by those who hate the Church as an opportunity, under the guise of patriotism, under the cloak of the spirit of nationalism, to imbue," with legislative sanction the minds of students with ideas contrary to their religious beliefs.⁶⁰

⁵⁴ 3 S. CONG. REC. 949 (1956).

⁵⁵ See note 1, *supra*.

⁵⁶ STATEMENT OF THE PHILIPPINE HIERARCHY, *supra* note 1, par. 3.

⁵⁷ *Id.* par. 6.

⁵⁸ *Id.* par. 7.

⁵⁹ *Id.*

⁶⁰ *Id.* par. 12.

6. *The Various Issues.*

The following were considered issues during the pendency of the bill:

1. Whether the Church was against Rizal;
2. Whether the Hierarchy was against the reading of the writings of Rizal to protect the reputation of present-day priests;
3. Whether they were against patriotism;
4. Whether they opposed the social and political ideas of Rizal expressed in the two novels;
5. Whether the novels tell the truth about the friars during Rizal's time.
6. Do Catholics in the Philippines, who want to follow the teachings and practices of their Church, have the same freedom of conscience under the Constitution as other religious groups?

It is humbly submitted that the last one is the real issue. The succeeding discussion on the merits of the bill will help prove this point.

7. *The Bill of Rights Violated.*

The right of a human being to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental human rights are guaranteed and protected by the Constitution, in the Bill of Rights⁶¹ to be specific. The very purpose of such provision is to withdraw these subjects from the vicissitudes of political controversy, to safeguard them against unreasonable and arbitrary exercise of government powers, and to place them beyond the reach of officials and majorities.⁶²

Mr. Chief Justice Taney describes police power as no esoteric power, for police power is, in truth, no more than the power of government inherent in every sovereign body or the power to govern men and things.⁶³ It has been succinctly defined by the Supreme Court as the power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people.⁶⁴ The police power aims, among other things, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.⁶⁵ It would seem therefore that the limit or scope of such power

⁶¹ PHIL. CONST. Art. III.

⁶² *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1942).

⁶³ *License Cases*, 5 How. 583.

⁶⁴ *Primicias v. Fugoso*, 80 Phil. 71 (1948). For other definitions, see *U.S. v. Ling Su Fan*, 10 Phil. 104 (1908); See also: *Peo. v. Merilo*, G.R. No. L-3489, June 28, 1951.

⁶⁵ *U.S. v. Toribio*, 15 Phil. 85 (1910); *Rubi v. Provincial Board*, 39 Phil. 660 (1919); *Smith Bell & Co. v. Natividad*, 40 Phil. 136 (1919); *Barbier v. Connolly*, 113 U.S. 27 (1884); *Boston Beer Co. v. Massachusetts*, 97 U.S. 25 (1878); *Lawton v. Steele*, 152 U.S. 133 (1894); *Cruz v. Youngberg*, 56 Phil. 234 (1931).

is indeed without limit.⁶⁶ Once in a while there may come a conflict between the police power and the Bill of Rights.⁶⁷ Which should prevail? Off hand, one cannot give a justifiable answer. The circumstances have to be considered.⁶⁸ It is evident from the provisions contained in those bills of rights that the principal aim is the protection of certain individual interest against governmental action. They limit government not only in respect of the procedure which it may employ in enforcing its policies but also in respect of the substantive policies which it may effectuate.⁶⁹ The necessary effect of limiting the power of government to regulate and control the conduct of individuals is to create an area within which individual interests are immune from governmental regulation and control.⁷⁰ The sovereign people, in framing their Constitution, distributed the powers of government to three departments: the legislative, executive, and judicial. Delegate Jose P. Laurel in defending the Bill of Rights said:

There is no Constitution, worthy of the name, without a Bill of Rights. This bill of rights is to be, as it were, the living gospel of the liberties of the people. It is not to be a catalogue or compilation of inhibitions or restrictions upon the people, because the people are sovereign. Rather, it is to be the palladium of their liberties and immunities, so that their persons, their homes, their peace, their livelihood, their happiness and their freedom may be safe and secure from an ambitious ruler, an envious neighbor, or a grasping state.⁷¹

The *Rizal Bill* is a practical example of a real conflict between the Bill of Rights on one hand and the police power on the other. It is admitted that the subject of the bill, i.e., education or nationalism, is within the power

⁶⁶ Mr. Justice Johnson, in the case of *U.S. v. Gomez Jesus*, 31 Phil. 218 (1915) said, "The police power of the state extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within its borders. Under the general police power of the State, persons and property are subject to all kinds of restrictions and burdens in order to secure the general health, comfort, and prosperity of all." See also, *U.S. v. Pompeya*, 31 Phil. 245 (1915); *Case v. Board of Health*, 24 Phil. 250 (1913); *Camfield v. U.S.*, 167 U.S. 518 (1897).

⁶⁷ The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power, it is obvious that no other governmental power and constitutional limitation can collide oftener than *police power* and *due process*. See, *U.S. v. Ling Su Fan*, 10 Phil. 104 (1908); *Rubi v. Provincial Board*, 39 Phil. 660 (1919); *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (1926); *U.S. v. Villareal*, 28 Phil. 390 (1914); *Churchill and Tait v. Rafferty*, 32 Phil. 581 (1915); *Peo. v. Pomar*, 46 Phil. 440 (1924); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Nebbia v. New York*, 291 U.S. 502 (1934); *Buck v. Bell*, 274 U.S. 200 (1927); *Chicago v. Sturges*, 222 U.S. 313 (1911); *Powell v. Pennsylvania* 127 U.S. 678 (1888) and *West Virginia State Board of Education v. Barnette*, *supra*, note 62.

⁶⁸ COOLEY, *CONSTITUTIONAL LIMITATIONS* 738 (6th ed.). See also MALCOLM & LAUREL, *PHIL. CONST. LAW* 342.

⁶⁹ ROTTSCHAEFER, *CONSTITUTIONAL LAW* 724.

⁷⁰ *Id.* at 725.

⁷¹ Speech delivered by Delegate Jose P. Laurel, Chairman of the Committee on the Bill of Rights, before the Philippine Constitutional Convention, Nov. 19, 1934.

of Congress to legislate on.⁷² There can be no better subject than the promotion of love of country. But we beg to disagree with the method proposed in the bill, means that are unjust, unreasonable, and arbitrary. These reasons become more manifest and prominent when viewed in the light of the following provisions found in the Bill of Rights:

- (1) Due Process;
- (2) Equal Protection;
- (3) Freedom of religion.

Due Process.

The Constitution provides:

No person shall be deprived of life, liberty, or property without due process of law.⁷³

The due process clause in the beginning of its history was made applicable only to procedural due process,⁷⁴ that which requires observance of the rules laid down by law for the proper protection of the rights of an individual liable to be affected in any proceeding, whether judicial, administrative, or legislative.⁷⁵ "By the law of the land", Daniel Webster said, in his argument in the *Dartmouth College Case* before the United States Supreme Court, "is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."⁷⁶ According to our Supreme Court, due process of law means simply: "First, that there shall be a law prescribed in harmony with the general powers of the legislative department of the government; second, that

⁷² Mr. Chief Justice Vinson in a dissenting opinion in the *Gobitis Cases* 310 U.S. 586 (1940); said, "the State may require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guarantees of civil liberty, which tend to inspire patriotism and love of country."

⁷³ PHIL. CONST. Art. III, Sec. 1 (1).

⁷⁴ TAÑADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES 82-83 (4th ed. 1952).

⁷⁵ *Arnauld v. Balagtas*, G.R. No. L-6749, July 30, 1955. The requirements of procedural due process are satisfied, if a person has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. *Dohany v. Rogers*, 281 U.S. 362 (1930). See also: *Halili v. Public Service Commissioner*, 49 O.G. 1827 (1953).

⁷⁶ 4 Wheat. 518 (1819). Webster's definition was quoted and followed by the Supreme Court of the Philippines in *U.S. v. Ling Su Fan*, 10 Phil. 104, (1908); *Shields v. McMicking*, 23 Phil. 526 (1912); *Rubi v. Provincial Board*, 39 Phil. 660 (1919) and other cases. Mr. Justice Johnson, in the case of *Bank of Columbia v. Okely*, 4 Wheat. 235 (1819) describes "law of the land" as found in the Magna Charta "as intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

this law shall be reasonable in its operation; third, that it shall be enforced according to the regular methods of procedure prescribed; and, fourth, that it shall be applicable alike to all the citizens of the state, or to all of a class."⁷⁷ But the same clause was later made to apply to substantive due process, that which upholds a standard or ideal or reasonableness or freedom from arbitrariness that the government should observe in the enactment of measures affecting substantive rights. More specifically, however, it may be said with the Mississippi Supreme Court that when applied to substantive rights due process means that the government is without right to deprive a person of life, liberty, or property by an act that has no reasonable relation to any proper governmental purpose, or which is so far beyond the necessity of the case as to be an arbitrary exercise of governmental power.⁷⁸ There is no question that the Rizal Bill has a reasonable relation to a proper governmental purpose, i.e., the promotion of nationalism or love of country.⁷⁹ But it is argued that although the measure relates to an appropriate end, it nevertheless goes beyond the necessity of the case as to amount to an arbitrary and unreasonable exercise of police power.⁸⁰

The unreasonableness and arbitrariness of the proposed piece of legislation can be briefly explained. If enacted into a law, millions of Filipino Catholics (students and parents alike) would be faced with a terrible dilemma: to obey the law and become unfaithful members of their Mother Church, or to obey the Church and incur the penalty of the law.⁸¹ There is no other alternative left in this situation. And these questions may be asked: Are the Filipino people so wanting in their love of country that they have to be compelled, forced, and coerced to read the novels in question, books which are objectionable reading literature for all Catholics, as if these were the very fountains of patriotism?⁸² Is compulsory legislation so necessary in order that students may begin to love their country? Is

⁷⁷ *U.S. v. Ling Su Fan*, 10 Phil. 104 (1908) affirmed on appeal to the United States Supreme Court, 218 U.S. 302 (1910).

⁷⁸ *Albritton v. City of Wilmona*, 181 Miss. 75.

⁷⁹ See Explanatory Note to the Rizal Bill, p. 276. "Today, more than at any period of our history, there is a need for rededication to the ideals of freedom and nationalism for which our heroes lived and died for."

⁸⁰ Substantive due process requires that the law should be reasonable, should have relation to a proper governmental purpose, should not be arbitrary. *Albritton v. City of Wilmona*, *supra* note 78. See: *Peo. v. Pomar*, *supra* note 67; *Adkins v. Children's Hospital*, 261 U.S. 525 (1923); *Adair v. U.S.* 208 U.S. 161 (1908); *Nebbia v. New York*, *supra* note 67; *Olsen v. Nebraska*, 313 U.S. 236 (1941); *Ribnik v. McBride*, 277 U.S. 350 (1928); *Churchill & Tait v. Rafferty*, *supra* note 67; *Chicago v. Netcher*, 48 L.R.A. 261; *Weaver v. Palmer Bros. Co.*, 270 U.S. 402 (1926); *Ligett Co. v. Baldrides*, 278 U.S. 105 (1928); but see dissenting opinion of Justice Holmes; "The Constitution does not make it a condition of preventive legislation that it should work a perfect cure"; *Lockner v. New York*, 198 U.S. 45 (1905); *Buck v. Bell*, *supra*, note 67; *Yu Cong Eng v. Trinidad*, *supra* note 67. See also Justice Holmes in *Haskell v. Noble State Bank*, 219 U.S. 104 (1911); dissenting opinion in *Tyson & Bro. v. Banton*, 273 U.S. 418 (1927).

⁸¹ Portion of Speech of Sen. Rodrigo. 3 S. CONG. REC. 201 (1956).

⁸² Portion of Speech of Sen. Rosales. 3 S. CONG. REC. 1151 (1956).

the law so indispensable that its very absence would endanger our national security and unity?⁸³ To justify the state to impose its authority, the object as well as the means must be reasonably necessary for the accomplishment of such purpose.⁸⁴ The means, compulsory reading, is unreasonable, even if the desired object is admitted to be good. If Filipino students cannot be compelled to participate in folk dancing for their Physical Education on religious grounds, if American public school pupils belonging to the Witnesses of Jehovah cannot be forced to salute the American flag and recite a pledge of allegiance to the flag, again on religious ground,⁸⁵ there can be no valid reason why Catholic students cannot invoke the due process clause in the Bill of Rights to protect their right to worship God in their own way which includes the freedom from being compelled to read

⁸³ "In order to imbue our youth with patriotism, is it necessary to make them read that 'confessionals are made so that we may sin?' In order to teach our youth love of country, is it necessary to expose them to jeers at Catholic worship, or to say of stole fees, that 'divine justice is not nearly so exacting as human,' to say that 'novenas, responsories, versicles and prayers have been composed for those who lack original ideas and feelings' and that 'the church does not gratuitously save the beloved souls for you nor does it distribute indulgences without payment'. In order to teach our youth high political and social ideals, is it necessary to make them read that the idea of Purgatory 'does not exist in the Old Testament nor in the Gospels; that neither Moses nor Christ made the slightest mention of it; and that the early Christians did not believe in a purgatory?' In order to teach our youth civic virtues, is it necessary to tell our girls that 'there is a mystery (or corruption) that is hidden behind the walls of a nunnery; that it is a thousand times better for them to be unhappy in the world than in the cloister; that girls who are beautiful were not born to be brides of Christ?' Does patriotism and nationalism consist in these assertions and many others like these repeated again and again in multifarious ways throughout many of the chapters of these novels? If not, then it is evident that the political and social principles of Rizal are *not inseparable* from those passages which we consider objectionable from the point of view of our Church. Therefore, the statements against the Church contained in the novels should never be considered indispensable parts of the ideals we want to teach our youth." STATEMENT OF THE PHILIPPINE HIERARCHY par. 15, *supra* note 1.

⁸⁴ U.S. v. Toribio, 15 Phil. 85 (1910).

⁸⁵ West Virginia State Board of Education v. Barnette, *supra* note 62. Sen. Recto contended that the reason why the flag salute ceremony was declared unconstitutional was because of the pledge, the recital of which accompanied the flag salute, and not the flag salute itself, that is, the mere raising of the right hand in salute to the flag. The Court said that said pledge was a pledge of allegiance, an assertion of belief. These are the words of the Court: "Here it is the State that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate *by word* and *sign* his acceptance of the political ideas it thus bespeaks. Objection to this form of communication where coerced is an old one, well known to the framers of the Bill of Rights." The Court said further: "If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority whose power to prescribe would no doubt include power to force an American citizen publicly to *profess* any statement of belief or to engage in any ceremony of the assent to one, presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question." From the remaining passages of the Court's opinion it is clear that the *ratio decidendi* of the *Barnette* case, was that no citizen can be compelled to *profess* publicly any pledge or assertion of political belief. Sen. Recto interpellating Sen. Rosales. 3 S. CONG. REC. 1164 (1956).

books contrary to their religious beliefs.⁸⁶ We can validly infer from the *Barnette Case, supra*, that the state recognizes not only the freedom of religion as exercised and asserted by an individual citizen, but also the recognition that religious beliefs and rules followed by any religion, so long as they are not contrary to law, morals, security, and public policy are guaranteed and protected by the mantle of due process and religious freedom.⁸⁷

It is claimed by the proponents of the *Rizal Bill* that the compulsory reading of the books in question is in *pari materia* or analogous to the law making compulsory the study of Spanish and the Filipino National Language.⁸⁸ It is submitted that the similarity, if any, is merely apparent and not real for while the latter merely prescribes the taking of a course by laying down a general legislative directive without indicating the use of any particular book leaving the matter to executive implementation by educational technicians and experts, the former would go so far as to specify the very texts.⁸⁹ The analogy would have been better were the bill merely provide that the ideals of freedom and nationalism for which our heroes from Daguhoy and Lapu-Lapu to Rizal, Del Pilar, Bonifacio, and Mabini lived and died, should be taught in all our schools leaving the implementation to our educational experts and technicians.⁹⁰ What is indeed similar is the compulsory reading of the Rizal novels and the compulsory salute to the flag with the utterance of words of allegiance. If the latter has been held unconstitutional, being contrary to the freedom of speech and religion,⁹¹ with more reason should the former be.

Equal Protection.

The fundamental law provides

No person shall be denied the equal protection of the law.⁹²

The equal protection clause literally enjoins the fair and impartial enforcement of the law, presupposing therefore the existence of a law that

⁸⁶ Sen. Rodrigo answering a question by Sen. Alonto. 3 S. CONG. REC. 950 (1956).

⁸⁷ "To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the fight to differ as to things that touch the heart of the existing order." 3 S. CONG. REC. 1151 (1956).

⁸⁸ 3 S. CONG. REC. 1160-1161 (1956).

⁸⁹ Senate Bill No. 438.

⁹⁰ 3 S. CONG. REC. 1202 (1956).

⁹¹ West Virginia State Board of Education v. Barnette, *supra* note 62.

⁹² PHIL. CONST. Art. III, Sec. 1 (1).

is reasonable, fair, and impartial on its face.⁹³ Originally, the clause extended only to the application or enforcement of the law by public authority.⁹⁴ But later, it came to be applied not merely to the manner of administration of the law, but it also commands that the law itself be equal. As stated by Justice Matthews, "Equal protection of the law is a pledge of the protection of equal laws."⁹⁵ The equal protection clause, therefore, like the due process clause, has two aspects, viz., the procedural and the substantive aspects. If the statute itself is equal, inequality may arise in its enforcement or administration; but, if the law itself is unequal, the enforcement must necessarily be unequal, and no matter how fair and just its application may be, the result will be nothing but inequality. In the enforcement of the equal protection clause, there is no difference at all between a law that denies equal protection and a law which permits and allows such denial.⁹⁶

The meaning most often given by the courts to the clause is that all persons subjected to legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.⁹⁷ Or stated in another way, it means that no person or class of persons shall be denied the protective mantle of the law, which is enjoyed by other persons or other classes in like circumstances, in their life, their liberty, their property, and in the pursuit of happiness.⁹⁸

The equal protection clause does not add anything to the rights which one citizen has against the other; but of the government and on all subordinate instrumentalities and subdivisions thereof. It is not so much a safeguard against the conduct of private individuals as against the arbitrary acts of the state.⁹⁹ It does not extend to all kinds of rights but only to civil rights as distinguished from those which are political, or such as arise from the form of government and its mode of administration. Religious freedom is one kind of civil right. It will be enforced by the municipal law at the instance of private individuals for the purpose of securing to them the enjoyment of their means of happiness.¹⁰⁰

Arguments:

The bill in question would compel all students in all schools, colleges and

⁹³ Yick Wo v. Hopkins, 118 U.S. 356 (1885).

⁹⁴ *Id.* "... though the law be fair on its face and impartial in appearance; yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

⁹⁵ *Id.*

⁹⁶ *Peo. v. Vera*, 65 Phil. 56 (1937).

⁹⁷ *Hartford Steam v. Harrison*, 301 U.S. 459 (1936).

⁹⁸ *Moore v. Missouri*, 127 U.S. 673 (1889).

⁹⁹ *Peo. v. Vera*, *supra* note 96.

¹⁰⁰ MALCOLM & LAUREL, *op. cit.*, *supra* note 68 at 414.

universities in the Philippines to read the *Noli Me Tangere* and the *El Filibusterismo* as a means of promoting nationalism.¹⁰¹ All agree to the nobility of the purpose. It is the means that is controverted.¹⁰² Ordinarily, the power and responsibility of ascertaining where the public welfare and interest lie or what acts injuriously affect the same belong to the legislature.¹⁰³ The choice of the means to effect what is required likewise belongs to the law-making organ of the government.¹⁰⁴ If it were merely a question as to the wisdom of the choice, there would have been but little objection to the *Rizal Bill*. But in this case the objection goes beyond the wisdom of the choice: it attacks the very choice because it is unreasonable and arbitrary, not only in the enforcement of the bill but also in the very inequality of the means chosen. Students, the subject of the law, will be affected in different and substantially different ways by the compulsory reading of the novels. Non-Catholics can read the books without qualms of conscience. Catholic students who constitute the majority of the student population will be compelled to read two novels that bitterly assail and ridicule their most fundamental practices and doctrines. The non-Catholic students are well sheltered under the canopy of the equal protection clause. Catholic students will certainly be outside its pale. The question that confronts us is this: should the Catholic students be exposed to such heretical attacks against their faith, to such ridicule, embarrassment and humiliation in order to teach them how to love their own country? Never yet in the history of our democratic nation will the great mantle of equal protection serve the minority to the utter disregard and exclusion of the majority.¹⁰⁵

Religious Freedom.

Justice Laurel spoke of religion as a profession of faith to an active power

¹⁰¹ Senate Bill No. 438 § 1.

¹⁰² "I agree with the proposition that we should try to foster and develop healthy nationalism among our people. But nationalism is not the only laudable attribute of the Filipinos as a people. Side by side with our nationalism is our religion. . . . A vast majority of our people are at the same time, Catholics and Filipino citizens. As such, they have two great loves: their country and their faith. These two loves are not conflicting loves. They are harmonious affections, like the love of a child for his father and for his mother." Portion of speech of Sen. Rodrigo delivered in the Senate on May 2, 1956. 3 S. CONG. REC. 1199 (1956).

¹⁰³ *U.S. v. Toribio*, *supra* note 65; citing *Barbier v. Connolly*, *supra* note 65 and *Kidd v. Pearson*, 128 U.S. 1 (1888). It is there said "The State may interfere whenever the public interest demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

¹⁰⁴ *L'Hote v. New Orleans*, 177 U.S. 587 (1900).

¹⁰⁵ This objection was raised on the floor of the Senate in a speech by Sen. Rosales on April 27, 1956. 3 S. CONG. REC. 1199 (1956).

that binds and elevates man to his Creator.¹⁰⁶ The United States Supreme Court explains:

"Freedom of thought, which necessarily includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain the theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. If one could be sent to jail because a jury in a hostile environment found these doctrines or teachings false, little would be left of religious freedom. The fathers of the Constitution were aware of the varied and extreme views of religious sects, of the violence of disagreement among them, and the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relations to his God was made no concern of the state. He was granted the right of worship in the manner he pleases, and was further granted the right to answer to no one for the verity of his religious views.¹⁰⁷

President Jefferson made what the United States Supreme Court has said may be accepted almost as an authoritative declaration of the scope and effect of the First Amendment of the United States Constitution,¹⁰⁸ namely: "Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative power of the government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof.¹⁰⁹ The United States Supreme Court in the case of *Watson v. Jones*,¹¹⁰ said:

"In this country the full and free right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate the laws of morality and propriety, and which does not infringe personal rights is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

Mr. Justice Miller delivering the opinion of the Court in the latter case of *Davis v. Beason*,¹¹¹ declared: "With man's relations to his maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure

¹⁰⁶ *Aglipay v. Ruiz*, 64 Phil. 201 (1937). The term *religion* has reference to one's views of his relations to his creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. *Davis v. Beason*, 133 U.S. 333 (1890).

¹⁰⁷ U.S. v. Ballard, 322 U.S. 78 (1937).

¹⁰⁸ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. First Amendment.

¹⁰⁹ 8 JEFF. WORK, 133; *Reynolds v. U.S.* 98 U.S. 145 (1878).

¹¹⁰ 13 Wall. 729 (1871).

¹¹¹ 133 U.S. 333 (1889).

peace and prosperity, and the morals of its people are not interfered with." Speaking of this right, Justice Laurel emphasized, in the *Aglipay Case*,¹¹² "that religious freedom... as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored 'the aid of Divine Providence in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy,' they thereby manifest their intense religious nature and placed unflinching reliance upon Him who guides the destinies of men and nations." Thus, although the Philippine Constitution prohibits the establishment of an official state religion, although it subscribes to the principle of separation of church and state, it nevertheless recognizes the religious heritage of our people,¹¹³ and their right to religious freedom has been made secure in the Bill of Rights which provides:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.¹¹⁴

This right to religious freedom is further made secure by another provision in the same Constitution which states that...

No public money or property shall ever be appropriated, applied, or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except, when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.¹¹⁵

Judge Cooley summarizes those things which are not lawful under any of the American constitutions thus; (1) Any law respecting an establishment of religion; (2) Compulsory support by taxation or otherwise of religious instruction; (3) compulsory attendance upon religious worship; (4) restraint upon the free exercise of religion according to the dictates of the conscience; (5) restraint upon the expression of religious belief.¹¹⁶

The basic principles which are recognized in the United States pertain-

¹¹² *Aglipay v. Ruiz*, *supra* note 106.

¹¹³ *Supra* note 106.

¹¹⁴ PHIL. CONST. Art. III, Sec. 1 (7).

¹¹⁵ PHIL. CONST. Art. VI, Sec. 23 (8).

¹¹⁶ 2 COOLEY'S CONSTITUTIONAL LIMITATIONS 967-969 (8th ed.).

ing to the separation of Church and state, and permitting the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and propriety, and which does not infringe personal rights, have been adopted in the Philippines.¹¹⁷ The separation between state and church is real, entire and absolute.¹¹⁸ No law shall be made respecting an establishment of religion.¹¹⁹ The inhabitants of the Philippines are secured in the free exercise of their religion. No inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.¹²⁰ No public money shall ever be applied, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, minister or other religious teacher or dignitary as such. No religious test shall be required for the exercise of civil or political rights.¹²¹

These constitutional provisions . . .

1. prohibit the establishment of a state religion;
2. prohibit the giving of government aid to any or to all religions;
3. prohibit compulsion to follow or not to follow a religion;
4. prohibit state discrimination against or state favor to any religion;
5. guarantees liberty to choose one's religion or no religion at all;
6. guarantees to priest or minister to follow and practice his religious calling;
7. guarantees liberty of religious profession;
8. prohibits religious test for the exercise of civil or political rights.¹²²

What it may be asked is the *rationale* of these provisions, of this right to religious freedom? And the answer is that the very reason why man has freedom of religion against the state is precisely because he has no freedom against his God.¹²³ He has religious rights as against the state because he has a duty to God, which the state may not refuse to recognize, and which, therefore, he, as an individual, has a right to assert even against the state.¹²⁴ The Almighty has divided the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human, things.¹²⁵ Each in its kind is supreme, each had fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we say, an orbit traced out within which the action of each is brought into

¹¹⁷ *Op. cit. supra* note 68 at 421.

¹¹⁸ *Id.*

¹¹⁹ PHIL. CONST. Art. III, Sec. 1 (7).

¹²⁰ MALCOLM & LAUREL, *op. cit. supra* note 68 at 421.

¹²¹ PHIL. CONST. Art. VI, Sec. 23 (3).

¹²² SINCO, PHIL. POL. LAW 558 (1947 ed.).

¹²³ PARSONS, FIRST FREEDOM 115 (1948 ed.).

¹²⁴ *Id.*

¹²⁵ POPE LEO XIII, CHRISTIAN CONSTITUTION OF STATES 251.

play by its own native rights.¹²⁶ But this distinction between church and state, by the very nature of the two societies, requires *co-operation* as well, since each of these two powers has authority over the same subjects.¹²⁷ There is distinction, it is true, but there must likewise be *co-operation*.¹²⁸ These two, distinction and *co-operation*, are the instruments necessary to work out in the concrete the eternal dilemma of the claims of the temporal and the eternal, a dilemma that faces the believer.¹²⁹ They are terms much better than union and separation.¹³⁰ It is admitted that the Philippine Constitution erects a wall of separation between church and state, but it does so for their mutual protection, so that one may not use the other for its own purposes, and not because the organic law belittles the value and influence of religion itself.¹³¹ The Constitution itself opens, in its preamble, with the invocation of the aid of Divine Providence, thus showing the intense religious fervor of the Filipino people.¹³² Elsewhere it exempts from taxation properties devoted exclusively to religious purposes,¹³³ authorizes state support of priests and ministers assigned to penal institution, the armed forces, orphanages and leprosarias,¹³⁴ and guarantees optional religious instruction in public schools.¹³⁵ In harmony with the Constitution, the law also respects the religious nature of our people and accommodates the public service to their spiritual needs.¹³⁶ Thursday and Friday of Holy Week, Christmas Day and Sundays are made legal holidays¹³⁷ "because of the secular idea that their observance is conducive to beneficial moral results." The law punishes bigamy and certain crimes against religious worship.¹³⁸ The separation of church and state in this jurisdiction is not absolute to the extent that one can ignore the very existence of the other. You cannot separate the citizen from the Catholic man that he is. Our Constitution and other statutory laws advocate mutual respect and cooperation to a certain extent but not a relationship of hostility. Freedom of religion is a right independent of the Constitution. The organic law simply recognized this as a fact and guarantee it as a necessary and efficacious

¹²⁶ *Id.*

¹²⁷ PARSONS, *op. cit. supra* note 123 at 92.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Aglipay v. Ruiz, *supra* note 106.

¹³² "The Filipino people, imploring the aid of Divine Providence, in order to establish a government..."

¹³³ "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." PHIL. CONST. Art. VI, Sec. 22 (3).

¹³⁴ *Supra* note 115.

¹³⁵ PHIL. CONST. Art. XIV, Sec. 5.

¹³⁶ Zorach v. Clauson, 343 U.S. 306 (1951).

¹³⁷ REV. ADM. CODE § 29.

¹³⁸ Arts. 349, 132, 133 REVISED PENAL CODE.

means to truly express the type of body politic we have organized, a Christian democratic state.

The vast majority of the students in our private and public schools, colleges and universities are Catholics.¹³⁹ They are, at the same time, Catholics and Filipino citizens. As such, they have two great loves: their country and their faith. These two loves are not conflicting loves.¹⁴⁰ They are harmonious affections, like the love of a child for his father and for his mother.¹⁴¹

And they have two loyalties: one to their country and one to their church; but again these two loyalties should not be conflicting, but harmonious and complementary, for they belong to different spheres, one temporal and the other spiritual and eternal.¹⁴²

Senate Bill No. 438 would certainly give rise to a situation where conflict is inevitable between these two great loves, these two great loyalties, of a vast majority of our countrymen.¹⁴³ The Bill would compel all Catholic students to read portions of the novels attacking the very truths, principles, doctrines and dogmas of their church. The statement of the Philippine Hierarchy on this point is specific:

In these two novels we find passages *against Catholic dogma* and morals where repeated attacks are made against the Catholic religion in general, against the possibility of miracles, against the doctrine of Purgatory, against the Sacrament of Baptism, against confession, Communion, Holy Mass, against the doctrine of indulgences, Church prayers, the Catechism of Christian Doctrine, sermons, sacramentals and books of piety. There are even passages casting doubts on or covering with confusion God's omnipotence, the existence of hell, the mystery of the Most Holy Trinity, and the two natures of Christ.

Similarly, we find passages which *disparage divine worship*, especially the veneration of images and relics, devotion to the Blessed Virgin and Saints, the use of scapulars, cords and habits, the praying of rosaries, novenas, ejaculations and indulgenced prayers. Even vocal prayers are included, such as the Our Father, the Hail Mary, the Doxology, the Act of Contrition, and the Angelus. Mass ceremonies, baptismal and exequial rites, worship of the Cross, the use of holy water and candles, processions, bells and even the Sacred Sunday obligations do not escape escorn.

We also find passages that *make light of ecclesiastical discipline*, especially in what concerns stole fees, alms to the Church, alms in suffrages for the dead, authority of the Pope, excommunication, education in Catholic schools, Pontifical privileges, Catholic burial, the organization of nunneries and monasteries, Confraternities, Third Orders, etc.¹⁴⁴

As a necessary result of this compulsion, Catholic students would be gradually weakened in faith and be subject to ridicule, embarrassment, and

¹³⁹ 3 S. CONG. REC. (1956).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ STATEMENT OF THE PHILIPPINE HIERARCHY *supra* note 1, pars. 10, 11, 12.

torture.¹⁴⁵ Catholic students would practically be punished for entertaining religious beliefs. Freedom to believe is absolute and so is freedom not to believe.¹⁴⁶ Although what is compulsory is the reading of the novels and not the belief in them, still in the nature of things the distinction is illusory.¹⁴⁷ It is true that freedom to act on one's belief cannot be absolute,¹⁴⁸ as when one's religion permits bigamy. But the limitation comes into play only when the basis of one's belief is contrary to the penal laws, to good morals, good customs, public order or public policy.¹⁴⁹ And so it follows that where one person acts in accordance with a belief that is not covered by any of the aforementioned limitations, the act itself cannot be restrained, much more punished, for under our Constitution and laws, men cannot be

¹⁴⁵ 3 S. CONG. REC. 1205 (1956).

¹⁴⁶ U.S. v. Ballard, *supra* note 107.

¹⁴⁷ In the course of the interpellations of Sen. Rosales by Sen. Recto.

Sen. Recto. The gentleman can agree with me that the bill does not make compulsory the acceptance of Rizal's principles or doctrines, whether in religion or in patriotism, or in any other respect.

Sen. Rosales. It does not.

Sen. Recto. In other words, after a passage of the *Noli Me Tangere* has been read in school for instance, either the professor or any of the pupils can challenge Rizal's stand in that particular passage that has been read.

Sen. Rosales. If the gentleman from Batangas will allow me to say a few words on that point, I think there are several ways of instruction. One is teaching through teachers and one is through reading of books. Now, if you, for example, prescribe a book to be read by the pupils, it is because you want those pupils to learn from those readings. That is one way of instruction.

Sen. Recto. To know what the book contains.

Sen. Rosales. To read and to know.

Sen. Recto. Is not the pupil left free to decide with the use of his own intelligence whether to accept or to reject the thought or opinion conveyed in the passage or passages read.

Sen. Rosales. I don't agree with the gentleman from Batangas on that point. Suppose, gentleman from Batangas, that I am offered an apple, partly good and partly rotten. I do not like to eat the rotten part. Then a law is passed by Congress saying, "You have got to eat that part."

Sen. Recto. What did Your Honor say as to the rotten part.

Sen. Rosales. I do not like to eat that part, the rotten part.

Sen. Recto. The gentleman is right, nobody would want that rotten part.

Sen. Rosales. Yes. For example, I do not want to read the *Noli Me Tangere* and the *El Filibusterismo*, but I will be compelled by this bill if this bill is approved into law.

Sen. Recto. You have made a comparison between eating and reading.

Sen. Rosales. I have not finished my analogy yet. The gentleman from Batangas probably will understand my analogy or differ from the point I want to drive. Now, you say that in this particular bill the pupils are only compelled to read but they are not compelled to believe from what they read. I make that comparison because I say that if an apple is rotten I do not like to eat it. They tell me, "Go ahead. Anyway, you can throw it out if you choose to throw it out. If you like it, eat it." But after masticating that apple, and because I really do not like the apple, I throw it away. But there are still some portions that remain inside my body causing disease or ailment in my body. It is the same as the *Noli Me Tangere* which I do not want to read. But you compel me to read. All right, I read and read, but something here (pointing to the head) will remain from what I read that I do not like.

3 S. CONG. REC. 1161 (1956).

¹⁴⁸ U.S. v. Ballard, *supra* note 107.

¹⁴⁹ *Id.*

punished for what they think or believe for it is not within the competence of the state to inquire into the truth on validity of a religious doctrine.¹⁵⁰ Catholic students, in refusing to read the *Noli* and the *Fili*, would practically be punished for what they believe in.

The compulsory reading of the novels is substantially analogous to the compulsory salute to the American flag, required by the State Board of Education of West Virginia in all public schools of the state. This case in reversing an earlier decision, declared unconstitutional a state board of education resolution compelling all teachers and pupils in public schools to salute any emblem or symbol, the decision declared the compulsory flag salute unconstitutional only insofar as it violated religious scruples or beliefs. While this is an inaccurate and opaque understanding of the Court's decision, as will presently be shown, yet even on the assumption that the Federal Supreme Court went on further than protect religious belief from being overriden by the compulsory flag salute prescribed by the State board of education, the Court's decision would still be apt and applicable to the situation provoked by Senate Bill No. 438 if we are to adhere to the theological conclusion that the two subject novels sought to be made compulsory reading matter in all schools, public and private, are against Catholic dogmas and the Catholic religion generally.¹⁵¹ For if Jehovah's Witnesses by the Court's decision in the *Barnette Case* may not constitutionally be required in a public school to salute the flag because of fundamental religious beliefs or scruples, it follows with equal logic and persuasion that a Catholic teacher may not be constitutionally bound to teach and a Catholic pupil may not be constitutionally bound or forced to learn or read in a Catholic school books or novels objectionable to them on religious grounds.¹⁵²

However, as mentioned earlier, the *Barnette*¹⁵³ decision was not founded on the slender ground of religious belief or scruple. The more fundamental issue resolved by the Court was whether the State has the power or authority to compel the flag salute as a legal duty. This is made clear in the following passages from Justice Jackson's opinion for the Court:

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether nonconformists' beliefs will exempt from the duty to salute unless we first find power to make the salute of legal duty.

Hence validity of the asserted power to force an American citizen publicly to profess any statement of belief or to engage in any ceremony of asset to one,

¹⁵⁰ *Id.*

¹⁵¹ 3 S. CONG. REC. 1152 (1956).

¹⁵² *Id.*

¹⁵³ West Virginia State Board of Education v. Barnette, *supra* note 62.

presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

... The question which underlies the flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine rather than assume existence of this power...

Thus, the issue in the *Barnette Case* was one of the constitutional power which is the same issue presented when Congress, by Senate Bill No. 438, seeks to make the compulsory teaching and reading of the two subject novels "a legal duty". Because of the clear analogy between the "compulsory flag salute" involved in the *Barnette Case* and the "compulsory novel reading or teaching" proposed by Senate Bill No. 438, an exposition of the *Barnette Case* related to the situation created by Senate Bill No. 438 is appropriate. The governmental action taken in the *Barnette Case* is described by the Court thus:

... the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitution of the United States and the State 'for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.' Appellant Board of Education was directed, with advice of the State Superintendent of Schools, to 'prescribe the courses of study covering these subjects' for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study 'similar to those required for the public schools.'

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's *Gobitis* opinion and ordering that the salute to the flag become a regular part of the program of activities in the public schools' that all teachers and pupils 'shall be represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an Act of insubordination, and shall be dealt with accordingly.'

Failure to conform is 'insubordination,' dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile the expelled child is 'unlawfully absent' and may be proceeded against as a delinquent. His parents or guardians are liable to prosecution, and if convicted are subject to fine not exceeding \$50 and a jail term not exceeding thirty days.

In the case of Senate Bill No. 438, Sec., 5¹⁵⁴ thereof provides for the punishment to heads of schools and professors who fail to teach compulsory the two subject novels, which includes dismissal from the public school and/or disqualification from teaching in a government-recognized school as well as withdrawal of government recognition for the school failing to teach or prescribe the novels. Thus, the factual and legal situation in the *Barnette Case* and Senate Bill No. 438 are identical or similar.

¹⁵⁴ See Bill p. 277.

In declaring unconstitutional the State board resolution enforcing the flag salute, the Federal Supreme Court expostulated thus:

The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behaviour is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

As regards Senate Bill No. 438, the freedom asserted or advocated by Catholic teachers not to teach compulsory and by Catholic pupils and parents not to read by compulsion the two subject novels does not collide against the freedom of others who may desire to teach or read the novels.¹⁵⁵ The sole issue, like in the *Barnette Case*, is between authority (the State) on one hand, and the rights of the individual schools, teachers, parents and pupils on the other.

Explaining the theory of the Bill of Rights similar to our Bill of Rights, Justice Jackson stated:

... These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men's affairs...

It is significant to observe the following passages from the explanatory note to Senate Bill No. 438:

Today more than at any period of our history, there is a need for a re-dedication to the ideals of freedom and nationalism for which our heroes, from Dagohoy and Lapulapu to Rizal, Del Pilar, Bonifacio and Mabini, lived and died. The words of these nationalists have impressed upon our history the stamp of undying glory. It is, therefore, meet that in recalling them, particularly the national hero and patriot, Jose Rizal, we remember with especial fondness and devotion their words that have shaped the national character.

Noli Me Tangere and *El Filibusterismo* must be read by all Filipinos. They must be taken to heart, for in their pages we see ourselves as in a mirror; our defects as well as our strength, our virtues as well as our vices. Only then would we become conscious as a people, and so learn to prepare ourselves for painful sacrifices that ultimately lead to self-reliance, self-respect, and freedom.

Obviously, the compulsory flag salute was motivated by the same consideration underlying Senate Bill No. 438. But the Court declared, in rejecting such consideration, that:

¹⁵⁵ *Supra* note 151.

... To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

The Court further stated:

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bend on its accomplishment must resort to an ever increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

The aforementioned fits strikingly the situation relative to Senate Bill No. 438. To believe that patriotism or nationalism will flourish through the compulsory reading or teaching of the two novels instead of leaving them to be read by those who may desire, "is to make an unflattering estimate of the appeal of our institutions to free minds" not to mention the unflattering estimate made of the novels themselves.

The authors of Senate Bill No. 438 also state:

It is for this purpose that this bill is presented. Many speak of Rizal as if they had read and understood him. His *Noli Me Tangere* and *El Filibusterismo*, the greatest Philippine social documents, live only as names to be mentioned on auspicious occasions, but are not read and studied. It is a national shame that in an era such as this, the works of Jose Rizal are not as assiduously read in his own country as they are in some countries of South America. To ignore them, as most of us do, is to ignore Rizal and what he stood for. To praise him without taking the trouble to study that which elicits our praises is to be hypocritical.

The reply to this founded on constitutional law are the following pronouncement of the U.S. Supreme Court:

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.

Accordingly, if the compulsory flag salute rule in public schools transcends constitutional limitations on state power, it is believed that the compulsory reading of the two subject novels in private and catholic schools also transcends the same constitutional limitations. The concurring opinion penned by Justice Black and Justice Douglas states thus:

Neither our domestic tranquility in peace nor our martial efforts in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

The situation of the Catholic students in the Philippines and that of students belonging to the Witnesses of Jehovah is indeed very similar. In both cases there is compulsion in order to promote nationalism or patriotism. The accidental difference lies only in the medium used: in the former, the compulsory reading of the *Noli* and the *Fili*; and in the latter, the compulsory salute and pledge to the American flag. And yet after a more careful study, it seems that the Catholic students under the *Rizal Bill* stand to suffer more, for, while the Witnesses of Jehovah would not weaken in their faith or be persuaded to leave it for another even if coerced to salute the flag, the Catholic students would certainly be exposed to heretical statements and attacks against their faith, which would be pressed to advantage by other religions, and in the end be instrumental in swelling their ranks, without giving the Catholics any *equal opportunity* to answer these attacks to clarify certain controversial points in the novels, say, by requiring the compulsory reading of a supplement to the novels that would explain the Catholic side.

Natural Rights of Parents to Direct the Education of Their Children¹⁵⁶

There are two schools of thought regarding as to who shall control or direct the education of children. The first school of thought was originally advocated by Plato who claimed that a child is a mere creature of the state and as such it is the absolute right of the state to control his educa-

¹⁵⁶ This objection was raised by Sen. Rosales in a speech before the Senate on April 27, 1956. 3 S. CONG. REC. 1153 (1956).

tion. This theory was later on adopted by March, Engels and others. Communist Russia accepted Plato's credo, followed by Hitler in Nazi Germany, and by Mussolini, in Fascist Italy. The other school of thought maintains that it is the natural right of parents to direct the education of their children as they are expected to have more interest than the State in rearing creatures which are parts of their flesh and blood. This theory is generally accepted and adopted in almost all Christian countries and in many democratic countries in the world. England's Educational Act of 1944, reads as follows:

In the exercise and performance of all powers and duties conferred and imposed on them by this act, the Minister and local education authorities shall have regard to the general principle that, so far as it is compatible with the provisions of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.¹⁵⁷

The Constitution of the Irish Republic¹⁵⁸ "acknowledges that the primary and natural educator of the child is the family," and guarantees to respect this inalienable right. Although there is no express recognition in the American Constitution on the natural right of parents to direct the education of their children, the Federal Supreme Court, however, in the celebrated case of *Pierce v. Society of Sisters*,¹⁵⁹ the Court ruled the following:

The fundamental theory of liberty upon which all government in this Union repose excludes any general power of the state to standardize the children by forcing them to accept instruction from public teachers. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligation.

Even the United Nations has openly come out in favor of this inalienable right of parents. In Art. XXVI of the Universal Declaration of Human Rights, the following is provided:

Parents have a prior right to choose the kind of education to be given to their children.

And in the report of the United Nations Economic and Social Council of April, 1951, the following can be read:

The prior right of parents to choose the kind of education that shall be given to their children, comes up against the monopolistic educational system adopted in various countries.

In the Philippines, although there is no express and direct recognition of the natural right of parents to guide the education of their children, in our

¹⁵⁷ Sec. 76.

¹⁵⁸ Sec. 42.

¹⁵⁹ 268 U.S. 510 (1925).

Constitution, the existence of this right is clearly implied in Art. II, Sec. 1, sub-sec. 4 of the Declaration of Principles, which states:

The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the government.

It is as a consequence of this theory that parents are free to choose the school where their children should be educated and to determine the kind of education that they should receive, especially on matters which affect their moral character and spiritual welfare.

Here in the Philippines, it is an admitted fact that our social structure is based on the family, and it is in the family where the education of children begins and is primarily moulded.¹⁶⁰ Filipino parents feel that it is their duty and at the same time their inalienable right to discipline their children, to make them follow and observe certain standards of morality and to take care of their spiritual welfare.¹⁶¹ In the exercise of this parental authority, the parents have the right to regulate the books, literature and other reading matters that their children should read.¹⁶² They may prohibit their children to read immoral or indecent books which in their opinion would be injurious to the children's moral character.¹⁶³

Does Senate Bill No. 438 respect the rights of Filipino parents to guide the education of their children? Under this bill, the reading of the two novels of Rizal, the Noli and the Fili are made compulsory.

Suppose that a father of a family who is a devout catholic sincerely believes that the reading of the two books would alienate them from the catholic faith which in his conviction is the only faith that can save their souls, and do not want his children to read these books, would it not be in violation of his natural right to guide the education of his children, if we pass this bill? If the parents are given the right to direct the destiny of their children in this life, why compel their children to learn and read something without consulting their parents? Remember that even in civic efficiency, our Constitution provides that the parents should be encouraged, but not commanded or compelled.¹⁶⁴

In the case of *Farrington v. Tokushiga*,¹⁶⁵ the law in question was a legislation by the state legislature of Hawaii, imposing regulations on all foreign schools in that territory among which were to compel all teachers in those schools to pass a test on history and how to read and write and speak the English language and at the same time prescribing the textbooks to be used in those schools. A Japanese parent contested the constitutionality of this law on the ground that to compel their school to teach certain spe-

¹⁶⁰ *Supra* note 156.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ 273 U.S. 284 (1927).

cified textbooks violated the natural right of the parents to guide the education of their children. The Supreme Court in sustaining the claim of the Japanese parent ruled the following:

The foregoing statement is enough to show that the School Act and the measures adopted thereunder go far beyond mere regulation of privately supported schools where children obtain instruction deemed valuable by their parents and which is not obviously in conflict with any public interest. They give affirmative direction concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and textbooks. Enforcement of the act probably would destroy most, if not all, of them; and, certainly, it would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restriction; the Constitution protects him as well as those who speak another tongue.

It is clear to us that the compulsory nature of the bill nullifies the natural right of parents to guide the education of their children, hence it is unconstitutional.

Excessive and Unusual Punishment:

The Constitution¹⁶⁶ provides: "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." Senate Bill No. 438¹⁶⁷ provides that for the violation of its provisions, or failure to comply with them, or any circumvention thereof, the punishment to be imposed will be upon:

(a) The Head of any public college or university; immediate dismissal from the service and disqualification from teaching in any public or government-recognized private school, college, or university;

(b) Private College or University; immediate withdrawal of government recognition;

(c) The Head or professor or professors concerned of said private college or university: disqualification from teaching in any government-recognized college or university.

There is indeed no *reasonable proportion* between the "crime" committed and the punishment provided therefore. The penalty is cruel and unusual, for, should any *individual* Head or professor or a *private* educational institution violate the law, it is not alone he who suffers the punishment, but also the entire institution; the innocent faculty members, the innocent student-body and the innocent school personnel. The students are deprived of their school, the faculty and school personnel are deprived of their livelihood. The punishment to be visited upon the erring Head or professor is tantamount to depriving him of the right to live, for he would be denied

¹⁶⁶ PHIL. CONST. Art. III, Sec. 1 (19).

¹⁶⁷ Sec. 5.

the exercise of the only means of livelihood, not only in the city or town where he violated the law but anywhere in the Philippines. It is practically compelling him to go outside the Philippines to earn a living.

There seems to be discrimination in the imposition of the punishments, for while it is true that public school Heads will be punished, any public school teacher, not being a school Head, and doing the same will not. Again, while the erring Head of a public college or university, as punishment, would be disqualified from teaching in any public or government-recognized private school, college, or university, the Head or professors of any private college or university, in doing the same, would not be disqualified from teaching in public educational institutions, for their disqualification extends only to any government-recognized college or university.

REPUBLIC ACT No. 1425

Senate Bill No. 438, popularly called the *Rizal Bill*, has found its way into our statute books as Republic Act No. 1425. We shall refer to it as the *Noli-Fili Law* or the *Rizal Law*. The *Rizal Law* is considered as a happy compromise between the proponents of the original bill and its opponents, a compromise intended to retain the high aim of Senate Bill No. 438 and at the same time to do away with certain features in the bill deemed to be objectionable by so-called "anti-Rizalists." The law as finally enacted is hailed by some to be a signal victory for the Catholic Church, and for "bigots", "obscurantists", and "pro-friars". Others, however, maintain that the law contains not only all the substantial features of the original measure, but also, in addition, incorporates the reading of Rizal's other books, a few of which are even more impious and heretical than the *Noli* and the *Fili*. Before going into the merits of the law, let us first read the law itself.

AN ACT INCLUDING IN THE CURRICULA OF ALL PUBLIC AND PRIVATE SCHOOLS, COLLEGES AND UNIVERSITIES, COURSES ON THE LIFE, WORKS AND WRITINGS OF JOSE RIZAL, PARTICULARLY HIS NOVELS *NOLI ME TANGERE* AND *EL FILIBUSTERISMO*, AUTHORIZING THE PRINTING AND DISTRIBUTION THEREOF, AND FOR OTHER PURPOSES.

Whereas, today, more than any period of our history, there is need for a re-dedication to the ideals of freedom and nationalism for which our heroes lived and died;

Whereas, it is meet that in honoring them, particularly the national hero and patriot, Jose Rizal, we remember with special fondness and devotion their lives and works that have shaped the national character;

Whereas, the life, works and writings of Jose Rizal, particularly his novels *Noli Me Tangere* and *El Filibusterismo*, are a constant and inspiring source of patriotism with which the minds of the youth, especially during their formative and decisive years in school, should be infused;

Whereas, all educational institutions are under the supervision of, and subject to regulation by the State, and all schools are enjoined to develop moral character, personal discipline, civic consciousness, and to teach the duties of citizenship.

SECTION 1. Courses on the life, works and writings of Jose Rizal, particularly his novels *Noli Me Tangere* and *El Filibusterismo*, shall be included in the curricula of all schools, colleges and universities, public or private: *Provided*: That in the collegiate courses, the original or unexpurgated editions of the *Noli Me Tangere* and *El Filibusterismo* or their English translation shall be used as basic texts.

The Board of National Education is hereby authorized and directed to adopt forthwith measures to implement and carry out the provisions of this Section, including the writing and printing of appropriate primers, readers, and textbooks. The Board shall, within sixty (60) days from the effectivity of this Act, promulgate rules and regulations, including those of disciplinary nature, to carry out and enforce the provisions of this Act. The Board shall promulgate rules and regulations providing for the exemption of students for reasons of religious belief stated in a sworn written statement, from the requirement of the provision contained in the second part of the first paragraph of this section; but not from taking the course provided for in the first part of said paragraph. Said rules and regulations shall take effect thirty (30) days after their publication in the Official Gazette.

SEC. 2. It shall be obligatory on all schools, colleges and universities to keep in their libraries an adequate number of copies of the original and unexpurgated editions of the *Noli Me Tangere* and *El Filibusterismo*, as well as of Rizal's other works and biography. The said unexpurgated editions of the *Noli Me Tangere* and *El Filibusterismo* or their translations in English as well as other writings of Rizal shall be included in the list of approved books for required reading in all public or private schools, colleges and universities.

The Board of National Education shall determine the adequacy of the number of books, depending upon the enrollment of the schools, colleges or universities.

SEC. 3. The Board of National Education shall cause the translation of the *Noli Me Tangere* and *El Filibusterismo*, as well as other writings of Jose Rizal into English, Tagalog and the principal Philippine dialects; cause them to be distributed, free of charge, to persons desiring to read them, through the Purok organizations and Barrio Councils throughout the country.

SEC. 4. Nothing in this Act shall be construed as amending or repealing section nine hundred twenty-seven of the Administrative Code, prohibiting the discussion of religious doctrines by public school teachers and other persons engaged in any public school.

SEC. 5. The sum of three hundred thousand pesos is hereby authorized to be appropriated out of any fund not otherwise appropriated in the National Treasury to carry out the purposes of this Act.

SEC. 6. This Act shall take effect upon its approval.

Approved, June 12, 1956.

Objectionable features in Senate Bill No. 438 removed in Republic Act 1425.

A reading of the *Noli-Fili Law* would readily assure the opponents of the original measure that the major objections thereto had been deleted or stricken out. These objections were: first, the compulsory reading of the *Noli Me Tangere* and the *El Filibusterismo*; and, second, the unreasonable punishment provided for in the bill to be meted out to all those who would in any way violate the provisions thereof.

Instead of the compulsory reading of the two novels, the *Rizal Law* prescribes the compulsory taking of courses on the life, works, and writings of Jose Rizal. These courses shall be part of the curricula of all public and private educational institutions in the Philippines. Unlike the original bill which is limited to the compulsory reading of two novels only, the law as passed includes Rizal's other writings which the Board of National Education may deem necessary to include, in pursuance to the authority vested upon it by the *Rizal Law*. The emphasis, however, remains on the two novels.

The law requires that in the college level the original or unexpurgated edition of the *Noli* and *Fili* shall be used as basic texts. But the same law provides for an exemption on the ground of religious beliefs. It should be noted, however, that this exemption in the college level is applicable only to the use as basic texts of the two novels; it does not extend to the taking of the courses on Rizal, nor does it extend to the "other writings" of Rizal which the Board of National Education may prescribe. It should be noted further that no exemption whatever has been provided for all rungs of education lower than the collegiate level.

The obviously unreasonable and unproportional punishment provided for in the original bill has been discarded, and, in its stead, the law empowers the Board of National Education to promulgate rules and regulations of a disciplinary nature to punish the violators of the law. So, in pursuance with such power, the Board of National Education promulgated the rule that any violation of the *Rizal Law* and any of its regulations implementing the *Rizal Law* shall be dealt with in accordance with existing rules and regulations and such rules and regulations as may be promulgated by the Board of National Education.

Rules and Regulations to Implement R.A. No. 1425.

Pursuant to the authority vested upon the Board of National Education by Republic Act No. 1425, and in conformity with its statement of policies,¹⁶⁸ the following rules and regulations relative to the inclusion of courses on the life, works and writings of Jose Rizal in the curricula of all public and private schools, colleges and universities, are hereby promulgated:

¹⁶⁸ See Preamble to R.A. No. 1425 p. 302-303.

1. Courses on the life, works and writings of Jose Rizal, particularly his novels *NOLI ME TANGERE* and *EL FILIBUSTERISMO*, shall be included in the curricula of all public and private schools, colleges and universities. These courses shall be given as part of school studies and/or language arts in the elementary school; the social studies or languages in the high school; and the social sciences or languages in the colleges and universities. The primers, readers, and textbooks for these courses shall be based on the outline approved by the Board of National Education; provided, that such appropriate primers, readers, and textbooks shall be approved by the Board of National Education.

The elementary course should include the main points of the biography of Rizal and such materials from his writings as are suitable to the elementary level and geared to the objectives of moral character, personal discipline, civic conscience, citizenship, and vocational efficiency.

The high school, with its continuing function of education, should offer courses which included not only a more advanced study of his life but also materials from Rizal's writings as are suitable to the secondary level.

The collegiate courses should include, among others, a more intensive study of Rizal's life, works, and writings.

The original and unexpurgated editions of the *NOLI ME TANGERE* and *EL FILIBUSTERISMO* or their translations shall be used as basic texts in the college level subject to the exemption provided for in these rules.

2. Collegiate students, for reasons of religious belief stated in a prescribed sworn statement, shall be exempt from using the original or unexpurgated editions of the *NOLI ME TANGERE* and *EL FILIBUSTERISMO* or their translations as basic texts. Such exemption, however, shall not extend to the collegiate course as prescribed in Section 1 hereof. This sworn statement shall be executed by the student himself if of legal age, or by his parent or guardian if under age.

The said sworn statement shall include:

- (a) the full name, residence and civil status of the student; and of the person executing the statement if other than the student;
- (b) the religious sect, denomination or church of which the student is a member;
- (c) a declaration that said student is not allowed, for reasons of religious belief, to read the unexpurgated edition or translation of the *NOLI ME TANGERE* and the *EL FILIBUSTERISMO*.

The said sworn statement may be filed any time during the school year and the original thereof shall be kept in the files of the school concerned and shall form part of the credentials or transcript of records of said student. The duplicate of said sworn statement shall be sent to the Department of Education.

The student, parent or guardian may revoke the exemption herein provided for by declaring so in writing any time during the school year.

3. It shall be obligatory on all schools, colleges and universities, where the books are prescribed, to keep in their libraries an adequate number of copies of the original unexpurgated editions of the *NOLI ME TANGERE* and *EL FILIBUSTERISMO*, as well as of Rizal's other works and biography. The said unexpurgated editions of the *NOLI ME TANGERE* and *EL FILIBUSTERISMO* or their translations, as well as other writings of Rizal, shall be included in the list of approved books for required reading in all public or private schools, colleges and universities. By required reading, as differentiated from compul-

sory is meant that these two novels, as well as Rizal's other works and biography, shall be included in the list of approved books from which the students can select one or more books to meet the home reading requirements.

4. The translations of the *NOLI ME TANGERE* and *EL FILIBUSTERISMO*, as well as other writings of Jose Rizal, into English, Filipino and the principal dialects shall be undertaken under the supervision and control of the Board of National Education. Upon approval of these translation by the said Board, they shall be printed in cheap popular editions which the Board of National Education shall distribute, free of charge, to persons desiring to read them, through the Purok organizations, Barrio Councils, Parent-Teachers Associations, and such other organizations as the Board of National Education may designate.

5. Nothing in the implementation of Republic Act No. 1425 as expressed in these Rules and Regulations shall be construed as amending or repealing section nine hundred twenty-seven of the Administrative Code, prohibiting the discussion of religious doctrines by public school teachers and other person engaged in any public school.

6. Any violation of the law and these regulations shall be dealt with in accordance with existing rules and regulations and such rules and regulations as may be promulgated by the Board of National Education.

7. The rules herein promulgated shall be published in the Official Gazette and shall become effective thirty (30) days from the actual date of said publication.

8. The Board of National Education may change, revise, amend, alter, or repeal any of the foregoing rules and regulations. Such change, revision, amendment, alteration or repeal shall take effect thirty (30) days after their publication in the Official Gazette.¹⁶⁹

State "Control" of Schools and Freedom of Education.

There are two types of educational institutions in the Philippines: public and private. The first is state owned; the second is owned and maintained by private persons or entities, receiving no financial support from the state. The Constitution provides: "All educational institutions shall be under the *supervision* of and subject to *regulation* by the State."¹⁷⁰ (Italics ours.) On its face, the above provision covers both public and private schools and other educational institutions. But in its practical application, it has reference particularly to private schools inasmuch as public schools are obviously under state control, an authority far more extensive than mere supervision and regulation.¹⁷¹ The establishment and control of public schools are intrinsically an exercise of legislative functions, the reason being that the education of the youth is the concern of the state for its own protection and welfare.¹⁷²

In a free and democratic country like ours, government supervision and

¹⁶⁹ EDUCATION ADM. ORDER No. 9 (1956), 52 O.G. 4227-4229.

¹⁷⁰ PHIL. CONST. Art. XIV, Sec. 5.

¹⁷¹ SINCO, *op. cit. supra* note 122 at 488.

¹⁷² MALCOLM & LAUREL, *op. cit. supra* note 68 at 529.

regulation of private educational institutions must necessarily be limited to the following: (1) to see that an educational institution does not teach or promote doctrines and practices contrary to the criminal laws of the state, and (2) to prevent immoral or fraudulent practices on the part of private institutions.¹⁷³ The state has no power to control private educational institutions. Its power, by the very wording of the Constitution, extends to *supervision* and *regulation* only, and not to *control*. Supervision is the act of overseeing, inspection, superintendence, or oversight.¹⁷⁴ On the other hand, to regulate is to direct by rule or restriction, or to subject to governing principles or laws. At times, the term is used interchangeably with the power of control.¹⁷⁵ It is submitted that the terms *regulation* and *control* differ only in intensity or degree, for the latter denotes the exercise of a restraining or directing influence over something.¹⁷⁶ In the very recent case of *PACU v. Secretary of Education*,¹⁷⁷ the Supreme Court in an *obiter dictum* seems to favor the view that the term *regulation* in the Constitution actually referred to *control*, citing local authorities like Tolentino, Aruego, Benitez, Malcolm and Laurel to back up its opinion. Sinco, however, holds the opposite view. He maintains that regulation does not embrace the idea of initiative and direction which must necessarily remain with the owner of the school. A contrary view would establish a system of educational dictatorship with absolute power to mould the minds of the youth in such a system or would in the least tend to tolerate such undemocratic system.¹⁷⁸

It is admitted that the state has control over its own public schools, subject, however, to certain constitutional limitations as academic freedom¹⁷⁹ and the natural right and duty of parents in educating their children.¹⁸⁰ Private schools, not being creatures of the State, are subject only to supervision and regulation by the state. To hold otherwise would render nugatory and useless a still higher law which the Constitution acknowledges and guarantees. The Bill of Rights declares that "The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the government."¹⁸¹ The provision indicates the pre-eminent position of the individual in our legal and political system. The education of the youth is a natural right and a natural duty of parents. Natural rights and duties are not created by the Constitution or state law. They flow from the very nature of man, inherent in him as a moral and

¹⁷³ SINCO, *op. cit. supra* note 122.

¹⁷⁴ 2 WEBSTER'S NEW INTERNATIONAL DICTIONARY 2083.

¹⁷⁵ *Id.* at 1798.

¹⁷⁶ *Id.* at 490 Vol. 1

¹⁷⁷ G.R. No. L-5279, Oct. 31, 1955.

¹⁷⁸ SINCO, *op. cit. supra* note 122 at 489.

¹⁷⁹ *Supra* note 170.

¹⁸⁰ Meyers v. Nebraska, 262 U.S. 390 (1922).

¹⁸¹ PHIL. CONST. Art. II, Sec. 4.

human personality.¹⁸² In recognizing them, insofar as they refer to the function of parents to rear their children, the Constitution has added the binding force of law to their intrinsic value and validity. Elevated to such heights, neither congressional enactment nor executive order may place them under government control or any other form of external subjection. This provision in the Bill of Rights gains added significance if one would consider the same not only in relation to the strictly moral ties between parents and children, but also and specifically to the wider relationship between the individual and the state.¹⁸³

It is plain, therefore, and beyond uncertainties of doubt that the state vests in the citizen the prerogative and the responsibility of educating his children for their place in the political community. The discretion that invariably accompanies the exercise of any right and the performance of any duty protects the parent against any interference or limitation that the organs of the state might place in the selection of means, methods, and institutions that the parent might select in educating the child. As long as these are not directly or indirectly condemnable as subversive or inimical to the interest of the state the discretion of the parent in this regard is practically unlimited and illimitable.

Implied from this constitutional provisions is a fundamental principle, namely: That government is without any authority to assume exclusive control over education for good citizenship. The parent may not be compelled by law to send his child to public schools or to any particular school. By the constitutional recognition of his natural right as a parent, he has the choice and discretion as to what sort of education, what school, what teachers, and what course of study, his child should pursue to acquire civic efficiency. And to give reality to this basic right, the constitutional provision impliedly guarantees the establishment of private schools uncontrolled by the government to the extent that they do not promote conduct inimical to public order, public morals, and the safety of the state.¹⁸⁴

Under the *Rizal Law* there is a real and substantial conflict between state power over education on one hand and the natural and inherent right of parents to educate their children on the other. The conflict arises from the fact that certain works and writings of Rizal which are regarded by the Catholic Church, and necessarily by Catholic parents, as impious and heretical, and therefore should not be read by Catholic students, are made basic texts in all public and private schools in the Philippines. In the lower rungs of education appropriate primers, readers, and textbooks based on Rizal's original works and writings shall be included in the new Rizal courses. The conflict is made more complicated by the additional fact that the purpose of the law, as enunciated by Congress, is to foster nationalism and patriotism. The original measure prescribes compulsory reading of the *Noli Me Tangere* and the *El Filibusterismo*, novels which may not be read by Catholics without first securing ecclesiastical permission. The *Rizal Law*

¹⁸² BARKER, PRINCIPLES OF SOCIAL AND POLITICAL THEORY 136-146.

¹⁸³ SINCO, *op. cit. supra* note 122 at 125.

¹⁸⁴ *Id.*

prescribes the compulsory taking of courses on Rizal's life, works and writings, particularly the *Noli* and the *Fili*. The practical effect of the original and the enacted measures is the same. Catholic students, no matter how one looks at the situation, are directly and positively exposed to religious discrimination by legislative action. In spite of the prohibition of discussion of religious doctrines in the public schools by public school teachers, the Catholic students, in practice, would certainly be subjected to religious embarrassment. They have to memorize dogmas contrary to their own. They have no right to discuss their own doctrines in answer to those mentioned in the Rizal texts. Teachers would be helpless to encourage them because of the prohibition. Catholic students in private non-sectarian schools will certainly suffer more than their brothers and sisters in the public schools. For the prohibition imposed upon public school teachers mentioned above does not apply at all to private schools or teachers in private schools. Catholic students in these schools will, against their wishes, be at the mercy of non-Catholic teachers and students.

Under such circumstances, cannot the parents invoke their natural rights to educate their children? The *Rizal Law* provides a remedy by allowing the exemptions — but in the college level only. Parents, therefore, have no right under the law to ask for exemptions for their children in the lower rungs of education. It may be argued that there exists no necessity for such an exemption in the lower educational grades for the reason that the unexpurgated or original versions of the *Noli* and the *Fili* shall be used in the collegiate courses only. It is submitted that the reason for exemption in the collegiate level equally holds true for the high school and elementary levels, for the simple reason that the primers, readers, and texts to be used therein are based on the *Noli* and the *Fili* and other writings of Rizal, some of which are equally offensive to the religious doctrines of the Catholic students and parents. And even in the college level itself, the exemption applies to the *Noli* and the *Fili* only, and does not extend to Rizal's other writings like *La Vision de Fray Rodriguez* and *Letter to the Young Women of Malolos*, which, according to Senator Recto himself in his article entitled: *The Rizal Novels Law: a Postscript*¹⁸⁵ contain heretical statements against the basic dogmas of the Catholic Church in quite unorthodox fashion.

The exemption provided for is substantially defective, as can be inferred from the foregoing discussion. This, however, can be remedied by legislative amendment.

An interesting question may be propounded at this point regarding the form of the exemption. Why does the *Rizal Law* prescribe a written affidavit as a formal requirement for exemption? The Witnesses of Jehovah are not required to file written affidavits in order to get exemption from flag ceremonies. The *Rizal Law* would practically put a peso mark on

¹⁸⁵ Manila Chronicle, June 4, 1956, p. 7, col. 1.

one's exercise of religious freedom and parental authority. One just begins to wonder why Congress makes it difficult for Catholic students and parents in a Catholic country to exercise their rights.

Section 2 of R.A. 1425 making it obligatory on all schools, colleges and universities to keep in their libraries an adequate number of copies of the original and unexpurgated editions of the *Noli Me Tangere* and the *El Filibusterismo*, as well as Rizal's other writings, is clearly unjust and unreasonable for all Catholic schools. It is moral certainty to expect all Catholic students in all Catholic colleges and universities to avail themselves of the exemption provided for in the law. Although the right to be exempted is granted to individuals, and not to groups, still a Catholic institution with an enrollment of five thousand college students, for instance, will have to slavishly and strictly follow the mandate imposed by the *RIZAL LAW* by purchasing adequate number of copies of books which for all practical purposes will not be read at all by the students. This library requirement on its face is discriminatory. The reason behind the granting of exemptions apply not only to Catholic students as individuals, but also to Catholic institutions as well.

The state, according to the Constitution, has the power to supervise and regulate all educational institutions, whether public or private. As regards the public schools the government has power of control. But even granting for the sake of argument that the government has control over private educational institutions, the same cannot be exercised over and above the natural and inherent right and duty of parents to educate their children. Such right and duty are unlimited and illimitable, as a general rule. The only time the government can rightfully restrain the exercise of this right is when such is directly or indirectly subversive or inimical to the welfare and interests of the state. As a matter of fact the Constitution guarantees governmental *aid and support* to such inherent right and duty; it does not intend to curtail much less suppress such right. The *Rizal Law*, under the guise of nationalism and patriotism, tends to suppress such right.

CONCLUSION

The purpose of the *Rizal Law* is to arouse in every Filipino heart love of country, civic virtues, and the spirit of liberty. There can be no question as to its nobility and righteousness. The original measure, Senate Bill No. 438, had to be amended for it sought to promote patriotism at the expense of liberty. Congress cannot arbitrarily impose its exclusive idea of what is right and turn a deaf ear to the vigorous and well-founded protests of those upon whom it seeks to impose its belief. Compulsion is the very antithesis of freedom. And so, acceding to the desires of those who would value their liberty above anything else, the bill underwent several amend-

ments. It has found its way into our statute books as R.A. 1425. Like many other human creations, the *Rizal Law* is full of imperfections. But these can be remedied by legislation.

Looking back at the history of the *Rizal Law*, one cannot help but see these contending forces: compulsion and liberty; governmental control and natural rights. Compulsion gave way to liberty, control yielded to the preeminent position of the individual citizen possessing natural rights. Such is the essence of true democracy. We can still say that in our legal and political system the state exists for the individual and not the individual for the state. The Bill of Rights has proved its worth!

The dark clouds that once gathered above our constitutional horizon last summer have vanished. But they may appear again, especially when least expected. Perhaps a repetition of some of those principles to which we steadfastly clung to in our moments of distress should be made here — to remind all liberty-loving people that:

1. The very reason why man has freedom of religion against the state is precisely because he has no freedom as against God. He has religious rights as against the state because he has a duty to God, which the state may not destroy, and which, therefore, has a right to assert against the state.¹⁸⁶
2. Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an even increasing severity. As government pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.¹⁸⁷
3. 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.¹⁸⁸ (Italics ours.)

With these principles deeply imbedded in our minds, we shall always be on guard, for nothing can better protect our priceless heritage and ensure its continued exercise than eternal vigilance!

¹⁸⁶ PARSONS, *op. cit. supra* note 123.

¹⁸⁷ West Virginia State Board of Education v. Barnette, *supra* note 62.

¹⁸⁸ *Id.*