

Protecting the Symbol against Symbolic Speech: the Unconstitutionality of the Flag and Heraldic Code

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This Article argues that Section 34 (a) and (f) of the Flag and Heraldic Code of the Philippines is unconstitutional for being violative of the freedom of speech and of expression. The Article finds background in an incident where a group of soldiers of the Armed Forces of the Philippines, who identified themselves as “Kawal Pilipino,” broadcasted on national television their grievances against the established system within the military.

The group displayed two Philippine flags stitched together at length’s end and bore the emblazoned word “KAWAL” along its entire length. The soldiers were charged with sedition. The alleged offense of disrespect to the flag was deemed absorbed in the charge. The Article also submits that although there is a law punishing the desecration of the Philippine flag, placing on it the word “KAWAL” would not constitute a crime by reason that the same is an exercise of the right to free speech and expression.

The Article achieves its objectives by providing a background on the development of Philippine laws relating to the protection of the flag as a national symbol. Several statutes are traced as the roots of the current law governing the subject matter. After such background, the Article discusses and surveys Philippine case law. It posits that there is scant jurisprudence that addresses the issue of conduct towards the national flag. Therefore, American cases are cited, being rich in this regard. Using said survey of jurisprudence, the Authors conclude that free speech enjoys primacy over the subject statute.

The Article submits that although the Flag and Heraldic Code protects the flag as a national symbol, it does so to the detriment of other constitutionally guaranteed rights insofar as it imposes a prior restraint on the freedom of expression. Also, beyond prior restraint, there is a limitation on the power of the State to impose subsequent punishment which may amount to prior restraint. Moreover, the Article suggests that dishonor and ridicule (which are the acts proscribed by the statute) are wanting in the

circumstances of the case. It even argues that the acts complained of are also expressions of patriotism.