

ACADEMIC FREEDOM AND THE REFORMS IN THE PHILIPPINE HIGHER EDUCATION¹

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Abstract. The current educational reforms affecting Higher Educational Institutions call for an examination of the status of Academic Freedom (AF). Comparing the notion of academic freedom from its origin and the current notion being esteemed by jurisprudence, I see the need for vigilance regarding the protection of AF so that such right will be fully realized and not just be set aside at the margins of academic practice.

In the first section, I argue for doing this research as AF is often taken for granted and not asserted. At times, AF is set aside in favor of an economic gain. In the second section, I demonstrate the origin of such concept and how such view is protected in the legal parlance. The key arguments for upholding AF are *argument from truth and knowledge*, *argument from autonomy and integrated human development* and *democratic arguments*. These arguments support AF, which is also guaranteed by a legal protection. In the third section, I argue that the current educational climate as manifested by the acts of the government institution, Commission on Higher Education (CHED), runs counter to the notion of AF as CHED fosters only one model that would ideologically constrain the “marketplace of ideas”. It would entail a monopoly of truth or knowledge, thereby, impinging on the freedom of the academicians to pursue other models. Also, in the long run, the reform only supports a model of human development dominated by economic values over other values.

Keywords: Academic Freedom, democratic argument, argument from autonomy, Outcomes Based Education (OBE), argument from truth or knowledge

Introduction

Academic freedom (AF) is rarely talked about or invoked in the professional circles of Higher Educational Institutions (HEIs) in the Philippines. There's a dearth of materials on such an issue, and even in the legal arena, asserting such constitutionally guaranteed right only arises at extreme necessity. Scholarship is almost nil.

Such lack of interest can be attributed to several factors. One, most HEIs foster and cultivate an academic environment that values AF. While this is ideal—this one is from what can be observed. Two, professors who are in a position to stand for their rights often occupy administrative positions that would entail toeing the line; no AF needs to be invoked. Three, university lecturers whose right may have been violated leave the issue to rest lest their jobs may be jeopardized, and asserting AF may take longer process, considering that litigation in the Philippines would take decades to finish—and this is not a hyperbole (Cf. *Bailen/UP vs. Court of Appeals*). Four, academic right is merely secondary to economic right, that is, the issue of university lecturers focused more on salaries and benefits—the problem of an academic environment can be borne as long as the pay is great. Five, lack of understanding of AF and the nuanced misperception that AF is possessed only by the university and not the professors. That is, AF is primarily ensconced in the HEIs and only extended and enjoyed by the professors insofar as they are employed by such institutions. (In this set-up, a question crops up why such right be invoked if it is merely corollary to the right on the HEIs.)

There could be more reasons, but the reasons that do not promote the assertion of AF may be grouped into three: indifference towards AF, fear of repercussions, and ignorance. Addressing ignorance, I think, might influence the preceding conditions. Thus, this study.

Another compelling reason to examine AF is the reform in the Philippine Educational system. The impact of such reform on the job security of university professors threatens the integrity of their academic tasks as they might perform their jobs to gain favor from administrators. Notice that the K-12 program would imply a drastic drop in the enrolments among HEIs, thereby calling for the reduction of university teachers. And, many universities remain ambiguous concerning their retention policies on this new situation. University lecturers remain in a quandary. As a consequence, some lecturers inveigle their way to win their administrators' heart—(the tacit idea here of AF is that of independence rather than antagonism).

In addition, CHED has lately put its foot down on certain policies with expansive implications on the affairs of HEIs in the Philippines. And, HEIs welcome without much ado CHED's acts—there are objections but such are merely voices in the wilderness so-to-speak.

By shedding light on AF, thus, I will be able to stimulate discussions on the roles of university lecturers as key contributors to higher education. Awareness on AF empowers them to respond to certain policies that would affect their professional practice.

Notion of Academic Freedom (AF)

The formal recognition of academic freedom as a right/privilege may be traced to the German concepts *Lehrfreiheit*—the freedom to teach—and *Lernfreiheit*—the freedom to learn (HLRA 1968, 1048-1049). Broadly, AF is some sort of privilege or right, where academics engage in their professional practice free of any interference from outside the university. On the one hand, *Lehrfreiheit*, in the German context, refers to the freedom of the university professors to choose the object of research and the subject to teach (HLRA 1968, 1048). On the other hand, *Lernfreiheit* refers to the right of the student

to choose whatever subject to study, whatever classes to attend, wherever university to go, and surprisingly, they can “wander from university to university” (Ibid., 1049).

This formal recognition of AF does not imply the absence of such notion in the earlier times. Before, academic freedom was regarded as a “feudal privilege” of scholars who possess authoritatively the ability to “teach and interpret doctrines.” Curiously, in Bologna, Italy, AF was conceived as the freedom of the students to hire teachers whose significant role was testing the abilities of their students; on other matters, they (the teachers) played no significant roles (Karran 2009, 265).

While these old notions no longer hold, they all attest to a degree of liberty that a scholar or university requires in the practice of his or her profession.

Today, the dominant paradigm in the understanding of AF emerged from the long history of American jurisprudence—one from whose tradition the Philippine jurisprudence most often borrows. In general, academic freedom is the liberty enjoyed by the members of academic community.

There are several landmark decisions that would illustrate such notion. I quote them here liberally:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.

The classroom is peculiarly the “marketplace of ideas.” The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth “out of a multitude of tongues, [rather] than through any kind of authoritative selection.”

“To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” (Keyishan vs Board of Regents)

Here, academic freedom is accorded to teachers and students on the ground that they are seeking novel developments in the “market place of ideas”; they constantly search for principles or discover technologies that will contribute to growth and knowledge. There is then openness to new knowledge even if such knowledge might appear or might run contrary to established beliefs; no entity can impose censorship on an academic institution despite that the new ideas would affect the sensibilities of the many.

More than the openness to other perspectives is the recognition that AF is a *conditio sine qua non* for the development of the society. This is true on the premise that mature professional education contributes to national development. This is why,

[t]he essentiality of freedom in the community of American universities is almost self-evident... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die... History has

amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society. (Sweezy v. New Hampshire 1957, 250)

With these assurances of AF, what other arguments are there for maintaining AF in the university or HEI?

Argument from truth or knowledge

In this view, academics engage themselves in the pursuit of truth or knowledge through research. They should remain unimpeded in their pursuit wherever their research may lead them. One could imagine what would have been our situation now—this view might be considered an *ex post facto* though—had the human world stifled the views of Nicolas Copernicus and Johannes Kepler. Had they been not free in their pursuit we would still perhaps maintained a geocentric view of the universe. AF is essential in the pursuit of knowledge or truth.

While it is purposeful, research is not purely utilitarian in its pursuit of truth or knowledge; the attainment of truth or knowledge is not solely pursued at that expense of all other goods. For example, can one agree that the pursuit of science in the name of truth is an acceptable practice at the expense of individuals, say, the Jews? The German National Socialists conducted inhumane experiments on the Jews—although some experiments nowadays seemed to have roots from the original projects of the Nazis. In this regard, the pursuit of truth, research for knowledge, is not the sole criterion for the guarantee and protection of academic freedom. Yet, truth or knowledge cannot be attained if the seekers are unfree to seek it.

Argument from autonomy or integrated human development

This view conceives of Higher Education as a phase of maturation for young adults who will be able to cultivate themselves by exposing themselves in the widest and most extensive dimension of human experience. And thus, for them to attain such maturation, they must thrive in an environment that is open and free. In this way, they will be able to engage in “varied and stimulating ideas” and learn independent thinking (Andreescu 2009, 510).

Here, the academic freedom of the students and the faculty is recognized: the former in their receptivity to learning and independent thinking and the latter in their position as authority in terms of knowledge of the subject matter and as role models.

Noteworthy in this context is the conception of academic freedom as necessary for maintaining integrity and stability. In other words, essential in the functioning of the teacher is that he or she ‘preaches what he [she] teaches.’

Also, academic freedom treats “academics as autonomous persons” and therefore accord them the respect as persons with integrity; “the freedom to investigate and teach lies at the core of the professional dignity of the academics” (Andreescu 2009, 510).

Democratic argument

The academic freedom of the institutions and individuals serves as a “safeguard from tyranny”. In other words, academic freedom fosters an environment that keeps despotism at bay. After all, in the free exchange of ideas, no idea is sacrosanct. Through academic freedom, an agent of HEI is empowered to communicate or express his/her ideas, thereby encouraging participation in the national life.

The key point, however, is the role of the institution in the so-called “nation-building,” that is, they produce professionals who will perform their roles in a democratic society. By

encouraging a liberal, educational environment, professionals are insulated from partisan politics, and they are more likely to provide an objective professional practice—they would be able to continue the democratization project of the society. (Keyishan v. Board of Regents, see online) Nancy Thomas (2010) argues,

Although this is vitally important, we need to shift the conversation from academic freedom as an individual right to academic freedom as a collective duty, a responsibility implicit in the social contract between ... education and democracy. It is a duty to study and teach subjects in ways that are publicly relevant and that inform and elevate public discourse. (85)

From her end, education has a social role in the society and the enjoyment of AF is directed towards the democratic aims of the society. Karran (2009, 277) puts it eloquently: “Academic freedom is at the heart of democracy.”

Opposition to Academic Freedom

Not everyone subscribes to AF for reasons of their own. Frank Donoghue (2009), for one, holds that academic freedom becomes irrelevant because in real practice issues of academic freedom can easily be swept under the rug by institutions, claiming professional incompetence in dismissing professors (618). Also by linking AF to tenure, advocates establish publication as a guarantor of tenure. In the long run, university teachers would always be scrambling their time just to publish. In doing so, they develop researches who will please administrators, and rather than venture into the unchartered areas of inquiry, they would only be contented with researches to hasten tenure.

Bromwich is blunter in objecting to a specialized notion of academic freedom. He claims that AF merely “rids us of the embarrassment of getting paid for work that lacks a utilitarian rationale.”

In a different paper, Evan Watkins sees Academic Freedom as obsolete and can be replaced by Academic Freedom/Academic Market. For him, since freedom is tied to academic tenure and therefore to merit, then it need not be retained if a professor has no market. After all, AF does not protect one from redundancy.

Academic Freedom in the Philippines

How is academic freedom understood in our setting? This one is settled. Ruben Agpalo (2006, 661-663) writes:

The institutional academic freedom of higher education includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain, free from outside coercion or interference save possibly when the overriding public welfare calls for restraint. The essential freedoms subsumed in the term 'academic freedom' encompass the freedom to determine for itself on academic grounds:

- (1) who may teach,
- (2) what may be taught, and
- (3) how it shall be taught, and
- (4) who may be admitted to study.”

In the passage above, AF is recognized as the characteristic autonomy of a higher educational institution to determine its academic concerns. This view is further expressed below:

The institutional academic freedom includes not only the freedom of professionally qualified persons to inquire, discover, publish, and teach the truth as they see it in the field of their competence subject to no control or authority except of rational methods by which their truths and conclusions are sought and established in their disciplines, but also the right of the school or college to decide for itself, its aims and

objectives and how best to attain them, free from outside coercion or interference save possibly when the overriding public welfare calls for the same restraint. (Agpalo 2006, 662)

The passage above recognizes the AF of the institution who shall exercise such in pursuit of knowledge and truth. It promotes an environment that is free from coercion and free from reprisal whenever the intellectual pursuit might be contrary to other views. In addition,

The personal aspect of academic freedom consists in the right of the university teacher—recognized and effectively guaranteed by society—to seek and express truth as he personally sees it, both in his academic work and in his capacity as a private citizen. Thus, the status of the individual university teacher is at least as important, in considering academic freedom, as the status of the institution to which he belongs and through which he disseminates his learning.

Academic freedom is more often identified with the right of a faculty member to pursue studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments. (662)

Miriam College vs. CA; Angeles v. Sison – discipline; (Agpalo 2006, 662)

Considering these promulgated decisions, we can glean that AF is found in institutions and only cascades to the academicians insofar as they are employed by these institutions. I disagree. The institutions are vested with that right because they are tasked to

protect the rights of the academicians and not the other way around. The UNESCO resolution says that:

17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved.

18. *Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions....* (UNESCO 1998, 28)

20. Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards.” (Ibid.) [italics added]

Philippine Educational Reforms

CHED Memorandum Order (CMO) 46, on the surface, reflects CHED’s assertion of its role as supervising body over HEIs. CHED appears to merely iterate itself as a government entity that does its job.

In this policy, however, CHED strongly advocates a paradigm shift from inputs based to outcomes-based quality assurance. Comparing this view from the notion of Academic Freedom, we

can glean that by ‘advocating’ OBE, CHED now mandates HEIs to have one specific bent: towards OBE. And, this is not for one institution. It is for all HEIs.

As a result, almost all HEIs cram to comply with such mandate to the point that each document, including or specifically the syllabi, must have OBE etched on it.

While Art. XI, Sec. 5, Par 2, of the 1987 constitution guarantees diversity in the “marketplace of ideas”, the so-called Academic Freedom, CHED with its policing powers require that everyone subscribe to its own advocacy.

Furthermore, the ideological view that undergirds such memo is found in section 5. On critical analysis, one can say that HEIs are being transformed as a facile training grounds for industries who would avoid investing on their employees for training and development as they already expect that the graduates of HEIs are already employable. The CMO, thus, states:

Section 5. The focus on quality and quality assurance is further underscored by the following:

Research findings suggesting that the lack of a critical pool of graduates with the necessary thinking, technical, and behavioural competencies are among the factors constraining the re-launching of the Philippine manufacturing sector and the achievement of the full potentials of the service sector;

The reality of an ASEAN community by 2015 which will facilitate the free flow of qualified labor in the region and either open up opportunities for graduates of Philippine HEIs or threaten their employment even in their own country;...

To be fair, it is possible that CHED recognizes the “marketplace of ideas,” and OBE is on sale—since everyone is buying it, CHED perhaps thought it best to procure and peddle OBE to all HEIs. Granting it has all the best intentions, it impinges

on AF because it advocates a paradigm for all at the expense of others. Even university professors have to tailor their methods to such a framework.

On nation-building. But also CMO 46 recognizes HEI's role as contributing to nation-building. One may say therefore that CHED recognizes the social contract and democratic aspect of AF. HEIs will produce graduates who will serve and preserve, so assumed, the democratic environment of the society.

Call it what you will, but OBE's premise is to transform graduates as market-ready. This is a good investment for external stakeholders; they'll pick diamonds without having to mine. When one acquires an office equipment, one cuts some slack for some errors at a cost until one is able to reap all the benefits. Sadly, this is not the case in the employment industry.

On the bright side, graduates stand to benefit from such endeavor; they are immediately employable: the land of milk and honey is ready when they finish their intellectual diaspora.

But that is the only option. If I were to apply the model of freedom as minimizing frustration over maximizing frustration, I doubt if the latter holds. At present, the social situation teems with graduates who remain unemployed, not for sheer lack of skill but for lack of employment opportunities.

It is possible that OBE-inspired educational philosophy would prepare our graduates to be on par with the skills of other nationalities in the ASEAN region or global arena. Then, in that very regard, our Educational orientation is doing its job of addressing brain drain.

Even if CHED's intention is to maintain QA, the expedience of OBE is insufficient to warrant its mandate.

Lifelong learning. What about lifelong learning? General Education Curriculum (GEC) will teach the student with critical and analytical thinking skills that will prepare them when they leave their institutions. Couch it in whatever language but

lifelong learning entails learning new skills so that one can step on the higher rung of the economic ladder. In other words, the notion requires individuals to equip themselves with skills that will make them competitive in the job market.

This is not to say that OBE is wrong *per se* and should be shelved by other HEIs. CHED's advocating it, however, while subordinating the rest to it is. And so by backing outcomes based education, CHED legitimizes the OBE as an ideological pedagogy.

By instituting a universal policy standard it tacitly narrows down the options of the universities to establish, if not develop, on their own the educational method, pedagogy, if you will. This is a clear breach in the notion that academic freedom empowers that institution to determine who will teach, how to teach, and where to teach.

I have outlined academic freedom as a right that protects academics insofar as they seek truth or knowledge, as instruments of autonomy or integrated human development, and contribute to the democratic ideal. CMO 46 does the contrary. And so, where is that Academic Freedom?

In conclusion, allow me to quote Biedenkopf:

If I hear professors argue today about suffering terribly under government constraints, I usually ask them, "What did you do? How did you act? How did you organize? What did you do against it? The answer often is, "Well, we do not want to get into trouble with the authorities. We do not want to get into trouble with this, that, or the other." In a society where professors act this way, simply granting academic freedom may be a fine thing, but it does not really fulfill freedom's promise. (Biedenkopf 2009, 810)

The rationale behind the educational reform is to consider the interests of the stakeholders. But the stakeholders in Higher Education are varied. Directly, the students, parents, and HEIs

are the stakeholders. Indirectly, businesses and industries have stakes in the education of HEIs for the reason that they stand to benefit from the educational achievement of graduates. Unfortunately, the ultimate end of education seems to favor the latter and only in hindsight the former. As a consequence, AF remains vulnerable and needs protection.

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