EN BANC

G.R. No. 230642 – OSCAR B. PIMENTEL, ERROL B. COMAFAY, JR., RENE B. GOROSPE, EDWIN R. SANDOVAL, VICTORIA R. LOANZON, ELGIN MICHAEL C. PEREZ, ARNOLD E. CACHO, AL CONRAD B. ESPALDON, ED VINCENT S. ALBANO, LEIGHTON R. SIAZON, ARIANNE C. ARTUGUE, CLARABEL ANNE R. LACSINA, KRISTINE JANE R. LIU, ALYANNA MARI C. BUENVIAJE, IANA PATRICIA DULA T. NICOLAS, IRENE A. TOLENTINO, and AUREA I. GRUYAL, *Petitioners,* **v. LEGAL EDUCATION BOARD, as represented by its Chairperson, HON. EMERSON B. AQUENDE, and LEB Member HON. ZENAIDA N. ELEPAÑO,** *Respondents*; **ATTYS. ANTHONY D. BENGZON, FERDINAND M. NEGRE, MICHAEL Z. UNTALAN, JONATHAN Q. PEREZ, SAMANTHA WESLEY K. ROSALES, ERIKA M. ALFONSO, KRYS VALEN O. MARTINEZ, RYAN CEAZAR P. ROMANO, and KENNETH C. VARONA,** *Respondents-in-Intervention*; **APRIL D. CABALLERO, JEREY C. CASTARDO, MC WELLROE P. BRINGAS, RHUFFY D. FEDERE, CONRAD THEODORE A. MATUTINO and numerous others similarly situated, ST. THOMAS MORE SCHOOL OF LAW AND BUSINESS, represented by its President RODOLFO C. RAPISTA, for himself and as Founder, Dean and Professor, of the College of Law, JUDY MARIE RAPISTA-TAN, LYNNART WALFORD A. TAN, IAN M. ENTERINA, NEIL JOHN VILLARICO as law professors and as concerned citizens,** *Petitioners-in-Intervention*;

G.R. No. 242954 – FRANCIS JOSE LEAN L. ABAYATA, GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, AL JAY T. MEJOS, ROCELLYN L. DAÑO, MICHAEL ADOLFO, RONALD A. ATIG, LYNNETTE C. LUMAYAG, MARY CHRIS LAGERA, TIMOTHY B. FRANCISCO, SHEILA MARIE C. DANDAN, MADELINE C. DELA PEÑA, DARLIN R. VILLAMOR, LORENZANA L. LLORICO, and JAN IVAN M. SANTAMARIA, *Petitioners,* **v. HON. SALVADOR MEDIALDEA, Executive Secretary, and LEGAL EDUCATION BOARD, herein represented by its Chairperson, EMERSON B. AQUENDE,** *Respondents.*

Promulgated:
September 10, 2019

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SEPARATE DISSENTING AND CONCURRING OPINION

LEONEN, *J.*:

The provisions permitting the imposition of the Philippine Law School Admission Test, as well as the entire concept of the Legal Education Board, are unconstitutional for intruding on the academic freedom of law schools and the universities and colleges to which they belong. The State has no business in deciding and substituting its judgment for the academic institutions. Any government attempt to dictate upon universities the qualifications of their studentry or interfere with their curriculum undermines the school's academic freedom.

Institutions of learning perform a vital function in nurturing and sharpening the people's understanding and intellect. They ensure an educated and thriving citizenry on whom a nation's civilization and life depend. Education leads to an economically productive populace through learned skill. More importantly, it gears the people toward thinking more prudently and critically.

Without educational institutions, our country will inevitably approach a shallow and dismal future. Thus, the State has a paramount interest in guaranteeing that they flourish and function robustly. Part and parcel of this guarantee is to allow them to freely determine for themselves their "aims and objectives and how best to attain them."[1]

One (1) of the four (4) essential academic freedoms is the academic institutions' right to determine who they will admit to study. In ascertaining who to admit in their institutions, law schools should be given autonomy in establishing their own policies, including the examination that they will employ.

The Philippine Law School Admission Test is an unwarranted intrusion into this essential freedom. The government's imposition of a passing score as a bar to admission violates the educational institutions' academic freedom to determine *who to admit to study*. The existence of the Legal Education Board, on the other hand, interferes with the right of academic institutions with respect to how to teach and who to teach.

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[1] *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 943 (1975) [Per J. Fernando, En Banc].

I

Academic freedom, as enshrined in our present Constitution, guarantees the fundamental protection to academic institutions. Article XIV, Section 5(2) states that "[a]cademic freedom shall be enjoyed in all institutions of higher learning."

This provision is equivalent to its precursor, Article XV, Section 8(2) of the 1973 Constitution, which stated that "[a]ll institutions of higher learning shall enjoy academic freedom." This, in turn, was an expansion of its counterpart in the 1935 Constitution which limited the grant of academic freedom to state-established universities. Article XIII, Section 5 of the 1935 Constitution stated:

> SECTION 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.

From this, the 1973 Constitution provided a broader protection by giving the same guarantee to private educational institutions.[2]

The nature and scope of academic freedom was first discussed at length in the 1975 case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*.[3] This Court recognized academic freedom as an institutional facet, and not solely confined to individual academic freedom or the right of faculty members to pursue their studies without fear of reprisal. In interpreting the import of the constitutional provision, this Court said:

> For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. *It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students.* This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G.

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2 J. Makasiar, Dissenting Opinion in *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 951 (1975) [Per J. Fernando, En Banc].

3 160-A Phil. 929 (1975) [Per J. Fernando, En Banc].

> Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor."[4] (Emphasis supplied, citation omitted)

Garcia concerned a Petition for Mandamus filed by Epicharis Garcia, a woman, to compel the Loyola School of Theology to allow her to continue her studies in the seminary. In dismissing the Petition, this Court upheld the discretion of educational institutions to choose who may be admitted to study.[5] *Garcia* referred to the four (4) essential freedoms as the parameters of academic freedom:

> Justice Frankfurter, with his extensive background in legal education as a former Professor of the Harvard Law School, referred to what he called the business of a university and the four essential freedoms in the following language: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. *It is an atmosphere in which there prevail 'the four essential freedoms' of a university — to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.* "[6] (Emphasis supplied, citation omitted)

Justice Claudio Teehankee's concurring opinion in *Garcia* is also instructive. He recognized that courts have neither the competence nor the inclination to decide who shall be admitted to an educational institution. Instead, they will only overturn the judgment of academic institutions after an exhaustion of administrative remedies and upon showing of arbitrariness on the school's part. He explained:

> Only after exhaustion of administrative remedies and when there is marked arbitrariness, will the courts interfere with the academic judgment of the school faculty and the proper authorities as to the competence and fitness of an applicant for enrollment or to continue taking up graduate studies in a graduate school. The courts simply do not have the competence nor inclination to constitute themselves as Admission Committees of the universities and institutions of higher learning and to substitute their judgment for that of the regularly constituted Admission Committees of such educational institutions. Were the courts to do so, they would conceivably be swamped with petitions for admission from the thousands refused admission every year, and next the thousands who flunked and were dropped would also be petitioning the courts for a judicial review of their grades![7]

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4 Id. at 943.

5 The institutional academic freedom reflected in *Garcia* was reiterated in the later case of *University of the Philippines v. Ayson*, 257 Phil. 580, 584–585 (1989) [Per J. Bidin, En Banc], where this Court held that the abolition of the UP College Baguio High School as a decision of the UP Board of Regents is within its exercise of academic freedom. Thus, as an "institution of higher learning enjoying academic freedom, the UP cannot be compelled to provide for secondary education."

6 *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975) [Per J. Fernando, En Banc].

7 J. Teehankee, Concurring Opinion in *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 949 (1975) [Per J. Fernando, En Banc].

Following the ruling in *Garcia*, this Court in *Tangonan v. Paño*[8] reiterated that it cannot compel academic institutions to admit students who fail to meet standard policies and qualifications. To rule otherwise, it held, would violate the institution's discretion on the admission and enrollment of students as a major component of academic freedom:

> [S]till petitioner would want Us to compel respondent school to enroll her despite her failure to meet the standard policies and qualifications set by the school. To grant such relief would be doing violence to the academic freedom enjoyed by the respondent school enshrined under Article XV, Section 8, Par. 2 of our Constitution which mandates "that all institutions of higher learning shall enjoy academic freedom." This 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 truths and conclusions are sought and established in these disciplines, but also the right of the school or college to decide for itself, its aims and objectives, and how best to attain them - the grant being to institutions of higher learning — free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint.[9]

In *San Sebastian College v. Court of Appeals*,[10] this Court likewise ruled that a student's failure to comply with academic standards justifies the institution's refusal to admit him or her.

An institution's discretion in determining who to admit extends to its decision on who to dismiss. In *Ateneo De Manila University v. Capulong*,[11] this Court upheld the institution's discretion to dismiss erring students. It reiterated that schools have the right to establish academic and disciplinary standards, and in failing to comply with these standards, a student can be validly dismissed:

> Since *Garcia v. Loyola School of Theology*, we have consistently upheld the salutary proposition that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right. While under the Education Act of 1982, students have a right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation," such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution.
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> For private schools have the right to establish reasonable rules and regulations for the admission, discipline and promotion of students. . . .

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8 221 Phil. 601 (1985) [Per J. Cuevas, Second Division].
9 Id. at 611–612.
10 274 Phil. 414 (1991) [Per J. Medialdea, First Division].
11 294 Phil. 654 (1993) [Per J. Romero, En Banc].

> Such rules are "incident to the very object of incorporation and indispensable to the successful management of the college. The rules may include those governing student discipline." Going a step further, the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.[12] (Citations omitted)

In *Licup v. University of San Carlos*,[13] the petitioners were students who had been denied readmission to the university after a chaotic assembly that resulted in violations of the university handbook rules. They were also found to have academic deficiencies. In upholding the university's decision, this Court held that the students were not deprived of due process during the investigation, and that their serious breach of discipline and failure to maintain the academic standard forfeited their contractual right to continue studying in the university.[14] This Court ruled similarly in *Alcuaz v. Philippine School of Business Administration*,[15] *Magtibay v. Garcia*,[16] *University of San Agustin v. Court of Appeals*,[17] and *Spouses Go v. Colegio de San Juan de Letran*.[18]

In *Miriam College Foundation, Inc. v. Court of Appeals*,[19] this Court further amplified the scope of academic freedom when it upheld the institution's right to discipline its students. It pronounced:

> Section 5 (2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompasses the freedom to determine for itself on academic grounds:
>
> (1)Who may teach,
> (2)What may be taught,
> (3)How it shall be taught, and
> (4)Who may be admitted to study.
>
> The right of the school to discipline its students is at once apparent in the third freedom, *i.e.*, "how it shall be taught." A school certainly cannot function in an atmosphere of anarchy.
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> Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the

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12 Id. at 675.
13 258-A Phil. 417 (1989) [Per J. Gancayco, First Division].
14 Id. at 423–424.
15 244 Phil. 8 (1988) [Per J. Paras, Second Division].
16 205 Phil. 307 (1983) [Per J. Escolin, Second Division].
17 300 Phil. 819 (1994) [Per J. Nocon, Second Division].
18 697 Phil. 31 (2012) [Per J. Brion, Second Division].
19 401 Phil. 431 (2000) [Per J. Kapunan, First Division].

> maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property.
>
> Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach."[20] (Citations omitted)

An academic institution's right to discipline its students was held applicable even to students' activities outside campus premises. In *Angeles v. Sison*,[21] this Court ruled that the school's power over its students does not absolutely cease when they set foot outside the school premises. Moreover, the students' conduct, if directly affecting the school's good order and welfare, may be subject to its discipline:

> A college, or any school for that matter, has a dual responsibility to its students. One is to provide opportunities for learning and the other is to help them grow and develop into mature, responsible, effective and worthy citizens of the community. Discipline is one of the means to carry out the second responsibility.
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> Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property. The power of school officials to investigate, an adjunct of its power to suspend or expel, is a necessary corollary to the enforcement of such rules and regulations and the maintenance of a safe and orderly educational environment conducive to learning.
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> . . . .
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> Common sense dictates that the school retains its power to compel its students in or off-campus to a norm of conduct compatible with their standing as members of the academic community. Hence, when as in the case at bar, the misconduct complained of directly affects the suitability of the alleged violators as students, there is no reason why the school can not impose the same disciplinary action as when the act took place inside the campus.[22]

In the more recent case of *Cudia v. Superintendent of the Philippine Military Academy*,[23] this Court reiterated that a school's right to discipline its students is part of the third essential freedom. There, this Court upheld the Philippine Military Academy's enforcement of its internal rules pursuant

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20 Id. at 455–456.
21 197 Phil. 713 (1982) [Per J. Fernandez, Second Division].
22 Id. at 724–726.
23 754 Phil. 590 (2015) [Per J. Peralta, En Banc].

to its academic freedom. The petitioner in *Cudia* was a graduating honor student who was dismissed for violating the institution's Honor Code. Affirming the dismissal, this Court ruled that the academy enjoys academic freedom to impose disciplinary measures and punishment as it deems fit:

> The schools' power to instill discipline in their students is subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival." As a Bohemian proverb puts it: "A school without discipline is like a mill without water." Insofar as the water turns the mill, so does the school's disciplinary power assure its right to survive and continue operating. In this regard, the Court has always recognized the right of schools to impose disciplinary sanctions, which includes the power to dismiss or expel, on students who violate disciplinary rules.[24] (Citations omitted)

Nevertheless, in *Villar v. Technological Institute of the Philippines*,[25] this Court clarified that the discretion of educational institutions is not absolute as to impinge on the students' constitutional rights. In *Villar*, the petitioners took part in an assembly and were subsequently denied admission by the university, which claimed that the students flunked. In finding that some of the petitioners did not violate the school's academic standards, this Court ruled that while the institution can deny admission to students with academic deficiencies, the academic freedom it enjoys cannot be used to discriminate against qualified students who exercise their constitutional rights.[26] This Court held:

> The academic freedom enjoyed by "institutions of higher learning" includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students. Once it has done so, however, that standard should be followed meticulously. It cannot be utilized to discriminate against those students who exercise their constitutional rights to peaceable assembly and free speech. If it does so, then there is a legitimate grievance by the students thus prejudiced, their right to the equal protection clause being disregarded.[27]

Similarly, in *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*,[28] this Court ruled against the university's refusal to admit the petitioner as its student. Explaining that "academic freedom has never been meant to be an unabridged license[,]" it held that the university cannot hide behind the shroud of academic freedom to act arbitrarily in dismissing a student.[29]

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24 Id. at 655–656.
25 220 Phil. 379 (1985) [Per C.J. Fernando, En Banc].
26 Id. at 384.
27 Id.
28 298 Phil. 382 (1993) [Per J. Vitug, En Banc].
29 Id. at 387–388.

Malabanan v. Ramento,[30] *Arreza v. Gregorio Araneta University*,[31] *Guzman v. National University*,[32] *Non v. Dames II*[33] were ruled in the same vein.

An academic institution's discretion applies not only to the admission and dismissal of its students, but also to its decision to confer academic recognition. In *Morales v. Board of Regents*,[34] the petitioner was a University of the Philippines student who questioned the university's decision not to grant her the academic distinction of *cum laude* due to a contested grade computation. In upholding this decision, this Court emphasized that "the wide sphere of autonomy given to universities in the exercise of academic freedom extends to the right to confer academic honors." It held:

> [The] exercise of academic freedom grants the University the exclusive discretion to determine to whom among its graduates it shall confer academic recognition, based on its established standards. And the courts may not interfere with such exercise of discretion unless there is a clear showing that the University has arbitrarily and capriciously exercised its judgment. Unlike the UP Board of Regents that has the competence and expertise in granting honors to graduating students of the University, courts do not have the competence to constitute themselves as an Honor's Committee and substitute their judgment for that of the University officials.[35]

Nevertheless, this Court has affirmed in the past the State's power to intrude—in very limited circumstances—into the admission process of schools imbued with public interest. Specifically, students applying to medical schools have to take and pass a state-sponsored examination as a condition to their admission.

In *Tablarin v. Gutierrez*,[36] the petitioners questioned the constitutionality of the National Medical Admission Test, a uniform admission test required by the Board of Medical Education and administered by the Center for Educational Measurement.[37] They sought to declare as unconstitutional portions of Republic Act No. 2382 and Ministry of Education, Culture, and Sports Order No. 52-1985, which require "the taking and passing of the [National Medical Admission Test] as a condition for securing certificates of eligibility for admission."[38] The order characterizes the test as an aptitude examination that aims to upgrade "the

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30 214 Phil. 319 (1984) [Per C.J. Fernando, En Banc].
31 221 Phil. 470 (1985) [Per C.J. Fernando, En Banc].
32 226 Phil. 596 (1986) [Per J. Narvasa, En Banc].
33 264 Phil. 98 (1990) [Per J. Cortes, En Banc].
34 487 Phil. 449 (2004) [Per J. Chico-Nazario, Second Division].
35 Id. at 474.
36 236 Phil. 768 (1987) [Per J. Feliciano, En Banc].
37 Id. at 774.
38 Id.

selection of applicants for admission into the medical schools and . . . to improve the quality of medical education in the country."[39]

In denying the Petition, this Court ruled that the requirement of taking and passing the National Medical Admission Test was a valid exercise of police power. It found the objectives cited in the order to be valid. It also found a reasonable relation between prescribing the test as a condition for admission to medical schools and securing the health and safety of the general public.[40]

Tablarin characterized state-sponsored admission tests as an exercise of police power that advanced legitimate interests.

This was further elaborated in *Department of Education, Culture, and Sports v. San Diego*,[41] the issue of which also revolved around the National Medical Admission Test. In that case, the petitioners were students who questioned the three-flunk rule, which states that students may only take the exam thrice, and are barred from taking it again after three (3) successive failures.[42] They argued that this limitation violates their constitutional right to academic freedom and education.

The trial court first ruled in favor of petitioners, finding that the three-flunk rule was an arbitrary exercise of police power.[43] However, this Court reversed its decision and, reiterating its pronouncements in *Tablarin*, found the National Medical Admission Test to be a valid exercise of police power:

> The subject of the challenged regulation is certainly within the ambit of the police power. It is the right and indeed the responsibility of the State to insure that the medical profession is not infiltrated by incompetents to whom patients may unwarily entrust their lives and health.
>
> The method employed by the challenged regulation is not irrelevant to the purpose of the law nor is it arbitrary or oppressive. The three-flunk rule is intended to insulate the medical schools and ultimately the medical profession from the intrusion of those not qualified to be doctors.
>
> While every person is entitled to aspire to be a doctor, he does not have a constitutional right to be a doctor. This is true of any other calling in which the public interest is involved; and the closer the link, the longer the bridge to one's ambition. The State has the responsibility to harness its human resources and to see to it that they are not dissipated or, no less worse, not used at all. These resources must be applied in a manner that

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39 Id. at 776–777.
40 Id. at 782.
41 259 Phil. 1016 (1989) [Per J. Cruz, En Banc].
42 Id. at 1018.
43 Id. at 1019.

> will best promote the common good while also giving the individual a sense of satisfaction.
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> A person cannot insist on being a physician if he will be a menace to his patients. If one who wants to be a lawyer may prove better as a plumber, he should be so advised and adviced (*sic*). Of course, he may not be forced to be a plumber, but on the other hand he may not force his entry into the bar. By the same token, a student who has demonstrated promise as a pianist cannot be shunted aside to take a course in nursing, however appropriate this career may be for others.
>
> The right to quality education invoked by the private respondent is not absolute. The Constitution also provides that "every citizen has the right to choose a profession or course of study, subject to fair, reasonable and equitable admission and academic requirements."
>
> The private respondent must yield to the challenged rule and give way to those better prepared. Where even those who have qualified may still not be accommodated in our already crowded medical schools, there is all the more reason to bar those who, like him, have been tested and found wanting.
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> The contention that the challenged rule violates the equal protection clause is not well-taken. A law does not have to operate with equal force on all persons or things to be conformable to Article III, Section 1 of the Constitution.
>
> There can be no question that a substantial distinction exists between medical students and other students who are not subjected to the National Medical Admission Test and the three-flunk rule. The medical profession directly affects the very lives of the people, unlike other careers which, for this reason, do not require more vigilant regulation. The accountant, for example, while belonging to an equally respectable profession, does not hold the same delicate responsibility as that of the physician and so need not be similarly treated.[44] (Citation omitted)

Department of Education, Culture, and Sports highlighted the special character of the medical profession, which justifies the three-flunk rule in the National Medical Admission Test in force at that time. As the medical profession "directly affects the very lives of the people,"[45] this Court found that the three-flunk rule was valid insofar as it seeks to admit only those who are academically qualified to study in a medical school.

Tablarin and *Department of Education, Culture, and Sports* both resolved issues on the right to quality education and the right to choose a profession vis-à-vis the State's power to regulate admission to schools through a uniform aptitude test. In both cases, this Court found that administering the National Medical Admission Test was a reasonable exercise of police power.

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[44] Id. at 1021–1023.
[45] Id. at 1023.

However, it should be remembered that the parties in these cases were student-applicants who asserted their right to the course of study of their own choosing. The issue of institutional academic freedom in relation to a standardized test imposed by the State was not discussed. The medical schools covered by the order that institutionalizes the National Medical Admission Test have not asserted their exclusive right to determine who may be admitted to their institutions pursuant to their academic freedom.

Reyes v. Court of Appeals[46] comes close. There, students of the University of the Philippines College of Medicine questioned the National Medical Admission Test's cutoff grade for admission, which was prescribed by the college faculty but was not approved by the University Council. The faculty, for its part, asserted institutional academic freedom in arguing that it had the power to determine the admission requirements of the college. However, this Court found that this power was vested in the University Council, not the faculty:

> Under the UP Charter, the power to fix admission requirements is vested in the University Council of the autonomous campus which is composed of the President of the University of the Philippines and of all instructors holding the rank of professor, associate professor or assistant professor (Section 9, Act 1870). Consequently, the UC alone has the right to protest against any unauthorized exercise of its power. Petitioners cannot impugn these BOR directives on the ground of academic freedom inasmuch as their rights as university teachers remain unaffected.[47]

Reyes, therefore, resolved an issue that was not so much a question of whether the State violated institutional academic freedom, but whether it was the proper academic unit that asserted this freedom.

The crucial question before this Court now is whether the state-sponsored Philippine Law School Admission Test, in its current configuration, violates institutional academic freedom.

I agree with the majority that it does.

As found by the majority, the Philippine Law School Admission Test, unlike the National Medical Admission Test, violates institutional academic freedom[48] insofar as it prescribes a passing score that must be followed by law schools.[49] Failure to reach the passing score will disqualify the examinee from admission to any Philippine law school. This is because a Certificate of Eligibility is necessary for enrollment as a first year law

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46 272 Phil. 241 (1991) [Per J. Medialdea, En Banc].
47 Id. at 254.
48 Ponencia, p. 85.
49 Legal Education Board Memorandum Order No. 7 (2016), par. 7.

student.[50] Respondent Legal Education Board, which administers the test, only allows law schools to impose additional requirements for admission, but passing the test is still mandatory.[51] The failure of law schools to abide by these requirements exposes them to administrative sanctions.[52]

In contrast, failure to achieve a certain score in the National Medical Admission Test no longer disqualifies an examinee from applying to all medical schools. For one, test scores are reported with a corresponding percentile rank that ranges from 1 to 99+. It "indicates the percentage of [National Medical Admission Test] examinees who have [test] scores the same as or lower than the examinee."[53] This percentile rank is evaluated by the medical schools against the cutoff grade that they themselves determine.[54] Hence, the percentile rank cutoff is only a "minimum score that qualifies an examinee as a bonafide applicant for admission into his/her preferred medical school."[55] The test score only determines the available medical schools where a person may apply; the higher the score, the more options the applicant has.

Thus, I agree with the majority's characterization that the Philippine Law School Admission Test employs a "totalitarian scheme"[56] that leaves the actions of law schools entirely dependent on the test results.[57] It usurps the right of law schools to determine the admission requirements for its would-be students—ultimately infringing on the institutional academic freedom they possess, as guaranteed by the Constitution.

II

However, the majority ruled that the Philippine Law School Admission Test is unconstitutional only insofar as it is a mandatory requirement for the law schools' admissions processes.

I disagree. The Philippine Law School Admission Test—or, for that matter, any national admission test—even if not made mandatory, still infringes on academic freedom.

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50 Legal Education Board Memorandum Order No. 7 (2016), par. 9.
51 Legal Education Board Memorandum Order No. 7 (2016), par. 11.
52 Legal Education Board Memorandum Order No. 7 (2016), par. 15.
53 Center for Educational Measurement, Inc., *National Medical Admission Test Bulletin of Information* (2019), available at <https://cem-inc.org.ph/nmat/files/upload/BOI_NMAT_Regular2019_web.pdf> (last accessed on September 9, 2019).
54 Commission on Higher Education Memorandum Order No. 03 (2003) delegates the determination of the National Medical Admission Test cutoff score to the respective medical schools. Available at <https://ched.gov.ph/cmo-3-s-2003-2/> (last visited on September 9, 2019).
55 Center for Educational Measurement, Inc., *National Medical Admission Test Bulletin of Information*, 6 (2019), available at <https://www.cem-inc.org.ph/National Medical Admission Test/files/upload/BOI_National Medical Admission Test_Summer_2019.pdf> (last accessed on September 9, 2019).
56 Ponencia, p. 87.
57 Id.

Academic freedom as a constitutional right should be interpreted with the understanding that this guarantee lies within the broader sphere of the Bill of Rights.

Academic discussions and other forms of scholarship are manifestations and extensions of an individual's thoughts and beliefs. Thus, academic freedom is constitutionally granted to students, faculty, and academic institutions alike:

> Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. *If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured.* A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. . . . Hence the main concern over developing and maintaining academic freedom in this country has focused upon encouragement and protection of the freedom of the faculty member.[58] (Emphasis supplied)

Academic freedom is anchored on the recognition that academic institutions perform a social function and its business is conducted for the common good; that is, it is a necessary tool for critical inquiry of truth and its free exposition. The guarantee of academic freedom is complementary to freedom of expression and of the mind.

Thus, to foster an environment of critical discussion and inquiry, the faculty must be given a degree of independence from their employers, and universities must have a degree of independence from the State.[59] This constitutional protection guaranteed for the students, faculty, and institutions is not merely a job-related concern or an institutional interest; rather, it "promotes First Amendment values of general concern to all citizens in a democracy."[60]

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58 Ralph F. Fuchs, *Academic Freedom: Its Basic Philosophy, Function and History*, 28 LAW AND CONTEMPORARY PROBLEMS 431, 433 (1963), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2963&context=lcp> (last visited on September 9, 2019).

59 David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment*, 53 LAW AND CONTEMPORARY PROBLEMS 227, 230 (1990), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4057&context=lcp> (last visited on September 9, 2019).

60 Id.

As eloquently discussed by then Justice Felix Makasiar in his dissenting opinion in *Garcia*, blows against academic freedom inevitably strike at the core of freedom of expression:

> The cardinal article of faith of our democratic civilization is the preservation and enhancement of the dignity and worth of the human personality. It was Mr. Justice Frankfurter himself who emphasized that man's "inviolate character" should be "protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person", so that the individual can fully develop himself and achieve complete fulfillment. His freedom to seek his own happiness would mean nothing if the same were not given sanctuary "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments and the scorn and derision of those who have no patience with general principles".
>
> . . . This individual freedom and right to happiness should be recognized and respected not only by the State but also by enterprises authorized by the State to operate; for as Laski stressed: "Without freedom of the mind . . . a man has no protection in our social order. He may speak wrongly or foolishly, . . . Yet a denial of his right . . . is a denial of his happiness. Thereby he becomes an instrument of other people's ends, not himself an end".
>
> As Justice Holmes pronounced, "the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out".
>
> The human mind is by nature an inquiring mind, whether of the very young or of the very old or in-between; for freedom of speech in the words of John Milton is the "liberty to know, to utter, and to argue freely according to conscience above all liberties."
>
> What is involved here is not merely academic freedom of the higher institutions of learning as guaranteed by Section 8(2) of Article [X]V of the 1973 Constitution. The issue here strikes at the broader freedom of expression of the individual — the very core of human liberty.
>
> Even if the term "academic freedom" were to be limited to institutions of higher learning — which to the mind of Dr. Vicente Sinco, an eminent authority in Constitutional Law, is the right of the university as an institution, not the academic freedom of the university professor — the term "institutions of higher learning" contained in the aforecited provision of our New Constitution comprehends not only the faculty and the college administrators but also the members of the student body. While it is true that the university professor may have the initiative and resourcefulness to pursue his own research and formulate his conclusions concerning the problem of his own science or subject, the motivation therefor may be provoked by questions addressed to him by his students. In this respect, the student — specially a graduate student — must not be restrained from raising questions or from challenging the validity of dogmas, whether theological or not. The true scholar never avoids, but on the contrary welcomes and encourages, such searching questions even if the same will

> have the tendency to uncover his own ignorance. It is not the happiness and self-fulfillment of the professor alone that are guaranteed. *The happiness and full development of the curious intellect of the student are protected by the narrow guarantee of academic freedom and more so by the broader right of free expression, which includes free speech and press, and academic freedom.*[61] (Emphasis supplied, citations omitted)

Academic freedom is intertwined with intellectual liberty. It is inseparable from one's freedom of thought, speech, expression, and the press.[62] Thus, the institutions' and individuals' right to pursue learning must be "free from internal and external interference or pressure."[63]

In American jurisprudence, the protection of academic freedom has been identified as a subset of the First Amendment.[64] In *Sweezy v. New Hampshire*,[65] the U.S. Supreme Court tied the First Amendment values of critical inquiry and search for truth to the autonomy of academic institutions and its faculty from the State's intrusion:

> No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket 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.[66]

Freedom of expression is a cognate of academic freedom. Hence, the zealous protection accorded to freedom of expression must necessarily be reflected in the level of protection that covers academic freedom. Any form of State intrusion against academic freedom must be treated suspect.

Central to the resolution of this case is the freedom of academic institutions, particularly law schools, to determine *who may be admitted to study*. As part of their academic self-government, law schools are given the discretion to come up with an autonomous decision on their admission

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61 J. Makasiar, Dissenting Opinion in *Garcia v. The Faculty Admission Committee, Loyola School of Technology*, 160-A Phil. 929, 954–956 (1975) [Per J. Fernando, En Banc].

62 *Ateneo De Manila University v. Capulong*, 292 Phil. 654, 672–673 [Per J. Romero, En Banc].

63 Id. at 673.

64 See J. Douglas, Dissenting Opinion in *Adler v. Board of Education,* 342 U.S. 485 (1952), where the U.S. Supreme Court first mentioned academic freedom as a constitutional right. In *Adler*, Justice Douglas stated that "[t]he Constitution guarantees freedom of though and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher. The public school is in most respects the cradle of our democracy… the impact of this kind of censorship in the public school system illustrates the high purpose of the First Amendment in freeing speech and thought from censorship; *See also* J. Frankfurter, Dissenting Opinion in *Wieman v. Updegraff*, 344 U.S. 183 (1952).

65 354 U.S. 234 (1957).

66 Id. at 251.

policies, including the examination they will administer. A state-sponsored examination like the Philippine Law School Admission Test, which tends to control the internal affairs of academic institutions, runs afoul of that essential freedom.

Moreover, according to the majority, "[t]he subject of the [Philippine Law School Admission Test] is to improve the quality of legal education."[67] Thus, under the State's police power, the imposition of the test is justified by the State's interest to improve the quality of legal education.[68]

I view that the thesis that changing the admissions policy will improve the quality of law schools is non-sequitur.

The standards for choosing who to admit are entirely different from the standards for maintaining or ensuring the quality of instruction. The process of admitting students is unrelated to the quality of the law school. Even if it were indeed related, respondent Legal Education Board has done no specific study to justify the administration of the Philippine Law School Admission Test. Test makers even admit that admission tests do not measure "smartness."[69] It is not an accurate barometer of merit, but only a measure of correlation between the exam scores and the students' first-year grades.[70] At best, respondent Legal Education Board relied on anecdotal evidence, which, in academic circles, is the worst way to justify policy. The Philippine Law School Admission Test is, therefore, arbitrary.

A closer look shows that the Philippine Law School Admission Test does not merely recommend, but dictates on law schools who are qualified to be admitted. By prescribing a passing score and predetermining who may enroll in law schools, the State forces its judgment on the institutions, when it has no business doing so. Any governmental attempt to dictate upon schools the composition of their studentry undermines their institutional academic freedom.[71]

Moreover, the final basis of the administration of the Philippine Law School Admission Test, regardless of whether there have been consultants, will always rest on the government-appointed members of respondent Legal Education Board. Yet, as this case shows, the Chair of the Board may not have the postgraduate academic, teaching, or college or university administrator credentials. Being government appointees, its members are

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67 Ponencia, p. 81.

68 Id.

69 LANI GUINIER, THE TYRANNY OF THE MERITOCRACY 17–18 (2016).

70 Id.

71 David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment*, 53 LAW AND CONTEMPORARY PROBLEMS 227, 272 (1990), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4057&context=lcp> (last visited on September 9, 2019).

prone to influences by their appointing power, consequently undermining the academe's most significant roles: to inquire into the truth, to powerfully disseminate this truth, and to speak this truth to power.

In the United States, admission to law schools is usually preceded by taking a standardized aptitude examination called the Law School Admission Test. While it may seem similar to our own test, important distinctions must be made. First, the U.S. Law School Admission Test is not a state-sponsored exam. It is administered by the Law School Admission Council, a private nonprofit that promotes "quality, access, and equity in law and education[.]"[72] Hence, the Law School Admission Test is a mere creation of law schools.[73]

In some cases, an aspiring student may even be accepted to a law school without taking the test.[74] Thus, unlike in the Philippines, the adherence of U.S. law schools to the Law School Admission Test is purely voluntary. The test results may be used merely as one (1) of the many criteria for admission, which a law school may determine for itself.[75] The Law School Admission Test is designed merely as a tool to help law schools make sound admission decisions.[76]

The Philippine Law School Admission Test, by contrast, undermines the critical function of law schools to provide pieces of truth that may ripen into critique of government. The State's intrusion, whatever form it may be, stifles the ability of the academic institution to be critical. This Court should remain ever so vigilant on any infraction of the Constitution disguised with good intentions.

Law schools are the principal institutions that have the space to analyze, deconstruct, and even critique our laws and jurisprudence. They not only teach doctrine, but examine its fundamentals.

The kind of freedom of expression contained in academic freedom is different from political expression. Within political or creative spaces, freedom of expression takes an almost unqualified immunity. Any thought,

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72 Law School Admission Council, *About the Law School Admission Council*, available at <https://www.lsac.org/about> (last accessed on September 9, 2019).

73 Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicions Effects of Rankings*, 81 INDIANA LAW JOURNAL 322, 323 (2006). Available at < http://ilj.law.indiana.edu/articles/81/81_1_Johnson.pdf> (last visited on September 9, 2019).

74 The Princeton Review, *ABA Accredited Law School*, available at <https://www.princetonreview.com/law-school-advice/law-school-accreditation> (last accessed August 27, 2019).

75 See Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61RUTGERS LAW REVIEW 1014 (2009). Available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1169&context=cl_pubs> (last visited on September 9, 2019). Even the Law School Admissions Council, which administers the LSAT, cautions law schools against over-reliance on LSAT scores in the admissions process.

76 Id.

whether or not it is hated by the dominant, finds protection without regard to its slant or falsity. In the sphere of political debate, falsehoods are platforms for testing reason and providing opportunities to publicly advocate what is true persuasively.

On the other hand, within the academe, falsities in method and content are deliberately rooted out, exposed, and marginalized so that the public debate is enriched, whether among the institution's students or the world beyond its walls. Academic freedom is the constitutional canon that protects this space from politics. It is the freedom that assures academic intellectual debate without fear of any governmental intervention of any kind, be it coercive or suggestive.

Government-sponsored standardized admission tests infringe on this freedom without reason.

III

Due process is guaranteed under our Constitution. Its Article III, Section 1 states:

> SECTION 1. No person shall be deprived of life, liberty or property without due process of law[.]

The due process clause is commonly referred to as the "right to be let alone" from the State's interference.[77] The essence of due process is the freedom from arbitrariness. In *Morfe v. Mutuc*:[78]

> "There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any governmental action for that matter, from the imputation of legal infirmity sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.' It is not a narrow or

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77 *See Morfe v. Mutuc,* 130 Phil. 415 (1968) [Per J. Fernando, En Banc].
78 Id.

> 'technical conception with fixed content unrelated to time, place and circumstances,' decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society.' Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases."[79] (Citation omitted)

Due process is the protection of the sphere of individual autonomy. It aims to "prevent arbitrary governmental encroachment against the life, liberty and property of individuals."[80] Thus, it imposes a burden on the government to observe two (2) separate limits: (1) procedural and (2) substantive due process. In *White Light Corporation v. City of Manila*:[81]

> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process". Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.
>
> If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.
>
> The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.[82] (Citations omitted)

Substantive due process answers the question of whether "the government has an adequate reason for taking away a person's life, liberty, or property."[83] To pass this test, the State must provide a sufficient justification for enforcing a governmental regulation.[84]

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79 Id. at 432–433.
80 *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc].
81 596 Phil. 444 (2009) [Per J. Tinga, En Banc].
82 Id. at 461–462.
83 *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 311 (2005) [Per J. Tinga, En Banc].
84 Id.

While the State's intrusion is not absolutely proscribed, due process requires that the intrusion on an individual's right to life, liberty, and property is neither arbitrary nor unreasonable.[85] In *Ichong v. Hernandez*:[86]

> The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power, Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.
>
> The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law[.][87]

When governmental action is checked against the due process requirement under the Constitution—particularly substantive due process—it must be shown that such action was neither arbitrary nor unreasonable. Respondent failed to show this.

The creation of the Philippine Law School Admission Test was not based on scientific research. The State has not given any justification for the propriety of conducting the examination, other than it being copied from the Law School Admission Test administered in the United States. The Chairperson of respondent Legal Education Board, during the oral arguments, admitted to this:

> **ASSOCIATE JUSTICE LEONEN:**
>
> Okay, next. Was there a study conducted by the LEB prior to imposing the national test relating to the correlation of passing the test and passing the bar? Because according to you the declaration of policy states, to improve the quality of the bar. Or was this anecdotal in nature? And if there is a test, a scientific study, will you be able to provide the Court? Was there a study done prior to imposing the national exam in an exclusionary character prior to giving the test?
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> . . . .

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85 *Ichong v. Hernandez*, 101 Phil. 1155, 1166 (1957) [Per J. Labrador, En Banc].

86 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

87 Id. at 1165.

DEAN AQUENDE:

We have none, Your Honor, but we relied on the LSAT study, Your Honor, in the United States.

JUSTICE LEONEN:

Yes, the LSAT study conducted by the United States. We are a different country and you are saying that you looked at a different culture so what they did in India, in America, in Canada, maybe even in Japan but not Filipinos, and the Filipinos have particular needs in our archipelago. Certainly, Tagum is different from Siargao, different from Baguio City, different from Cebu, so, you are saying that the LEB imposed this without, isn't this arbitrary, Chair?

DEAN AQUENDE:

We looked at, Your Honor, at the result or the correlation result of the law school qualifying test administered by the CEM and in that particular study, the correlation is that the . . . (interrupted)

. . . .

JUSTICE LEONEN:

You said that it was correlation, what was the degree of confidence?

DEAN AQUENDE:

I do not have right now.

JUSTICE LEONEN:

Yes, probably you can provide us with a copy.

DEAN AQUENDE:

Yes, Your Honor.

JUSTICE LEONEN:

Because in order not to be a grave abuse of discretion, it must be reasonable.

DEAN AQUENDE:

Yes, Your Honor.

JUSTICE LEONEN:

Considering, Chair, that this affects a freedom and a primordial freedom at that, freedom of expression, academic freedom, the way we teach our, as Justice Andy Reyes pointed out, the way we teach law to our citizens and therefore, to me, the level of scrutiny should not be cursory. The level of scrutiny must be deep and I would think it would apply strict scrutiny in this regard. Therefore, if there was no study that supported it, then perhaps, may be stricken down as unreasonable and therefore, a grave abuse of discretion. . . .

. . . .

JUSTICE LEONEN:

. . . . the English proficiency that you mentioned, what are your statistics on that?

DEAN AQUENDE:
The . . . . (interrupted)

JUSTICE LEONEN:
That law schools are admitting law students that do not have English proficiency . . . .

DEAN AQUENDE:
That ties up, Your Honor, with the public interest that we are looking at and that is . . . . (interrupted)

JUSTICE LEONEN:
Yes, yes, what are your statistics on that?

DEAN AQUENDE:
. . . . and that is the weigh stage . . . . (interrupted)

JUSTICE LEONEN:
What are your numbers?

DEAN AQUENDE:
Actually, Your Honor, it's the weigh stage of the human capital resulting problem . . . . (interrupted)

JUSTICE LEONEN:
I'm not asking about the concept.

DEAN AQUENDE:
. . . . in the bar examination, Your Honor.

JUSTICE LEONEN:
What are your numbers?

DEAN AQUENDE:
It's the bar examination, Your Honor, that seventy-five percent (75%) of all the . . . . (interrupted)

JUSTICE LEONEN:
You see all the examinations?

DEAN AQUENDE:
Yes, Your Honor.

JUSTICE LEONEN:
You mean to say, those that flunked the exams is because of English?

DEAN AQUENDE:
No, Your Honor, but that is the competency . . . . (interrupted)

JUSTICE LEONEN:
In other words, in looking at the law schools, you made a claim that the English proficiency of undergraduates going into law schools is deteriorating, correct? And because you are an academic body, you

should have a scientific study to back yourself up? Can you submit that to the Court? Have you made that study?

DEAN AQUENDE:
Which particular . . . . (interrupted)

JUSTICE LEONEN:
You cannot operate to supervise academic institutions deep in science on the basis of anecdotal references. That would be unreasonable. That is grave abuse of discretion.

DEAN AQUENDE:
No. Your Honor, please, if the question is . . . . (interrupted)

JUSTICE LEONEN:
You said it was English proficiency, logic, correct? That's why you imposed this exam. By the way, Chair, how many law schools are there?

DEAN AQUENDE:
One hundred twenty-two (122) law schools, Your Honor.

JUSTICE LEONEN:
Have you taught in all those environments?

DEAN AQUENDE:
None, not, Your Honor.

JUSTICE LEONEN:
In fact, have you taught in more than five law schools?

DEAN AQUENDE:
No, Your Honor.

JUSTICE LEONEN:
How many law schools have you taught in?

DEAN AQUENDE:
Just two (2), Your Honor.

JUSTICE LEONEN:
Just two (2), and you make a conclusion based on your experience in two (2) law schools multiplied by the number of experiences of all your members of the Board with 120? Shouldn't you have done a scientific study on English proficiency of incoming first year of law schools at the very least before you put in this policy so that it becomes reasonable for us?

DEAN AQUENDE:
Well, we looked at the LSAT correlation, Your Honor.[88]

Respondent Legal Education Board has not conducted any scientific and empirical study prior to its decision to impose a national standardized

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[88] TSN dated March 5, 2019, pp. 171–179.

test for the admission of students in law schools. All that it has as basis is the study for the Law School Admission Test of the United States. There was no showing of how this foreign experience is applicable, or even relevant, to the Philippine context. For lack of any substantial basis, the administration of the Philippine Law School Admission Test is arbitrary.

Moreover, the Philippine Law School Admission Test transgresses due process for being unreasonable. At the core of this test is the enforcement of a written exam that supposedly sifts and sets apart individuals who are likely to survive law school. The exclusionary result is based on a single criterion—if the applicants pass the written exam, they are deemed qualified. There is no other basis used for the evaluation of applicants. Through the Philippine Law School Admission Test, the government imposes a single determinant to ascertain who can pursue legal education. This is insufficient to hurdle the requirement of due process. Reasonableness demands that a multi-varying approach is used in evaluating law school applicants.

American jurisprudence sheds more light on this. In *Grutter v. Bollinger*,[89] the U.S. Supreme Court upheld the University of Michigan Law School's use of an applicant's race as among the criteria in its admission policy. It agreed with the use of race as a factor in its admission decisions, as it serves a "compelling interest in attaining a diverse student body."[90]

In *Grutter*, the law school's admission policy sought to admit more students from disadvantaged backgrounds, not to meet a desired quota for diversity, but to enroll a "critical mass" of minority students. Its concept of critical mass is anchored on the important educational benefits that flow from having a diverse studentry. The law school used race as one (1) of the criteria in its admission policy to avoid a monolithic student demographic that is typically admitted by traditional admissions processes.

In upholding the policy, the U.S. Supreme Court ruled that the law school's educational judgment that diversity is essential to its educational mission must be respected, and that universities must be given a degree of deference when it comes to academic decisions:

> In announcing the principle of student body diversity as a compelling state interest, Justice Powell invoked our cases recognizing a constitutional dimension, grounded in the First Amendment, of educational autonomy: "The freedom of a university to make its own judgments as to education includes the selection of its student body." From this premise, Justice Powell reasoned that by claiming "the right to select those students who will contribute the most to the 'robust exchange of ideas,'" a university

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89 539 U.S. 306 (2003).

90 Id. at 329.

> "seek[s] to achieve a goal that is of paramount importance in the fulfillment of its mission." Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that "good faith" on the part of a university is "presumed" absent "a showing to the contrary."[91] (Citations omitted)

In *Grutter*, the U.S. Supreme Court upheld a holistic evaluation of an applicant by considering several factors such as academic ability, talents, experiences, including other information through a personal statement, letters of recommendation, together with the applicant's undergraduate grade point average, Law School Admission Test score, and other "soft variables," including the applicant's racial and ethnic status. In effect, the law school affords an individualized consideration to all applicants regardless of race. There is no policy of automatic acceptance or rejection based on a single variable.

In this case, by enforcing an arbitrary and unreasonable measure in the law schools' admission process, the government violates the applicants' right to due process.

The choice of pursuing an education is within the ambit of one's right to life and liberty. Liberty includes the "right to exist and the right to be free from arbitrary restraint or servitude."[92] It embraces the right of individuals to enjoy the faculties they are endowed with such as the right to live, right to be married, right to choose a profession, and the right to pursue an education.[93] In *City of Manila v. Laguio, Jr.*:[94]

> While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[95]

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91 *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 316 (2005) [Per J. Tinga, En Banc].
92 Id.
93 Id.
94 495 Phil. 289 (2005) [Per J. Tinga, En Banc].
95 *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 317 (2005) [Per J. Tinga, En Banc] *citing Roth v. Board of Regents*, 408 U.S. 564 (1972).

In my concurring opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*:[96]

> Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.
>
> "Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person" and the American formulation of "life, liberty and the pursuit of happiness." As the American Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured. Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.
>
> "Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence. "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions.[97] (Citations omitted)

Ultimately, the right to life is intertwined with the right to pursue an education. Right to life, after all, is not merely the right to exist, but the right to achieve the "fullness of human potential[.]"[98] This is real in attaining a degree of one's own choice. Education does not only enhance and sharpen intellect, but also opens up better opportunities. It improves the quality of life. When a person obtains a degree, there is economic and social mobility. Thus, when the State interferes and prevents an individual from accessing education, it impliedly infringes on the right to life and liberty.

In the same vein, imposing an arbitrary and unreasonable government-sponsored standardized test violates the right to property. Applicants, forced to take the mandatory examination, are likewise required to pay testing fees. This means additional financial cost that acts as another unnecessary obstacle to aspiring law students.

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96 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
97 Id. at 1142–1143.
98 Id.

Yet, more than the financial barrier, going through the bureaucracy of studying for, applying for, and actually taking the test also entails opportunity cost. This includes, among others, the foregone time, prospects, and other possibilities that could have been realized.[99] These additional costs only serve as exclusionary measures that unreasonably weed out those who simply cannot afford them.

Thus, the Philippine Law School Admission Test must be struck down for infringing on the rights to life, liberty, and property without due process of law.

IV

Moreover, standardized tests as a measure of merit should be taken with a grain of salt. A meritocratic method based on these tests does not necessarily mean that the most qualified students are admitted.[100] For one, meritocracy was originally a term of abuse, used to describe a "ludicrously unequal state."[101] Rather than measure fairness, it disproportionately benefits those who are well-off.[102] For another, entrance tests have historically been skewed in favor of elite applicants who have significant advantage and access to better education, resources, and wealth.[103]

As Stanford Law professor Richard Banks concluded:

> Differential access to achievement-related resources may occur at the level of a child's family, school, or neighborhood.
>
> The relative achievement formulation of socioeconomic status would encompass family characteristics such as parental income, education, occupation, and wealth. A variety of studies have demonstrated positive relationships between early academic achievement and parental income, education, and occupation.[104] (Citations omitted)

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99 *Racelis v. Spouses Javier*, G.R. No. 189609, January 29, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63801> [Per J. Leonen, Third Division].

100 Id.

101 Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, available at <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> (last accessed on September 9, 2019).

102 Id.

103 Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development* 3 (2010), available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019); and R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N. C. L. REV. 1061, 1062 (2001), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=301300&download=yes> (last visited on September 9, 2019).

104 R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N. C. L. REV. 1061 (2001), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=283711> (last visited on September 9, 2019).

Merit is a manifestation of elitism. Meritocracy opposes democratization and opportunity for all.[105]

Even if national standardized tests were non-exclusionary, and were designed only to guide law schools, harm still persists in their mandatory character. Obviously, they entail both financial and opportunity cost for the applicant. An admission exam like the Philippine Law School Admission Test presents another financial barrier for an applicant.

This Court cannot ignore the greater disparity that prevails among income classes, ethnicities, and even geographical differences. The cost of taking the Philippine Law School Admission Test creates an additional burden and prevents applicants from the middle to low-income strata from pursuing legal education. The test morphs into a selective mechanism that unduly favors the wealthy. Even if the results of the exams are non-exclusionary, the costs virtually make the exam itself exclusionary.

Moreover, students with low scores in the national test, which was created without the participation of true academics who understand test metrics, will consider themselves inferior. Because the results are ranked, the test creates a stigma on those who received low scores and excludes them. A national standardized exam, even as a non-exclusionary list, when state-sponsored, creates an unnecessary hierarchy.

Besides, that a law school is producing good lawyers does not automatically mean that it is a good law school. On the contrary, having a standardized national admission exam hides the defects and inadequacies of a law school. Students who ranked high in the Philippine Law School Admission Test, but went on to study in a school that may not exactly have good standards of education, may still likely pass the bar examinations. This is because students who topped the Philippine Law School Admission Test are not a random sample. Right at the start, they have already enjoyed a good foundation of education and a conducive environment to excel, equipped with the advantage of financial resources.[106]

Thus, the Philippine Law School Admission Test effectively screens applicants not on the basis of merit alone, but on the resources they possess.

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[105] Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development*, 7 (2010), available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019).

[106] Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development* 3 (2010). Available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019); R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N. C. L. Rev. 1062 (2001). Available at < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=301300&download=yes> (last visited on September 9, 2019).

Through it, law schools are encouraged to work with better-equipped students. They are incentivized in catering to the elite in our society.

Ironically, we incentivize sloth among law schools.

Justice Clarence Thomas' (Justice Thomas) dissent in *Grutter* is likewise illuminating. Proposing that law schools must end their reliance on the Law School Admission Test, he suggested adopting different methods of admission "such as accepting all students who meet minimum qualifications,"[107] instead of betting on the highest scores.

Justice Thomas questioned whether standardized admission tests are reliable in predicting the success of applicants in law school. He does not believe that the test serves any real educational significance, but is only used to admit high scorers. The test, he notes, translates to selectivity—a marker of elitism:

> [T]here is much to be said for the view that the use of tests and other measures to "predict" academic performance is a poor substitute for a system that gives every applicant a chance to prove he can succeed in the study of law. The rallying cry that in the absence of racial discrimination in admissions there would be a true meritocracy ignores the fact that the entire process is poisoned by numerous exceptions to "merit."[108]

Here in the Philippines, our education system's obsession with examination-based meritocracy must be tempered, not further celebrated. Legal education must not be an exclusive good for the elite. There must be a conscious move to eliminate the socioeconomic barriers that cement this elitism. The Philippine Law School Admission Test does the exact opposite by reinforcing a faulty method that does not necessarily admit the most qualified students, but only favors the economically privileged.

National standardized admission tests reward this blind and corrosive meritocracy. Crudely rewarding merit without understanding its context undermines the constitutional goal of achieving social justice. Rewarding merit alone or privileging it results in more inequality.

There has never been a level playing field in basic, secondary, and tertiary education. In the first place, not all poor and rural students who enter basic education make it to college. Fewer still are those that finish their college degrees. Most of the poor rural students will not rank high in a national standardized test due to limited access to resources in their communities. This does not mean, however, that they are so mentally

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[107] J. Thomas, Dissenting Opinion in *Grutter v. Bollinger*, 539 U.S. 306, 361 (2003).
[108] Id. at 367–368.

deficient that they will not make it in law school. Rather, the national standardized test will most likely exclude them because they will be put in the proverbial back of the line.

Those from privileged families, by contrast, are more likely to grow up in an environment that nurtures cognitive development.[109] They have likely received social and cultural capital that propel them to do better in school.[110] Chances are they attended good schools staffed with competent teachers and professionals, learning with other privileged students.[111]

The inevitably low ranking of poor students adds to their burden. In the meantime, rich, privileged students will, as usual, get better chances. This situation only perpetuates the status quo, ultimately putting meritocracy as a barrier to the principle of equality.[112]

On its surface, the contemporary idea of meritocracy is appealing because "it carries with it the idea of moving beyond where you start in life, of creative flourishing and fairness."[113] But this understanding is a myth, as our system rewards through wealth and it increases inequality.[114] Financially privileged students are way ahead of those who have much less, and any merit-based system will only serve to further highlight this privilege:

> In this intergenerational relay race, children born to wealthy parents start at or near the finish line, while children born into poverty start behind everyone else. Those who are born close to the finish line do not need any merit to get ahead. They already are ahead. The poorest of the poor, however, need to traverse the entire distance to get to the finish line on the basis of merit alone. In this sense, meritocracy strictly applies only to the poorest of the poor; everyone else has at least some advantage of inheritance that places them ahead at the start of the race.
>
> In comparing the effects of inheritance and individual merit on life outcomes, the effects of inheritance come first, then the effects of individual merit follow— not the other way around.[115]

An educational system that rewards on the basis of loosely defined merits assumes an equality of educational opportunity.[116] It fails to

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109 Id. at 107.
110 Id.
111 Id.
112 Hannah Arendt, *The Crisis in Education* (1954) <http://www.digitalcounterrevolution.co.uk/2016/hannah-arendt-the-crisis-in-education-full-text/> (last accessed September 12, 2019).
113 Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> (last accessed on September 9, 2019).
114 Id.
115 STEPHEN MCNAMEE AND ROBERT K. MILLER, JR., THE MERITOCRACY MYTH 49 (2004).
116 Id. at 102.

recognize that the most privileged in society are provided with much greater opportunities to succeed and fewer chances to fail compared with those from less privileged backgrounds.[117]

All these privileges that are attached to a person simply by the circumstances of his or her birth snowball within an educational system that hides behind the sanitized concept of meritocracy. In truth, such concept only widens the existing economic, social, and cultural inequality.

It is, thus, inaccurate to use the results of a standardized test as proxies for measuring the capability of students to do well in law school. The competitive and individualistic meritocracy that standardized tests espouse rests on the neoliberal assumption that hard work and effort alone will result in success. It is, however, almost deliberately blind to the reality that the starting line for success is unequal, and the path toward it more challenging for those disfavored by the system. In reality, a national standardized test only rewards crude meritocracy. Meritocracy, then, disguises prejudice.

V

In this case, the majority declared unconstitutional several provisions of the Legal Education Reform Act and Memorandum Orders of respondent Legal Education Board. However, it essentially retained the Philippine Law School Admission Test. It ruled that Section 7(e) of the Legal Education Reform Act[118] is faithful to the reasonable supervision and regulation clause under the Constitution. It found that the provision only empowers respondent Legal Education Board to prescribe minimum requirements, which does not equate to control.[119]

Section 7(e) of the Legal Education Reform Act states:

> SECTION 7. Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
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> . . . .
>
> (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.]

The majority concludes that while the State may administer the Philippine Law School Admission Test, it should not be imposed on law

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117 Id.
118 Republic Act No. 7662 (1993).
119 Ponencia, p. 77.

schools as a mandatory part of their admission process.[120] Relying on *Tablarin*, it sustained admission tests as a legitimate exercise of the State's regulatory power.[121]

I find that the majority's pronouncements readily allow unwarranted State incursion on academic freedom.

An educational institution's right to determine who to admit as its students is an integral part of its institutional academic freedom. It is absolute. Any form of State intrusion into an educational institution's admission policies, no matter how benign, should be rejected.

In this regard, I view that *Tablarin* and *Department of Education, Culture, and Sports*[122] should be overturned. Just like the Philippine Law School Admission Test, the National Medical Admission Test, and any kind of government-sponsored standardized admission test—mandatory or not—should be rejected for infringing on academic freedom.

The State cannot sponsor an admission exam under the guise of prescribing minimum qualifications when, right from the start, it already excludes those who cannot pay to take the test.

Ultimately, the results of the Philippine Law School Admission Test will affect the schools' admission decisions. To recapitulate, its mandatory character means that if an applicant fails, he or she is disqualified from enrolling in any law school, even when a law school determines that the unsuccessful examinee should be admitted as its student. Removing its mandatory character, but retaining the test nonetheless, perpetuates the stigma that attaches to an applicant who passes but scores low relative to other examinees. Thus, the power of respondent Legal Education Board to implement the Philippine Law School Admission Test, even as a minimum requirement for admission, is already a demonstration of State control over the law schools.

The academic institutions' right to determine who they will admit to study remains among their four (4) essential freedoms. In ascertaining who to admit, law schools must have autonomy in establishing their own policies, including the examination that they will employ.

The Philippine Law School Admission Test presents an unwarranted intrusion into this essential freedom. The government's imposition of a

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120 Id. at 78.
121 Id. at 81–84.
122 259 Phil. 1016 (1989) [Per J. Cruz, En Banc].

passing score as a bar to admission is a violation of the institutions' academic freedom.

The rationale of this decision in relation to the significance of academic freedom in our jurisdiction also applies to the entire concept of the Legal Education Board.

The teaching of law as an academic degree is protected by Article XIV, Section 5(2)[123] of the Constitution, which also relates to Article III, Section 4[124] under the Bill of Rights. On the other hand, the requirements for a license to practice law is broadly covered by Article XIV, Section 5(3)[125] of the Constitution, and more specifically as a power granted to this Court under Article VIII, Section 5(5).[126]

The regulation on the teaching of law as an academic degree is different from the regulation on the practice of law as a profession. The former is an aspect of higher education leading to a degree, while the latter may require a degree, yet the degree alone does not qualify one to practice law.

Quality legal education should be guaranteed by the faculty and administration of a law school. A law school, on the other hand, may be part of a university or college. Thus, the law school is accountable to its academic councils for its approaches to teaching, qualifications and promotion of its professors, as well as the full contents of its curriculum.

The broad and ambiguous rubric of police power should not be an excuse to provide government oversight on purely academic matters, or even academic matters that appear to be administrative issues. Academic

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[123] CONST., art. XIV, sec. 5(2) provides:
SECTION 5. . . .
. . . .
(2) Academic freedom shall be enjoyed in all institutions of higher learning.

[124] CONST., art. III, sec. 4 provides:
SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

[125] CONST., art. XIV, sec. 5(3) provides:
SECTION 5. . . .
. . . .
(3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.

[126] CONST., art. VIII, sec. 5(5) provides:
SECTION 5. . . .
. . . .
(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

supervision cannot be done by a statutorily appointed Legal Education Board restricting the academic freedom of institutions of higher learning which offer what amounts to a postgraduate degree. Legal education cannot be supervised in the way institutions offering pre-school or basic elementary education are supervised. The entire concept of the Legal Education Board—appointed public officials interfering with law schools' academic freedoms as if the appointment from an elective official gives them the academic expertise—is precisely what Article XIV, Section 5(2) of the Constitution proscribes.

The entire Legal Education Reform Act clearly violates the Constitution. It is, therefore, surprising that the majority is unwilling to strike it down. It is likewise astounding that the majority seems to put its trust on the evolution of law as an academic discipline to political appointees.

There are better ways to ensure the quality of legal education, none of which involves a super body similar to the Legal Education Board. While it appears to be a mere guidance for law schools, the State's infringement on academic freedom through the Philippine Law School Admission Test has far-reaching implications.

ACCORDINGLY, I vote to **GRANT** the Petitions. The entire Republic Act No. 7662, or the Legal Education Reform Act, is unconstitutional.

MARVIC M.V.F. LEONEN
Associate Justice