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Joaquin G. Bernas

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JOAQUIN G. BERNAS

AMONG the constitutional questions that have recently appeared upon the Philippine juridical scene, the one that perhaps interests private educators most is one based on the first sentence of Article XIV Section 5 of the Philippine Constitution. It reads: "All educational institutions shall be under the supervision and subject to regulation by the State."

Because in the history of political thought the concept of state supervision and regulation of things not belonging to the state but somehow having some relation to the public good has never been univocal, the provision does present a problem. The various meanings that have been attached to the concept range from minimal *laissez faire* policy to maximal and absolute despotism. Private educators (and their number has increased tremendously since the last war) naturally wish to know how much freedom for private schools (and how much state intereference in private schools) is compatible with the "supervision" and "regulation" clause of the Constitution. The present article is an attempt to answer this question in the light of Philippine constitutional law.[1]

PRINCIPLE OF SUBSIDIARITY

The philosophical answer to the problem is the principle of subsidiarity. This principle is a bit of common sense easily

[1] Although the law applies to both private and public schools, this article will limit itself to private schools.

understood but, having passed through the hands of scholars, it has acquired a technical dress. Stripped of its pretentious garb, it simply says, "If a wheelbarrow will do, don't hire a truck." Pius XI in a statement that has now become a *locus classicus* of political thought expresses it more exactly:

> . . . just as it is wrong to take away from individuals what by their own ability and effort they can accomplish, and commit it to the community, so it is an injury and at the same time both a serious evil and and a perturbation of right order to assign to a larger and higher society what can be performed by smaller and lower communities. The reason is that all social activity, of its very power and nature, should supply help to the members of the social body, but never may destroy or absorb them.[2]

A terser yet no less complete enunciation of the principle says, "As much freedom as possible, as much state intervention as necessary." Hence another label for the same principle is the "principle of freedom."

Since a satisfying empirical demonstration of the principle may easily be found elsewhere,[3] suffice it here to observe that authors identify the principle of freedom with the more familiar "principle of the common good"; "all action proceeding from and concerned with the community as a unity receives its supreme maxim from the common good." The two principles differ only in emphasis, the latter being used as an antidote for *laissez faire* individualism and the former as a cure for totalitarianism in any of its varied forms. The principle of freedom then and the principle of the common good are but two ways of expressing the truth which is the bedrock of all good government: the end of the state is the common good of all the people.

A PARENTAL FUNCTION

A more immediate background for a constructional study of Art. XIV Sec. 5 is given in Art. II Sec. 4 of the Constitu-

[2] "Quadragesimo Anno" *Acta Apostolicae Sedis* XXIII (1 junii 1931) 203.

[3] See Johannes Messner "Freedom as a Principle of Social Order: An Essay in the Substance of Subsidiarity Function" *The Modern Schoolman* XXVIII (January 1951) 97-110; Henry J. Schmandt "State Intervention—When?" *Social Order* IV (December 1954) 435-40.

tion: "The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government." Because of the position it occupies as part of the Declaration of Principles—the official synthesis of national ideals—and because of the philosophy it summarizes, this provision serves as the key to Philippine politico-educational theory. Furthermore, a fundamental principle of constitutional construction is that the Constitution must be construed as a logical whole, every word and every clause of which must be interpreted in the light of all the other provisions.[4]

The original provision inserted into the first draft of the Declaration of Principles by the convention President, Claro M. Recto, read as follows:

> The rearing of the youth in physical, mental, moral and social efficiency, is the highest duty and natural right of the parents, the accomplishment of which shall receive the aid and support of the state.[5]

This is traditional philosophy and an echo of the pronouncement made earlier by Pius XI:

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[4] On being asked by Delegate Sevilla which should prevail in case there should be conflict between the Declaration of Principles and a constitutional precept, Delegate Palma, the chairman of the committee on the Declaration of Principles, replied: "If there is any apparent contradiction, then the declaration of principles which is the philosophy of the whole constitution prevails." On further being asked by Delegate Sevilla what would be the means of interpretation "in case of any ambiguity between the two," Palma replied, "I interpret the principles to be the means of interpretation." *Proceedings of the Constitutional Convention*, Manila, Philippines, 1934-35, vol. IX, pp. 5374-5. References to the *Proceedings* are to the microfilm copy (University Microfilms, Ann Arbor, Michigan, 1955) of the typewritten original kept in the Philippine Supreme Court.

Many, if not all, of those who objected to the inclusion of the Declaration of Principles in the Constitution did so not because they were against the principles enunciated in it, but because they thought that the Declaration of Principles was a useless repetition of principles already embodied in other places in the Constitution. See v.g. the speech of Delegate Guzman *ibid.* 5381.

[5] Jose M. Aruego *The Framing of the Philippine Constitution* (Manila, University Publishing Co., 1949) I, 145. This book first came out in 1936. It has been cited in a number of Supreme Court decisions.

The family therefore holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth.[6]

And again:

Accordingly in the matter of education, it is the right, or to speak more correctly, it is the duty of the State to protect in its legislation the prior rights . . . of the family as regards the . . . education of its offspring . . .[7]

The special committee on style, in recasting Recto's insertion to its present phraseology, did not alter the philosophical content of the original. Indeed a committee on style is not authorized to do so. The committee members merely decided that the phrase "civic efficiency" was a "better term" and expressed the equivalent meaning of "physical, mental, moral and social efficiency."[8] Whether the change was really for the better might be debated. The new term, if not better, was at least briefer, and, understood correctly, did not lose the fullness of meaning expressed by the original. After all, the citizen graced with "civic efficiency" is one who is physically, mentally, morally and socially well developed. For this reason Art. XIV Sec. 5 later says: "All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship." To understand "civic efficiency" in the sense that the *total* end of education is merely *social efficiency* would be most unfortunate.

Education is not primarily a government function. The right of parents to exercise it is recognized by the Constitution as being anterior to the Constitution itself, as coming to parents from nature (that is, from God the author of nature) by the mere fact of parenthood. It is not conferred upon parents by the Constitution, but the Constitution recognizes it as already

[6] "Rappresentanti in terra" *Acta Apostolicae Sedis* XXI (31 decembris 1929) 733.

[7] *Ibid.* pp. 737-38.

[8] Aruego *op. cit.* pp. 145-46.

existing and the Constitution here binds the Philippine government not to usurp the place of parents nor to interfere—except to "aid and support."

"AID AND SUPPORT"

The phrase "aid and support" clearly delineates the role of the state—a subsidiary role. It is to be a *subsidium*, a help, to the natural duty and right of parents.

Another fundamental principle of constitutional construction is that the intent of the law can be found in the words of the document itself understood in their ordinary and general meaning, unless technical terms are employed or unless the "nature of the subject matter or the context clearly indicates that the limited sense is intended."[9] "Aid and support" is not a technical term and there is no indication in the context or in the subject matter that a limited meaning is intended. Taking the expression then in its ordinary and general sense, it is clear that giving aid and support can be done in different ways. It can come in the form of *material* assistance, as, for instance, in the form of money or commodities;[10] or, it can come in the form of *protection* against a third party. Further, protection against a third party may come *negatively*, by the prohibition of acts openly violative of another's right; or *positively*, by ordaining positive measures designed to forestall violation of rights.

In the light of this analysis (not rigid, of course, because besides imperfections of nomenclature it does not exclude all functional overlapping between the various aspects enumerated) and in the light of the principle that the Constitution must be construed as a logical whole, it is easy to place the

[9] *Marcos v. Chief of Staff.* G.R. No. L-4664. prom. May 30, 1951. Cited in Lorenzo M. Tañada and Enrique M. Fernando *Constitution of the Philippines* (fourth edition, Manila, Citizens Publishing Co., 1952) I 23.

[10] The state's duty of giving material aid and support to parents is the *raison d'etre* of the public school system. For a treatment of *public material aid* to *private schools*, see Benigno Benabarre O.S.B. *Public Funds for Private Schools in a Democracy: Theory and Practice* (mimeographed edition, Manila, Our Lady of Montserrat Abbey, 1956).

provision: "All educational institutions shall be under the supervision and subject to regulation by the State." This provision and Art. II Sec. 4 must be taken together. Not only must one be interpreted in conjunction with the other, but also, if they should appear to contradict each other, an interpretation which would permit both to stand must be sought, since the two provisions were simultaneously promulgated and hence, in the mind of the legislators, were not contradictory.

ARTICLE XIV SECTION 5

Fundamentally, and this will be seen more clearly as the article proceeds, this provision is *protective*, both negatively and positively, of the natural duty and right of parents to educate their children. The powers of supervision and regulation are the means given by the Constitution to the government to enable it to "aid and support" parents in fulfilling what is properly a parental, not a state, function. In so far as supervision and regulation mean the prohibition of immoral and subversive teachings, the law negatively safeguards the rights of parents. In so far as supervision and regulation include the power to require the maintenance of a minimal set of educational standards, the law positively protects the right of parents to their tuition money's worth.

But protecting against subversive teaching and requiring schools to maintain at least minimum standards of educational efficiency also protect the general welfare, for the welfare of a nation largely depends upon the proper education of its citizens. In other words, the provision is also an expressed grant by the Constitution to the government of what since the nineteenth century has been popularly known as the "police power" of the state.

POLICE POWER

In the case *Rubi vs. Provincial Board*, Justice Malcolm defines police power negatively as "that inherent of the plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety and welfare of society."[11]

[11] *Philippine Report* 39: 660, 708. Cited in Tañada and Fernando *op. cit.* I 118.

A more comprehensive definition is the statement, often quoted, of Chief Justice Shaw of Massachussetts. It is "the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same."[12] This definition includes the power to ordain negative as well as positive measures.

The phrase "vested in the legislature by the constitution" might create the misunderstanding that police power derives its justification from an explicit constitutional guarantee. This is not so. Police power by nature is prior to any constitutional guarantee, because it is a necessary means for the attainment of legitimate governmental ends and is therefore inseparable from the very concept of a state. In the words of the Philippine Supreme Court:

> The police power and the right to exercise it constitutes the very foundation, or at least one of the cornerstones of the state. For the state to deprive itself or permit itself to be deprived of the right to enact laws to promote the general prosperity and welfare of its inhabitants, and promote public health, public morals, and public safety, would be to destroy the very purpose and objects of the state . . .[13]

Fundamental therefore in the notion of police power is the notion of the common good, for police power is rooted in the state's inalienable obligation of promoting the welfare of all. *Salus populi suprema lex.* But the common good is an evolving social phenomenon. Consequently, police power, geared as it is to the common good, also takes on an evolving character. This is what the Supreme Court means when it speaks of the expanding scope of police power.

> The development of civilization, the rapidly increasing population, the growth of public opinion with an increasing desire on the part of the masses and of the government to look after and care for the interests of the individuals of the state, have brought within the police power many questions for regulation which formerly were not so considered.[14]

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[12] *Commonwealth v. Alger* 7 Cush. (Mass. 1851) 53 and 85. Cited *ibid.* I 119.

[13] *United States v. Gomez Jesus* 31 Phil. 218. Cited *ibid.* I 121.

[14] *People v. Pomar* 46 Phil. 440. Cited *ibid.* I 122.

The Court does not mean that the expansion of police power is arbitrarily assumed by the state; rather, it is conditioned by the increase of the demands of the common good. For this reason, in passing upon the validity of police power measures, the criteria which Philippine decisions have followed are reasonableness and necessity for the promotion of the general welfare. "Philippine decisions have held that if the means adopted are reasonably necessary for the attainment of the end in view, not arbitrary nor unduly oppressive upon the individual, and in the interest of the public generally rather than of a particular class, the exercise of police power is to be upheld as valid..."[15]

Herein therefore is to be found a significant *rapprochement*. The reader will recognize that these criteria (reasonableness and necessity for the common good) are the very essence of the principle of the common good: "all action proceeding from and concerned with the community as a unity receives its supreme maxim from the common good." When to the phrase "reasonably necessary" the Philippine court decisions add "not arbitrary, nor unduly oppressive upon the individual," do they not come close to upholding the principle of subsidiarity—"as much freedom as possible, as much state intervention as necessary"?

The principle of subsidiarity requires two conditions for government intervention: first, the necessity of intervention for the common good; second, the absence of an individual or group beneath the state capable and willing to perform a particular function necessary for the common good. The first condition for government intervention is explicitly required by Philippine decisions for the proper exercise of police power. If Philippine decisions do not require the second condition in its fullness, they would seem at least to advance well along the way towards requiring it, since they require that any exercise of the police power must be "not arbitrary, nor unduly oppressive upon the individual."

[15] *Ibid.* I 128.

INTENT OF THE FRAMERS

In the mind of the framers of the Constitution, what was the intent of the law? Delegate Camilo Osias explained it as being to enable the state to supervise all educational institutions and regulate their operation for the advancement of the interest of the country as a whole and for the welfare of its inhabitants, and to prevent these institutions from becoming agencies for the spread of propaganda subversive of public peace and order, inimical to the interests of the general public, and violative of the spirit of the Constitution.[16] In other words, in educational matters *salus populi suprema lex*—necessity for the common good determines the power to regulate. Was any further refinement than this intended by the delegates?

THE OSIAS-MARAMARA AMENDMENT

Another glance at the proceedings furnishes the answer. The Osias-Maramara amendment reads: 'All educational institutions shall be under the supervision and subject to the laws of the state." Delegate Salvador Araneta strongly objected to the phrase "subject to the laws of the state." On being asked by Delegate Salvador Araneta to what extent this amendment would "curtail the liberty of teaching consecrated in the Bill of Rights," Osias replied that the amendment did not curtail the liberty of school administrators. He said:

> I think it only insures the efficient functioning of educational work and does not limit the liberty of administrators of schools. The gentleman will notice that my amendment does not tend to curtail which he used in asking the question [sic]. I want the power of the State to be supervisory as supervision in educational parlance should be of the constructive type in the matter of help rather than obstruction.[17]

Furthermore, in his explanation of the phrase "subject to the laws of the state," Osias declared that his intention was to make schools subject not only to the Constitution but also to whatever educational laws may be prescribed in the future. The following dialogue concretizes the issue:

> MR. ARANETA. To be more specific suppose the legislature should enact a law prescribing that Darwinism, the theory in evolution is

[16] Aruego *op. cit.* II 615.

[17] *Proceedings of the Constitutional Convention* IX 5505.

one and only theory that can be taught in every school including the private schools, would that be constitutional under your amendment? (sic)

MR. OSIAS. Theoretically, yes; but practically, I cannot conceive of the people of the future of this country going so nutty as to prescribe and pass a thing like that.

MR. ARANETA. Well, but I believe that we are drafting a constitution providing only for what we believe the Legislature will do and for what the Legislature might do.

MR. OSIAS. If the Legislature should pass a law, then the educational institutions would have to abide by that law; and if it should pass even a bad law subjecting the educational institutions to that law, the best way to demonstrate to that law should be changed (sic) is to follow it strictly and demonstrate later on its policy and agitate the revision of that law. Theoretically, I answer you that it would be constitutional.

MR. ARANETA. In other words under that draft, there would be no limit to the power of the legislature to prescribe laws regarding educational institutions?

MR. OSIAS. I would be reasonable, and the limits would be consideration of the needs of the greatest number and force of public opinion.[18]

However violently one might disagree with the logic of Mr. Osias, this much at least is clear, that Delegate Osias had no totalitarian intentions. Nor did the Assembly intend to declare unlimited state power over education. Delegate Araneta's next move was to argue for the removal of the phrase "subject to the laws of the state" on the ground of its being superfluous and possibly misleading. He said:

Parece que esta Asamblea esta dispuesta a dar a estas palabras una interpretacion inocente, porque cuando yo expreso otra posible interpretacion la asamblea protesta. Pues bien; si esta asamblea de unicamente a esas palabras una interpretacion inocente, en el sentido de que esta sujeto a las leyes del Estado como cualquiera otra institucion entonces creo innecessarias esas frases y para evitar confusiones y dudas con el fin de salvaguardar la libertad de enseñanza, propongo que eliminemos esas palabras...[19]

[18] *Ibid.* 5506.

[19] *Ibid.* 5527. —No accents in the original. The *Proceedings* have these words under Osias' name. They are, however, evidently Araneta's. Araneta likewise cites, *loc. cit.*, the U.S. Supreme Court decision declaring unconstitutional a law which prohibited the teaching of German during the first world war.

He argued that the phrase "subject to the laws of the state" could have two possible meanings: subject to the laws in the sense of totalitarian subjection or subject to the laws in the sense of democratic subjection. The first meaning was unacceptable both to the sponsors of the law and to the assembly. The second meaning rendered the phrase superfluous since there already was that other phrase "under the supervision."

Delegate Conejero, however, objected that such an amendment would leave to the state insufficient power since the state would then have only the power of supervision, and supervision was "solamente ver a inspeccionar y nada mas." Araneta's answer was that the power of supervision coupled with the "police power" already inherent in the state was sufficient for safeguarding the rights of the state. Araneta likewise added that the phrase "subject to the laws of the state" was not a *definición* of police power but, on the contrary, only added confusion to the issue.[20]

Araneta's proposed amendment was defeated, the Osias-Maramara amendment was approved. But the committee on style came out with a slightly revised version, the present "subject to regulation by the State."

THE COMMITTEE ON STYLE'S REVISION

One might speculate as to whether the committee on style's revision was occasioned by Araneta's objection. Whether or not it was seems a matter of small significance since there is hardly any difference in meaning between the phrases "subject to the laws of the state" and subject to "regulation by the state." What is highly significant is that in the course of the debates there clearly was no intention on the part of the delegates to declare unlimited state powers of control over education. What existed was a preoccupation with finding a way of safeguarding the right of the state to protect itself and the public, a preoccupation understandable perhaps in the light of the spirit of liberalism not yet dead. When therefore the framers of the Constitution approved Article XIV Section 5, it is

[20] *Ibid.* 5527-29.

evident that their intention was not to give to the state unlimited powers of control over private schools.

If, however, the question should be asked whether the power of supervision and regulation does mean a power of control at all, the answer cannot be an unequivocal yes. Any form of supervision and regulation does mean some form of control. But there are controls and controls and controls of controls. The state's power to control education must itself be controlled by the purpose for which that power is given, the purpose, namely, of promoting the common good and more specifically of "giving aid and support" to parents in the performance of their natural duty and right to educate their children.

PACU vs. SECRETARY OF EDUCATION

For a fuller understanding of the law, a recent case decided by the Supreme Court must be studied, since the Supreme Court is the supreme arbiter of the meaning of the Constitution. The case in point is *Philippine Association of Colleges and Universities* (PACU) vs. *Secretary of Education.*[21]

In a petition for prohibition submitted to the Supreme Court, the Philippine Association of Colleges and Universities challenged the constitutionality of three laws presently in effect, all of which the Supreme Court upheld as constitutional. The reasons given by the Supreme Court show the scope, in the opinion of the Court, of the power of supervision and regulation.

PERMIT FOR PRIVATE SCHOOLS

The first point placed under fire by the petitioners was the question of permits. Act No. 2706 as amended by Commonwealth Act No. 180 requires that private persons desiring to open a school must first obtain previous government approval or permit. The law likewise empowers the Secretary of Education to revoke such permit for cause.

In upholding the validity of this law, the Court rests its decision on the police power of the state. Police power, in the face of a "great evil" that calls for correction, enables the state

[21] *Official Gazette* 51:6230-40.

legitimately to establish the "previous permit" system. The Court calls to mind that in March 1924 the Philippine Legislature authorized a Board of Educational Survey to look into existing private schools. The Board reported the existence of private schools which were decidedly harmful money-making devices. Parents who sent their children to such schools were not getting their money's worth. "There is no law in the Philippine Islands today," the report declared, "to prevent a person, however, disqualified by ignorance, greed, or even immoral character, from opening a school to teach the young."[22] The report therefore recommended that permits to open schools be required and be granted only if those seeking permit satisfied certain standards to be set down by the government.

No one who knows the abuses of "fly-by-night" schools (unfortunately they flourish in the Philippines) will doubt the wisdom and validity of the statute. It obviously is an exercise of police power. It is therefore within the limits of the principle of the common good and hence, granted also the necessity of state action to prevent such schools from deceiving parents (which seems historically to have been the case), the statute is likewise within the limits of the principle of subsidiarity. The first condition for state intervention apparently existed and, most probably, also the second. It should be noted, however, that the Supreme Court gives no indication of recognizing the second condition.

CIRCULARS AND MEMORANDA

The second point assailed by the petitioners was the validity of the power presently exercised by the Secretary of Education to issue circulars and memoranda governing the maintenance of standards of efficiency; circulars and memoranda which, the petitioners claimed, were in excess of the supervision and regulation provided for by the Constitution and amounted to an exercise of complete control over private schools. The Court replied:

> It is clear in our opinion that the statute does not in express terms give the Secretary *complete* control. It gives him powers to inspect

[22] Cited *ibid.* 6234.

private schools, to regulate their activities, to give them official permits to operate under certain conditions, and to revoke such permit for cause. This does not amount to *complete* control. If any such Department circulars or memoranda issued by the Secretary go beyond the bounds of regulation and seeks [sic] to establish complete control, it would surely be invalid...[23]

Further on, however, the Court does equate regulation and supervision with control. It says:

If however the statutes in question actually give the Secretary control over private schools, the question arises whether the power of supervision and regulation granted to the State by section 5, Article XIV was meant to include control of private educational institutions. It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.[24]

One might object, as the present writer is inclined to do, to the terminology of the Court's distinction in the passages just quoted. The distinction made between control and *complete* control does not seem satisfactorily expressive of the meaning the Court evidently wishes to convey. The distinction is between a generic notion and a specific notion, hence, inadequate. For the distinction to be precise, it must be between two specific notions. From the whole tenor of the decision, it is clear that the Court wishes to make a distinction between specific notions. It even seems to suggest *complete* control and *regulatory* control. This article suggests that the distinction should be between *complete* control and *subsidiary* control.

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[23] *Ibid.* 6237. Note that the phrase "in express terms" does not justify the inference that the statute *implicitly* gives the Secretary the power of complete control .

[24] *Loc. cit.* Whether or not it is enough for the main interpreter of the Constitution to point out the opinion of "local educators and writers" is itself an interesting question. The bibliographical notes given by the Court are the following: Tolentino *Government of the Philippines* (1950) p. 401; Aruego *Framing of the Philippine Constitution* II 615; Benitez *Philippine Social Life and Progress* p. 335; Malcolm and Laurel *Philippine Constitutional Law* (1936). The above authors add nothing, either in substance or in clarity, to what the Court puts down in the decision. Moreover, Malcolm and Laurel seem to be concerned only with *public* schools. Incidentally, Benitez' work is a high school text-book.

"CENSORSHIP" OF TEXTBOOKS

A third complaint raised by petitioners was against Republic Act No. 139. The Act requires schools to submit textbooks to the Board on Textbooks which in turn—

> shall have the power to prohibit the use of any of said textbooks which it may find to be against the law or to offend the dignity and honor of the government and people of the Philippines, or which it may find to be against the general policies of the government, or which it may deem pedagogically unsuitable.[25]

The Court explains its position thus:

> The average lawyer who reads the above quoted section of Republic Act 139 will fail to perceive anything objectionable. Why should not the State prohibit the use of textbooks that are illegal, or offensive to the Filipinos or adverse to government policies or educationally improper? But those trained to the investigation of constitutional issues are likely to apprehend the danger to civil liberties, or possible educational dictatorship or thought control... Much depends, however, upon the execution and implementation of the statute... But if the Board on Textbooks in its actuations strictly adheres to the letter of the section and wisely steers a middle course between the Scylla of "dictatorship" and the Charybdis of "thought control," no cause for complaint will arise and no occasion for judicial review will develop...
>
> Of course it is unnecessary to assure herein petitioners that when and if the dangers they apprehend materialize and judicial intervention is suitably invoked, after all administrative remedies are exhausted, the courts will not shrink from their duty to delimit constitutional boundaries and protect individual liberties.[26]

It is evident then that the Court definitely wishes to exclude totalitarian control and thought control from the law. One wonders, however, whether the Court has effectively done so. For the law contains phrases which are sufficiently vague to be disturbing, like "against the law" or "against the general policies of the government." There is, moreover, that clause which reserves to the state the power to judge over the pedagogical soundness or unsoundness of a textbook. When a private educator reads the statute and when he hears the Supreme Court say, "Much depends, however, upon the execution and

[25] Cited in *PACU v. Secretary of Education* 51 O.G. 6238.
[26] *Ibid.* 6239-40.

implementation of the statute," questions begin to form in his mind. How will the officials charged with the execution and implementation of the statute interpret the words "against the law" or "against the general policies of the state"? What are the Board on Textbooks' norms for pedagogical suitability? Does not the statute equivalently say that the Board on Textbooks has the right to enter every classroom and determine the substance of every class lecture, since it has the right to judge the suitability of the books upon which classroom lectures are based? The private educator is tempted to remark, "Much, indeed, depends upon the execution and implementation of the statute!"

CONCLUSION ON PACU CASE

Elsewhere in the decision, the Court has this observation to make:

> we do not share the belief that section 5 [Art. XIV] has added *no new power* to what the state inherently possesses by virtue of the police power. An express power is necessarily more extensive than a mere implied power. For instance, if there is conflict between an express individual right and the express power to control education, it cannot offhand be said that the latter must yield to the former-conflict of two express powers [sic]. But if the power to control education is *merely implied* from the police power, it is feasible to uphold the express individual right...[27]

What the Court means is that when the Constitution expressly states that all schools are subject to regulation and supervision by the state, it makes express a power which the state already implicitly possesses by virtue of its police power. By making this implied power express, it adds a new power to the state in as much as an implied right of the state must yield to an express right of an individual, whereas an express right of the state need not yield to an express right of an individual. In the latter case, the merits of both rights must be examined to determine which must have precedence. The problem then before the Court, it would seem, was one of determining the merits of two express rights or, more exactly, of reconciling two apparently contradictory express rights,

[27] See *ibid.* 6239.

namely, the express right of the state to supervise and regulate educational institutions and the express right of parents (which they delegate to private schools) to educate their children.[28]

In the Supreme Court's solution to the difficulty (or, did the Supreme Court approach the problem as we see it?), this article suggests that two things seem wanting.

First, the regulation and supervision clause seems to be taken by itself as if the Constitution affirms nothing but the right of the government to regulate and supervise schools. This writer suggests that the supervision-and-regulation clause be taken in conjuction with Art. II Sec. 4 where the government's role is set down definitely as subsidiary to the natural right and duty of parents.

Secondly, the Supreme Court seems to be seeking a clearer principle, or at least seems to wish that there were a clearer principle, to delimit the power of supervision and regulation of schools and to distinguish it from complete control. This article suggests "subsidiary control" as the desired and desirable principle with its twofold test—(1) Is the particular application of the regulation-and-supervision clause necessary for the common good? (Is it necessary for the "aid and support" of parents?) (2) Is it necessary for the government to perform the function or can it be done by some person, moral or physical, beneath the government? Although the Supreme

[28] Of interest is a passage from the Supreme Court decision in the case *Rubi v. Provincial Board*: "How far, consistently with freedom, may the rights and liberties of the individual members of society be subordinated to the will of the Government? It is a question which has assailed the very existence of government from the beginning of time. Not now purely an ethical or philosophical subject, nor now to be decided by force, it has been transferred to the peaceful forum of the Judiciary. In resolving such an issue, the Judiciary must realize that the very existence of government renders imperative a power to restrain the individual to some extent, dependent, of course, on the necessities of the class to be benefited. As to the particular degree to which the Legislature and the Executive can go interfering with the rights of the citizens, this is, and for a long time to come will be, impossible for the courts to determine." Cited in Tañada and Fernando *op. cit.* I 140.

Court clearly recognizes the validity of the first test, its recognition of the second is not very clear. Consequently, it does not seem to distinguish between *temporary* and *permanent* powers.

SUMMARY AND CONCLUSION

Briefly, then, it was the desire of the framers of the Constitution and it is the express opinion of the Supreme Court that the government's power of supervision and regulation be limited so that it should fall short of *complete* control. Both the framers of the Constitution and the justices of the Supreme Court realize that the power of supervision and regulation granted by Art. XIV Sec. 5 does mean a power of control and they seem to be seeking a principle that will ensure the proper delimitation of this power. This writer suggests that the key to the solution can be found in Art. II Sec. 4 where the educational function of the government is made definitely *subsidiary.*

The late Secretary of Education, Gregorio Hernandez Jr., expressed this doctrine in words which serve as an official recognition of the principle of subsidiarity in the juridico-educational theory of the Constitution. The principle of subsidiarity became for the late Secretary a favorite topic for addresses to student and teacher groups. On 26 March 1955, for instance, he addressed the graduates of the University of Manila thus:

> Ever since I assumed headship of this Department, it has been my constant care to exercise this supervision in a manner that will serve not as a limitation on liberty, but rather as a stimulus to achievement. For that is basically my concept of government supervision of private educational institutions. The idea is not to impose a ready-made pattern of procedures that will reduce our school system to a dead level of uninspired conformity, but rather to set common goals... and to encourage each institution to achieve those goals in its way, according to the spirit of its own genius and traditions, with the widest possible freedom compatible with our national needs.[29]

Further on he lamented the unnecessary curtailments imposed upon private schools. "It is unfortunate indeed that in the

[29] See "The State Has No Monopoly on Learning," U.E. Public Service Series No. 4 pp. 16-17.

past these institutions have not been given the recognition that is their just desert, that they have been subjected to difficulties and unnecessary embarrassments."[30]

Again on 29 October 1955, addressing the General Assembly of the Catholic Educational Association of the Philippines, he said:

> It is the policy of the Government, through its Department of Education, to encourage... private organizations, to facilitate their educational activities and, where need exists, to assist and supplement their work... when private schools are providing educational opportunities for their students "adequately, efficiently, and with benefit to the welfare of the whole" and their activities are in conformity with the aims expressed in the Constitution, then the Department of Education rejoices; *in accordance with the principle of subsidiarity*, it will not "thrust itself into their peculiar concerns and their organization" lest their development and vitality "be choked at the root."[31]

In conclusion, the one word which synthesizes the spirit of the first sentence of Art. XIV Sec. 5, to reduce it to its germinal essence, is *balance*—balance between liberty and constraint, between freedom and order. And that, incidentally, is also the essence of democracy. And the reason why democracy is fundamentally such a balance is because democracy is built on the twin principles of natural political law, viz. the principle of subsidiarity and the principle of the common good. Democracy stands or falls with these principles. To deny them either in theory or in practice is to lay the axe to the root of democratic living. Consequently, any construction of Art. XIV Sec. 5 which rejects the principle of the common good or the principle of subsidiarity, either by leaning towards *laissez faire* or by favoring state interference unwarranted by the demands of the general welfare, not only distorts the intention of the law but also constitutes a threat to education in a free community.

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[30] *Loc. cit.*

[31] See Sec. Gregorio Hernandez Jr., "The Principle of Subsidiarity" (speech delivered before the Catholic Educational Association of the Philippines, 29, October 1955). He is quoting here an earlier speech delivered before PACU, "Operation Decontrol," published in full in *The Philippines Herald* 30 July 1955.

One very blunt observation from Maritain may be pertinent here:

> The fact remains that the State has skill and competence in administrative, legal, and political matters, but is inevitably dull and awkward—and, as a result, easily oppressive and injudicious—in all other fields. To become... a leading spirit in the affairs of culture, science, and philosophy is against the nature of such an impersonal topmost agency, abstract so to speak and separated from the moving peculiarities, mutual tensions, risks, and dynamism of concrete social existence.[32]

Someone has well remarked, realistically, although not without a touch of cynicism, that the common good can demand that public services be left in the hands of those who do not professedly seek the common good.

[32] Jacques Maritain *Man and the State* (Chicago, University of Chicago Press 1951) p. 21.