

Contemporary Employment Relations and Academic Freedom in the University of the Philippines: Convergence and Divergence

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Abstract

The University of the Philippines (UP) has a new charter— Republic Act No. 9500 (2008). It declares UP as “the national university.” UP is the only university in the country accorded such a status. This makes UP sui generis. The new charter has implications for employment relations and academic freedom. There are areas of convergence between employment relations and academic freedom in the national university. Jurisprudence affirms UP’s academic freedom, which includes the “autonomy to choose who should teach” and “who should be retained in its rolls of professors and other academic personnel.” UP faculty members and research, extension and professional staff (REPS) are not covered by civil service law, rules and regulations, including the Revised Uniform Rules on Administrative Cases in the Civil Service and the pertinent provisions of Republic Act No. 6713, as requisites to appointment and removal since the power of appointment includes the power of removal. There

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would be an eventual shift of governing employment and social security laws to the Labor Code and Social Security Act as regards faculty members and REPS. They belong to one bargaining unit. However, the Civil Service Decree and related laws apply to the administrative staff. While there is convergence between employment relations and academic freedom as to faculty members and REPS, divergence is also evident. Dualism characterizes contemporary employment relations in the national university. Academic freedom is influencing the dichotomy between employment relations for faculty members and REPS (academic personnel) and that for administrative staff (non-academic personnel).

Introduction

Employment relations is the study of the regulation of the employment relationship between employer and employee, collectively and individually, and the determination of substantive and procedural issues at international, national, industrial, organizational, and workplace levels.¹ Employment relations—covering as it does both human resources (HR) and industrial relations (IR)—is a multidisciplinary field that encompasses all aspects of work and the employment relationship.² Verma, Kochan and Lansbury (1995) use employment relations interchangeably with industrial relations and human resource management, i.e., traditional industrial relations and human resource practices are collectively referred to as employment relations.³ And Erickson, Kuruvilla, Ofreneo, and Ortiz (2001) analyze changing employment relations in the Philippines via the study of IR/HR practices, including the core-periphery system of workforce management, in different firms and sectors.⁴

Academic freedom is the liberty to pursue and teach relevant knowledge and to discuss it freely without restriction from school or public officials or from other sources of influence.⁵ Academic freedom, according to Justice Felix Frankfurter, includes the determination of who may teach, what may be taught, how it shall be taught, and who may be admitted to study (*Sweezy v. New Hampshire*, 354 US 234 [1957]).⁶ “The internal conditions for academic freedom in a university are that the academic staff should have *de facto* control of the following functions: (1) the admission and examination of students; (2) the curricula for courses of study; (3) the

appointment and tenure of office of academic staff; and (4) the allocation of income among the different categories of expenditure.”⁷

The University of the Philippines (UP) has a new charter—Republic Act No. 9500, otherwise known as the University of the Philippines Charter of 2008. Under its new charter, UP is declared as “the national university.”⁸ UP is the only university in the Philippines accorded such a status by law.

What are the implications of the new UP charter for employment relations and academic freedom in the national university? What are the changes introduced by the new law? Are there areas of intersection or convergence between employment relations and academic freedom in the national university? Is academic freedom influencing employment relations in UP? These are some questions that this descriptive, exploratory and seminal study hopes to address.

Legal Origins of the UP Charter

Legal origins theory has two key assumptions: a legal system is founded on either the common law system or the civil law system, and thus it is exogenous or a foreign transplant.⁹ The common law system relies on judicial decisions and precedents while the civil law system is based on fixed codes or rules.¹⁰ Common law countries include the United Kingdom and United States. France and Germany are examples of civil law countries.

When the Americans came to the Philippines, the Philippine Commission—the legislative body of the colonial government—passed several laws, among which were the civil service law¹¹ and the first UP charter. The first UP charter—Act No. 1870—was enacted on June 18, 1908 and titled “An Act for the Purpose of Founding a University for the Philippine Islands, Giving It Corporate Existence, Providing for a Board of Regents, Defining the Board’s Responsibilities and Duties, Providing Higher and Professional Instruction, and for Other Purposes.” Both the initial civil service law and UP charter were thus of common law origin.

Under Act No. 1870 (Section 6), the UP Board of Regents had the following powers and duties:

- “(a) To receive and appropriate to the ends specified by law such sums as may be provided by law for the support of the university;
- (b) To provide for the establishment of a College of Philosophy, Science, and Letters; a College of Law and of Social and Political Science; a College

of Medicine and Surgery; a College of Pharmacy; a College of Dentistry; a College of Veterinary Science; a College of Engineering; a College of Mines; a College of Agriculture; and a School of Fine Arts; Provided, That the Board of Regents may establish these colleges or any of them as soon as in its judgment conditions shall favor their opening and funds shall be available for their maintenance; And provided further, That the Board of Regents, by and with the approval of the Governor-General, shall have power to combine two or more of the colleges authorized by this Act, in the interests of economy and efficiency; And provided further, That the Philippine Medical School, as established by Act Numbered Fourteen hundred and fifteen, as amended, shall become the College of Medicine and Surgery of the Philippine University as soon as two or more colleges of the University of the Philippines shall have been established and in actual operation;

(c) To confer the usual honorary degrees upon persons other than graduates of the university in recognition of learning, statesmanship, or eminence in literature, science, or art; Provided, That such degrees shall not be conferred in consideration of the payment of money or other valuable consideration;

(d) To establish chairs in the colleges hereinbefore mentioned, and to provide for the maintenance or endowment of such chairs, as well as to provide for such other professors, assistant professors, instructors, tutors, and lecturers as the progress of instruction may make necessary, and to fix the compensation pertaining to such positions;

(e) To appoint, on recommendation of the president of the university, professors, instructors, lecturers, and other employees of the university, to fix their compensation and to remove them for cause after an investigation and hearing shall have been had;

(f) To approve the courses of study and rules of discipline drawn up by the university council as hereinafter provided; to fix the tuition fees required of students, as well as matriculation fees, graduation fees and fees for laboratory, courses, and all special fees; and to remit the same in special cases;

(g) To provide fellowships and scholarships and to award the same to students giving special evidence of merit;

(h) To prescribe rules for its own government, and to enact for the government of the university such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the university as defined in section two of this Act."

Based on Section 2 of Act No. 1870:

“Sec. 2. The purpose of said university shall be to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training.”

Sections 9 to 11 of Act No. 1870 also provided the following:

“Sec. 9. There shall be a university council, consisting of the president of the university and of all instructors in the university holding the rank of professor, associate professor, or assistant professor. The council shall have power to prescribe the courses of study and rules of discipline, subject to the approval of the Board of Regents. It shall fix the requirements for admission to any college of the university, as well as for graduation and the receiving of a degree. The council alone shall have the power to recommend students or others to be recipients of degrees. Through its president or committees it shall have disciplinary power over the students within the limits prescribed by the rules of discipline approved by the Board of Regents. The powers and duties of the president of the university, in addition to those specifically provided for in this Act, shall be those usually pertaining to the office of president of a university.

Sec. 10. The body of instructors of each college shall constitute its faculty, and as presiding officer of each faculty there shall be a dean elected by the faculty to which he belongs. In the appointment of professors or other instructors of the university, no religious test shall be applied, nor shall the religious opinions or affiliations of the instructors of the university be made a matter of examination or inquiry; Provided, however, That no instructor in the university shall inculcate sectarian tenets in any of the teachings, nor attempt, either directly or indirectly, under penalty of dismissal by the Board of Regents, to influence students or attendants at the university for or against any particular church or religious sect.

Sec. 11. Professors and other regular instructors in the university shall be exempt as such from any civil-service examination or regulation as a requisite to appointment.”

Act No. 1870 was amended subsequently by several laws.

The New UP Charter

The UP Charter of 2008 has explicit provisions on the academic freedom and institutional autonomy of the national university, to wit:

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“SEC. 5. Academic Freedom. - The national university has the right and responsibility to exercise academic freedom.

SEC. 6. Academic Excellence. - The national university has the responsibility to maintain and enhance its high academic standards in the performance of its functions of instruction, research and extension, and public service.”

“SEC. 11. Institutional Autonomy as the National University. - To provide greater flexibility, it shall be treated in a manner consistent with its institutional requirements as the national university by the service-wide agencies in the exercise of their respective jurisdiction. Taking into account national goals and priorities, it shall exclusively determine its teaching, research and extension thrusts, plans, policies, programs and standard, and on the basis of such determination, the national university shall recommend its annual budget to the President of the Republic of the Philippines and Congress.”

“SEC. 27. Rules of Construction. - No statutory or other issuances shall diminish the powers, rights, privileges and benefits accorded to the national university under this Act or enjoyed at present, by it under other issuances not otherwise modified or repealed under this Act, unless subsequent legislation expressly provides for their repeal, amendment or modification. Any case of doubt in the interpretation of any of the provisions of this Charter shall be resolved in favor of the academic freedom and fiscal autonomy of the University of the Philippines.”

Regarding governance and employment relations, the following provisions of the new UP charter are significant:

“SEC. 13. Powers and Duties of the Board of Regents. - The administration of the national university and the exercise of its corporate powers are vested in the Board of Regents.

The Board shall exercise the following specific powers and duties:

(a) To define in general terms the thrusts of the national university and adopt broad policy guidelines to ensure their implementation;

(b) To preserve the integrity of the national university;

(c) To approve the institution, merger or abolition of academic programs, upon recommendation of the University Council of the constituent university concerned, through the President of the University;

- (d) To approve the graduation of students and grant of honors, as recommended by their respective University Councils through the President of the University;
- (e) To confer honorary degrees upon persons in recognition of learning, statesmanship, or eminence in literature, science, or art, upon recommendation of a committee created by the President of the University: *Provided*, That such degrees shall not be conferred in consideration of any payment, gift or other valuable consideration;
- (f) To approve the rules on student discipline recommended by the University Councils through the President of the University, with the Board retaining the power to review and pass final judgment on student disciplinary cases;
- (g) To create, organize, reorganize, merge or abolish constituent universities, colleges, institutes, and other academic and administrative units of the national university;
- (h) To establish professorial chair awards;
- (i) To provide fellowships, scholarships and grants, including athletic grants and to award the same to faculty, staff and students having special evidence of merit, especially those who are poor and deserving individuals;
- (j) To elect the President of the University for a single term of six (6) years following a process of democratic consultation with the university community based on standards and guidelines set by the Board. In the event of a vacancy, the Board shall elect a president who shall serve a full term. A Chancellor chosen by the Board may act as Officer-in-Charge of the national university when the search process is in progress. In no case shall the search and election of the next President be longer than ninety (90) calendar days from the date when the vacancy occurs;
- (k) To appoint faculty members and other officials and employees, to draw up a position classification and compensation plan for its faculty and staff, and, any law to the contrary notwithstanding, to fix and adjust salaries and benefits of the faculty members and other employees: *Provided*, That salaries and other benefits of the faculty shall be equivalent to those being received by their counterparts in the private sector; to determine the hours of service of faculty and staff, and such other terms and conditions of employment as it may deem proper; to grant leave of absence under such regulations as it may promulgate, any other provisions of law to the contrary notwithstanding; and to remove them for cause as provided by law after due investigation and proper hearing;

(l) To extend, with their consent, the tenure of faculty members of the national university beyond the compulsory retirement age, any other provision of law to the contrary notwithstanding, on recommendation of the units upon endorsement of the President of the national university, whenever their services are especially needed: *Provided, however,* That no extension of tenure shall be made beyond the age of seventy (70);

(m) To fix the tuition fees and other necessary school charges, as the Board may deem proper to impose, after due and comprehensive consultation with the students concerned. Such fees and charges, including government support and other income generated by the national university, shall constitute special trust funds and shall be deposited in an authorized government depository bank. Any and all interest that shall accrue therefrom shall form part of the same funds for the use of the national university.

Notwithstanding any provision of law to the contrary, all incomes generated by the national university or by its subsidiaries shall, upon their collection, be retained by the national university and disbursed at the discretion of the Board for the professional growth and development, health, welfare, and other benefits of the students, faculty members and other personnel; for the acquisition, construction, maintenance and repair of urgently needed instructional and auxiliary facilities, equipment, buildings and other infrastructure; and for expenses necessary for the attainment of its purposes under its approved program of expenditures.

If the national university, for reasons beyond its control, shall not be able to pursue any project for which funds have been appropriated and allocated under its approved program of expenditures, the Board may authorize the use of said fund for any reasonable purpose for which it deems necessary and urgent for the attainment of the objectives of the national university: *Provided,* That funds collected from students for a specific purpose shall not be reprogrammed to other expenditures;

(n) To receive and appropriate all sums as may be provided by law for the support of the national university to the ends specified by law, and all other sums in the manner it may, in its discretion, determine to carry out the purposes and functions of the national university;

(o) To authorize the construction, maintenance or repair of its buildings, machinery, equipment and other facilities, and the purchase and acquisition of real and personal properties, including necessary supplies, materials and equipment;

(p) To receive in trust legacies, gifts and donations of real and personal property of all kinds and to administer and dispose the same when

necessary for the benefit of the national university and subject to the instructions of the donor, if any;

(q) Notwithstanding any provision of law to the contrary, to authorize its faculty and staff to travel abroad to study, deliver papers, attend conferences and disseminate research: *Provided*, That the fellowship, scholarship or grant is authorized by the Board: *Provided, finally*, That research and other activities funded by the national university shall likewise undertake research in fields or topics that have promising commercial applications, and that the faculty and staff involved in said research be allowed to participate in its financial or economic benefits;

(r) To exercise the general powers set out in the Corporation Code;

(s) To delegate any of its powers to the President of the University or other officials or officers as it may deem necessary;

(t) To prescribe rules for its own government and the discipline of the faculty and other personnel and to enact for the government of the national university such general policies, rules and regulations, not contrary to law, as are consistent with its purposes; and

(u) To exercise such powers as may be proper and necessary to carry out the objectives of this Act.”

“SEC. 17. Powers of the University Council. - The University Council shall be the highest academic body of each constituent university and shall exercise the following powers:

(a) Fix the requirements for admission to any college or unit, graduation, and the grant of honors subject to the minimum system-wide requirements;

(b) Prescribe the academic programs including their institution, revision, abolition and merger, subject to the approval of the Board;

(c) Recommend to the Board the graduation of students and the grant of honors;

(d) Exercise disciplinary power over the students, through the Chancellors or their appropriate committees, subject to review by the President of the University according to the limits prescribed by system-wide rules on student discipline;

(e) Undertake the periodic review of academic courses, programs, standards, thrusts and policies; and

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(f) Adopt internal rules of procedure consistent with the provisions of this Act.

SEC. 18. The Chancellor of the Constituent University. - The Administration of each constituent university is vested in the Chancellor insofar as authorized by the Board and the President of the University. The Chancellor of the constituent university shall be elected by the Board upon nomination of the President of the University, following a process of consultation with the constituents of the constituent university based on standards and guidelines set by the Board. The Chancellor shall report to the President of the University, and shall perform the duties and functions elsewhere stated in this Act, and all the usual, necessary and related functions of the Office of the Chancellor, subject to the policies and rules prescribed by the Board. The Board shall determine the term and compensation of the Chancellor. If a Chancellor fails to complete his/her term, the President shall appoint an acting Chancellor while a search process is in progress. In no case shall the search and election of the next Chancellor be longer than sixty (60) calendar days from the date when the vacancy occurs.

SEC. 19. The Faculty. - The teaching staff of each college shall constitute its faculty. The College Faculty shall be presided over by a Dean. The Dean shall be elected by the Board upon nomination of the President of the University and recommendation of the Chancellor of the constituent university, following a process of consultation with the constituents of the college based on standards and guidelines set by the Board.

If a Dean fails to complete his/her term, the Chancellor shall appoint an acting Dean while a search process is in progress. In no case shall the search and election of the next Dean be longer than sixty (60) calendar days from the date when the vacancy occurs.

SEC. 20. Appointment Requisites and Practice of Profession. - Faculty members, as well as research, extension and professional staff (REPS) of the national university, shall be exempt as such from any civil service examination or regulation as a requisite to appointment. The provisions of existing law to the contrary notwithstanding, licensing requirements for professional regulatory boards shall not affect appointments to faculty positions. In the appointment of faculty members, no religious test shall be applied, nor shall the religious or political opinions or affiliations of the faculty members of the national university be made subject of examination or inquiry."

"SEC. 30. Repealing Clause. - Act No. 1870, as amended, and all laws, decrees, orders, rules, and regulations or other issuances or parts inconsistent with the provisions of this Act are hereby repealed or modified accordingly."

Based on the UP Charter FAQ of Senator Francis Pangilinan, a leading co-author of Republic Act No. 9500 in the Senate:

“2. What does being a national university mean?”

RA 9500 recognizes UP as the national university. Being the national university, UP is acknowledged as the country’s most advanced institution of higher learning. It leads in all of its academic programs, in teaching as well as in advanced studies and research undertakings, and graduate programs. As the premier state university, UP joins the ranks of national universities in the region that are listed in the roster of the best universities in the world such as—the University of Tokyo, University of Malaya, Chulalongkorn University, National University of Singapore, University of Indonesia, Seoul National University and Peking University. Within the country, UP is recognized as the leader and a model for other state universities, a source of knowledge and of top-rank teachers and researchers, and the best training ground for the country’s future leaders in government, in business and other professions.

3. What provisions of this Act safeguard the welfare of the faculty and staff of UP?

The new UP Charter gives the Board of Regents the authority to draw up a position classification and compensation plan for UP faculty and staff. Specifically the Charter states that *salaries and other benefits of the faculty should be equivalent to those being received by their counterparts in the private sector*. This effectively means exempting the UP personnel from the Salary Standardization Law. Further, this will arrest the exodus of UP faculty, many of whom have left the University to seek higher paying jobs in other schools and in corporations. The minimal pay of the UP faculty has for sometime weakened the University’s ability to retain the best teachers who also conduct world-class research for the University. With the new compensation scheme, UP will be able to offer competitive wages and benefits to its personnel.¹²

Some Implications of the New UP Charter: Areas of intersection or convergence between employment relations and academic freedom in the national university

During the martial law period, Presidential Decree No. 807 (1975), otherwise known as the Civil Service Decree of the Philippines, was enacted, repealing the previous civil service law, rules and regulations. Under the Civil Service Decree, the Career Service includes Closed Career positions which are scientific or highly technical in nature.¹³ These include the faculty and academic staff of state colleges and universities, and scientific

and technical positions in scientific or research institutions which shall establish and maintain their own merit systems.¹⁴

After martial law, Republic Act No. 6713 (1989) was enacted by Congress. Republic Act No. 6713 (Section 8) provides in part that “within thirty (30) days after assumption of office;” “on or before April 30, of every year thereafter; and” “within thirty (30) days after separation from the service”—

“The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

x x x

(5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.” (Emphasis supplied.)

In 1999, the Civil Service Commission issued Memorandum Circular No. 19, S.1999 to all heads of departments, bureaus and agencies of the national and local governments, including government-owned and controlled corporations with original charters and state universities and colleges¹⁵ regarding the Revised Uniform Rules on Administrative Cases in the Civil Service.

Section 52 (B) of the Revised Uniform Rules on Administrative Cases in the Civil Service declares that the failure (of public officials and employees) to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households is punishable as follows:

“8. Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households.

1st Offense – Suspension 1 mo. 1 day to 6 mos.

2nd Offense – Dismissal”

However, according to the Supreme Court in *University of the Philippines and Alfredo De Torres, Petitioners, v. Civil Service Commission, Respondent* (G.R. No. 132860, April 3, 2001, inclusive of footnotes):

“As part of its academic freedom, the University of the Philippines has the prerogative to determine who may teach its students. The Civil Service Commission has no authority to force it to dismiss a member of its faculty even in the guise of enforcing Civil Service Rules.

x x x

x x x We have held time and again that “the University has the academic freedom 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.”¹⁶ Clearly, this freedom encompasses the autonomy to choose who should teach¹⁷ and, concomitant therewith, who should be retained in its rolls of professors and other academic personnel. This Court declared in *Ateneo de Manila University v. Capulong*: “As corporate entities, educational institutions of higher learning are inherently endowed with the right to establish their policies, academic *and otherwise*, unhampered by external controls or pressure.”¹⁸ Similarly, Vicente G. Sinco, a former UP president and delegate to the 1973 Constitutional Convention, stressed that the Constitution “definitely grants the right of academic freedom to the University as an institution as distinguished from the academic freedom of a university professor.”¹⁹

We are not unaware that academic freedom has been traditionally associated with freedom of thought, speech, expression and the press.²⁰ But, as explained by Constitutional Commissioner Adolfo S. Azcuna during the deliberations on Section 5 (2), Article XIV²¹ of the 1987 Constitution, “[S]ince academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom.”²²

Thus, we hold that by opting to retain private petitioner and even promoting him x x x, the University was exercising its freedom to choose who may teach or, more precisely, who may continue to teach in its faculty. x x x the Respondent CSC had no authority to dictate to UP the outright dismissal of its personnel. The former could not have done so without trampling upon the latter’s constitutionally enshrined academic freedom. Moreover, in *Chang v. Civil Service Commission*,²³ the Court stressed that “[t]he CSC is not a co-manager, or surrogate administrator of government offices and agencies. Its functions and authority are limited to approving or reviewing appointments to determine their concordance with the requirements of the Civil Service Law.” In short, on its own, the CSC does not have the power to terminate employment or to drop workers from the rolls.

Needless to say, UP definitely recognizes and values petitioner’s academic expertise. As the vice chancellor for academic affairs explained,

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"[d]ropping him from the rolls will utterly be a waste of government funds and will not serve the best interest of the country which is suffering from 'brain-drain.'"²⁴ Even UP President Emil Q. Javier advised x x x to "give Dr. de Torres the opportunity to honor his service obligation to the University,"²⁵ referring to petitioner's required return service in view of a fellowship abroad earlier granted him by the institution.

Consequently, there is no need for the issuance of a new appointment in favor of Dr. De Torres. His service in UP is deemed uninterrupted during his tenure at CIRDAP.

WHEREFORE, the Petition is hereby GRANTED. The assailed Decision of the Court of Appeals and the Respondent Civil Service Commission's Resolution Nos. 95-3045 and 96-1041 are SET ASIDE. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Likewise, the following facts and proceedings culled from the US Supreme Court decision in *Keyishian v. Board of Regents*, 385 US 589 (1967) are relevant because of the common law origins of both the civil service law and UP charter:

"Appellants, faculty members of the State University of New York and a nonfaculty employee, brought this action for declaratory and injunctive relief, claiming that New York's teacher loyalty laws and regulations are unconstitutional. Their continued employment had been terminated or was threatened when each appellant faculty member refused to comply with a requirement of the university trustees that he certify that he was not a Communist and that if he had ever been one he had so advised the university president; and the nonfaculty employee refused to state under oath whether he had advocated or been a member of a group which advocated forceful overthrow of the government. Under 3021 of New York's Education Law "treasonable or seditious" utterances or acts are grounds for dismissal from the public school system, as well as under 105, subd. 3, of the Civil Service Law. Other provisions of 105 of the Civil Service Law disqualify from the civil service or employment in the educational system any person advocating or involved with the distribution of written material which advocates the forceful overthrow of the government. Section 3021 does not define "treasonable or seditious." Section 105, subd. 3, provides that "treasonable word or act" shall mean "treason" as defined in the Penal Law and "seditious word or act" shall mean "criminal anarchy" as therein defined. Section

3022 (the Feinberg Law) of the Education Law requires the State Board of Regents to issue regulations for the disqualification or removal on loyalty grounds of faculty or other personnel in the state educational system, to make a list of “subversive” organizations, and to provide that membership therein constitutes prima facie evidence of disqualification for employment. The Board listed the National and State Communist Parties as “subversive organizations” under the law, but shortly before the trial of this case the university trustees’ certificate requirement was rescinded and it was announced that no person would be ineligible for employment “solely” because he refused to sign the [385 US 589, 590] certificate, and that 3021 and 3022 of the Education Law and 105 of the Civil Service Law constituted part of the employment contract. A three-judge District Court sustained the constitutionality of these provisions against appellants’ challenges of vagueness and overbreadth and dismissed the complaint.”²⁶

The US Supreme Court, reversing and remanding the case, held that:

“1. Adler v. Board of Education, 342 US 485 , in which this Court upheld some aspects of the New York teacher loyalty plan before its extension to state institutions of higher learning, is not controlling, the vagueness issue presented here involving 3021 and 105 not having been decided in Adler, and the validity of the subversive organization membership provision of 3022 having been upheld for reasons subsequently rejected by this Court. x x x.

2. The rescission of the certificate requirement does not moot this case, as the substance of the statutory and regulatory complex challenged by appellants remains. x x x

3. Section 3021 of the Education Law and 105, subds. 1(a), 1 (b), and 3, of the Civil Service Law as implemented by the machinery created pursuant to 3022 of the Education Law, are unconstitutionally vague, since no teacher can know from 3021 of the Education Law and 105, subd. 3, of the Civil Service Law what constitutes the boundary between “seditious” and nonseditious utterances and acts, and the other provisions may well prohibit the employment of one who advocates doctrine abstractly without any attempt to incite others to action, and may be construed to cover mere expression of belief. x x x

(a) These provisions, which have not been interpreted by the New York courts, can have a stifling effect on the “free play of the spirit which all teachers ought especially to cultivate and practice” (Wieman v. Updegraff, 344 US 183, 195 (concurring opinion)). x x x

(b) Academic freedom is a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.
x x x

(c) The prolixity and profusion of statutes, regulations, and administrative machinery, and manifold cross-references to inter-related enactments and rules aggravate the problem of vagueness of wording. x x x.

4. The provisions of the Civil Service Law (105, subd. 1 (c)) and the Education Law (3022, subd. 2), which make Communist Party membership, as such, prima facie evidence of disqualification [385 US 589, 591] for employment in the public school system are “overbroad” and therefore unconstitutional. x x x.

(a) Constitutional doctrine after this Court’s upholding of 3022, subd. 2, in *Adler* has rejected its major premise that public employment may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action. x x x

(b) Mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for imposing sanctions. x x x.”²⁷ (Emphases supplied.)

“The US Supreme Court, finding overbreadth and vagueness in the statute, threw out the New York loyalty oath requiring a denial of Communist affiliation as a prerequisite to teaching at a state university.”²⁸

Significantly, under Section 20 of the UP Charter of 2008, “Faculty members, as well as research, extension and professional staff (REPS) of the national university shall be exempt as such from any civil service examination or regulation as a requisite to appointment.” (Emphasis supplied.)

It is a basic rule that the power of appointment includes the power of removal,²⁹ which is evident even in Section 13 (k) of the UP Charter of 2008.³⁰ Thus, UP’s “autonomy to choose who should teach” and “who should be retained in its rolls of professors and other academic personnel” is, therefore, not only a matter of jurisprudence (see *University of the Philippines and Alfredo De Torres, Petitioners, v. Civil Service Commission, Respondent, supra*). Now, that autonomy has a statutory basis as well.

Moreover, the Act does not grant to UP the autonomy to impose any civil service examination or regulation as a requisite to the appointment, and removal or separation, of its faculty and REPS. For the Act explicitly declares that faculty and REPS “of the national university shall be exempt as such from any civil service examination or regulation as a requisite to appointment.”

Borrowing the language in *Keyishian v. Board of Regents, supra*, the purpose is to prevent the “stifling effect on the free play of the spirit which all teachers ought especially to cultivate and practice,” since academic freedom “does not tolerate laws that cast a pall of orthodoxy over the classroom.” As already noted, academic freedom includes the de facto control by academic staff of “the appointment and tenure of office of academic staff.”³¹

Furthermore, Section 27 of the Act provides that “Any case of doubt in the interpretation of any of the provisions of this Charter shall be resolved in favor of the academic freedom and fiscal autonomy of the University of the Philippines.”

Notably, too, Republic Act No. 9500 has the effect of repealing or modifying accordingly “all laws, decrees, orders, rules, and regulations or other issuances or parts” thereof that are “inconsistent with” its “provisions.”³²

To that extent, there are areas of intersection or convergence between employment relations and academic freedom as far as the academic staff or faculty members and REPS are concerned.

Thus, faculty members and REPS of the national university are not covered by the civil service law, rules and regulations, including the Revised Uniform Rules on Administrative Cases in the Civil Service and the pertinent provisions of Republic Act No. 6713, as requisites to appointment and removal or separation.

This is consistent with *Keyishian v. Board of Regents, supra*: “Constitutional doctrine xxx has rejected” the “major promise that public employment may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action.”

Conclusion: Dualism in contemporary employment relations in UP³³

One major effect that the UP Charter of 2008 has is the eventual shift of governing employment law from the Civil Service Decree to the Labor Code insofar as the faculty members and REPS are concerned. But UP’s administrative staff is still covered by the Civil Service Decree. Both the present Civil Service Decree and Labor Code became effective during the martial law period in the form of presidential decrees.³⁴

Security of tenure³⁵ is recognized in both laws. Those covered by the Civil Service Decree can be removed only for cause provided by

law.³⁶ There can be instances of separation from the service, however, in government reorganizations when there are no available positions in the approved staffing pattern.³⁷ But those holding permanent appointments enjoy a preference for appointment to the new positions.³⁸ On the other hand, there are just and authorized causes for termination of employment under the Labor Code.³⁹ Just causes are blameworthy acts on the part of the employee, such as serious misconduct, willful disobedience, gross and habitual neglect of duties, commission of fraud or crime, and other analogous causes. Authorized causes are business or health reasons beyond the control of the employee. Business reasons include installation of labor saving devices (automation), redundancy (excess personnel), retrenchment (based on expected or actual losses that are substantial), cessation of operations or closure (whether due to losses or not). Illness as an authorized cause for termination of employment must be based on a certification by a competent public health authority that the illness is of such a nature and at such a stage that it can no longer be cured, even with proper medical attention, within a period of six months.

As a consequence of the provision in the UP Charter of 2008 that “salaries and other benefits of the faculty shall be equivalent to those being received by their counterparts in the private sector,”⁴⁰ instead of Executive Order No. 180, the Labor Code provisions on the right to self-organization, collective bargaining, strikes and other concerted actions,⁴¹ among others, would also ultimately apply to UP faculty members and REPS because they belong to one appropriate bargaining unit—that of the academic personnel, as held in *University of the Philippines v. Ferrer-Calleja, et al.*, G.R. No. 96189, July 14, 1992. According to the Supreme Court:

“x x x the University employees may, as already suggested, quite easily be categorized into two general classes: one, the group composed of employees whose functions are non-academic, i.e., janitors, messengers, typists, clerks, receptionists, carpenters, electricians, grounds-keepers, chauffeurs, mechanics, plumbers;^[32] and two, the group made up of those performing academic functions, i.e., full professors, associate professors, assistant professors, instructors—who may be judges or government executives—and research, extension and professorial staff.^[33] Not much reflection is needed to perceive that the community or mutuality of interests which justifies the formation of a single collective bargaining unit is wanting between the academic and non-academic personnel of the university. It would seem obvious that teachers would find very little in common with the University clerks and other non-academic employees as regards responsibilities and functions, working conditions, compensation rates, social life and interests, skills and intellectual pursuits, cultural activities, etc. On the contrary, the dichotomy of

interests, the dissimilarity in the nature of the work and duties as well as in the compensation and working conditions of the academic and non-academic personnel dictate the separation of these two categories of employees for purposes of collective bargaining. x x x"⁴²

One important change would be the scope of issues in *collective bargaining* under the Labor Code, as opposed to *collective negotiation* as used in Executive Order No. 180. Terms and conditions of employment that are fixed by law are beyond the scope of *collective negotiation*.⁴³ Employment terms and conditions above the minimum labor standards could be the subject of *collective bargaining*, such as wages, hours of work, and all other terms and conditions of employment.⁴⁴ Another is the set of rules on strikes and lockouts—workers in the private sector may go on strike to gain economic concessions after complying with the procedural requirements, although the Secretary of Labor would most likely assume jurisdiction over a labor dispute in an educational institution after the filing of a notice of strike and strike vote result.⁴⁵ In the civil service, the staging of a strike is not allowed.⁴⁶

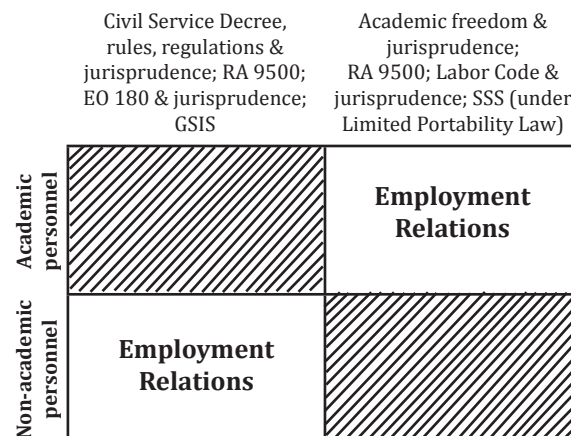
Still another difference is the body of rules on dispute settlement. In the private sector, there are about 25 different mechanisms for handling conflict.⁴⁷ The multiplicity of conflict handling forums in the private sector creates a variety of spaces or channels for worker participation in conflict management and resolution. Those in the public sector are not as many.

What about social security benefits? Under Republic Act No. 7699 of 1994, the Limited Portability Law, social security benefits under the Government Service Insurance System (GSIS) and Social Security System (SSS) are portable and may be totalized. Portability means the transfer of funds for the account and benefit of a worker who transfers from one System to the other.⁴⁸ Totalization refers to the process of adding up the periods of creditable services or contributions under each of the Systems, for the purpose of eligibility and computation of benefits.⁴⁹ Faculty members and REPS could avail of the processes under the limited portability and totalizing scheme to ensure continuity of and/or entitlement to social security benefits upon transfer from one System to the other, as a result of the implementation of the new UP charter, particularly the provision that "salaries and other benefits of the faculty shall be equivalent to those being received by their counterparts in the private sector."⁵⁰

While there is convergence between employment relations and academic freedom as far as faculty members and REPS are concerned, divergence is also evident. Dualism characterizes contemporary employment relations in the national university. The dichotomy between

employment relations for faculty members and REPS (academic personnel) and that for administrative staff (non-academic personnel) is being influenced by academic freedom (Figure 1), “since academic freedom is a dynamic concept” and the need “to expand the frontiers of freedom, especially in education”⁵¹ has been articulated.

Figure 1. Dualism in contemporary employment relations in UP



Source: Sale, in this study.
 Note: Shaded parts indicate that the whole of x-axis categories and the lone y-axis category tend to be mutually exclusive.
 Jurisprudence means case law (court decisions) as precedents (Webster’s New World Law Dictionary [2006], p. 165).

Based on its coverage provisions, the Social Security Act of 1997 does not preclude coverage in the SSS of the national university’s academic personnel, to wit:

“SEC. 8. *Terms Defined.* – For purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

x x x

(j) *Employment* – Any service performed by an employee for his employer except:

x x x

(3) Service performed in the employ of the Philippine Government or instrumentality or agency thereof;

x x x

SEC. 9. *Coverage.* - (a) Coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers: *Provided,* That in the case of domestic helpers, their monthly income shall not be less than One thousand pesos (P1,000.00) a month: *Provided, further,* That any benefit already earned by the employees under private benefit plans existing at the time of the approval of this Act shall not be discontinued, reduced or otherwise impaired: *Provided, further,* That private plans which are existing and in force at the time of compulsory coverage shall be integrated with the plan of the SSS in such a way where the employer's contribution to his private plan is more than that required of him in this Act, he shall pay to the SSS only the contribution required of him and he shall continue his contribution to such private plan less his contribution to the SSS so that the employer's total contribution to his benefit plan and to the SSS shall be the same as his contribution to his private benefit plan before the compulsory coverage: *Provided, further,* That any changes, adjustments, modifications, eliminations or improvements in the benefits to be available under the remaining private plan, which may be necessary to adopt by reason of the reduced contributions thereto as a result of the integration, shall be subject to agreements between the employers and employees concerned: *Provided, further,* That the private benefit plan which the employer shall continue for his employees shall remain under the employer's management and control unless there is an existing agreement to the contrary: *Provided, finally,* That nothing in this Act shall be construed as a limitation on the right of employers and employees to agree on and adopt benefits which are over and above those provided under this Act.

(b) Spouses who devote full time to managing the household and family affairs, unless they are also engaged in other vocation or employment which is subject to mandatory coverage, may be covered by the SSS on a voluntary basis.

(c) Filipinos recruited by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis.

SEC. 9-A. *Compulsory Coverage of the Self-Employed.* - Coverage in the SSS shall also be compulsory upon such self-employed persons as may be determined by the Commission under such rules and regulations as it may prescribe, including but not limited to the following:

1. All self-employed professionals;
2. Partners and single proprietors of businesses;

3. Actors and actresses, directors, scriptwriters and news correspondents who do not fall within the definition of the term “employee” in Section 8 (d) of this Act;
4. Professional athletes, coaches, trainers and jockeys; and
5. Individual farmers and fishermen.

Unless otherwise specified herein, all provisions of this Act applicable to covered employees shall also be applicable to the covered self-employed persons.⁵² (Emphases supplied.)

The service of academic personnel to the national university is not equivalent to “service performed in the employ of the Philippine Government or instrumentality or agency thereof.” The legal personality of the national university is separate and distinct from that of the Philippine Government. Thus, the national university is not an instrumentality or agency thereof.⁵³ The separate and distinct legal personality of the national university emanates from its own charter—a special law passed by Congress.

Coverage in the Labor Code of the national university’s academic personnel is not precluded, too, based on the following provision:

“ART. 276. *Government employees.* – The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. x x x”⁵⁴ (Emphasis supplied.)

Again, coverage in the SSS and the Labor Code of the national university’s academic personnel is in consonance with the laws and jurisprudence discussed earlier. Significantly, the UP Charter of 2008 unequivocally states that “(f)aculty members, as well as research, extension and professional staff (REPS) of the national university shall be exempt as such from any civil service examination or regulation as a requisite to appointment”⁵⁵ (or removal, as the power to appoint includes the power to remove, *supra*) and “salaries and other benefits of the faculty should be equivalent to those being received by their counterparts in the private sector.”⁵⁶ As noted by Pangilinan, “(t)his effectively means exempting the UP personnel from the Salary Standardization Law.”⁵⁷ As the national university, UP is *sui generis*—of its own kind or in a class of its own.⁵⁸

These are in line with academic freedom. And “(t)he national university has the right and responsibility to exercise academic freedom”⁵⁹ under its own charter. That freedom includes—

“The freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of the teacher, without interference from political and ecclesiastical authorities or administrative opinions of institutions in which he is employed, unless his methods are found by a qualified body of his own profession to be clearly incompetent or contrary to professional ethics.”⁶⁰ (Emphasis supplied.)

Endnotes

¹ See Rose, Ed. (2004). *Employment Relations*. England: Pearson Education Limited, p. 8. The current author added to Rose’s definition the “international and national levels” to reflect the influences of globalization on employment relations.

² Budd, John W. and Bhave, Devasheesh. (2006). Values, Ideologies, and Frames of Reference in Employment Relations, Chapter 5, in *Sage Handbook of Industrial and Employment Relations*, Nick Bacon, Paul Blyton, Jack Fiorito, and Edmund Heery, editors, p. 5-1.

³ Verma, Anil, Kochan, Thomas A., and Lansbury, Russell D. (eds). (1995). *Employment Relations in the Growing Asian Economies*. USA and Canada: Routledge, pp. 1, 22.

⁴ Erickson, Christopher L.; Kuruvilla, Sarosh; Ofreneo, Rene E.; and Ortiz, Maria Asuncion, “Recent Developments in Employment Relations in the Philippines” (2001). *Faculty Publications–Collective Bargaining, Labor Law, and Labor History*. Paper 2. <http://digitalcommons.ilr.cornell.edu/cbpubs/2>.

⁵ J.R. Coquia, *Broad Aspects of Academic Freedom*, 313 SCRA 428, 429.

⁶ Id.

⁷ Id., at 430.

⁸ REPUBLIC ACT NO. 9500, sec. 2.

⁹ Sale, Jonathan P. (2011). *The Governance of Decision Making and Labor Dispute Settlement in the Philippines: Shifting Methods from Command to Collaboration or Vice-Versa?* Doctoral Dissertation, UP National College of Public Administration and Governance, 08 March 2011, p. 146; citing Foster, David M. (2005). *Politics, Legal Origins, and the Roots of Modern Economic Institutions*. Seminar Paper for Advanced Issues in Corporate Governance. http://www.law.harvard.edu/programs/olin_center/corporate_governance/papers/Foster-Brudney_June.2005.pdf, accessed 26 January 2011.

¹⁰ Id., pp. 146-147.

¹¹ P. Agabin, *Mestizo: The Story of the Philippine Legal System 191*, 2011.

¹² http://www.kiko.ph/index.php?option=com_content&view=article&id=52&Itemid=56.

¹³ PRESIDENTIAL DECREE NO. 807 (1975), sec. 5.

¹⁴ PRESIDENTIAL DECREE NO. 807 (1975), sec. 5. In this regard, UP is now “the national university” under the UP Charter of 2008, which is the later and controlling law. It is no longer just a “state university.” It is a university sui generis, which means it is of its own kind or in a class of its own (Webster’s New World Law Dictionary [2006], p. 247).

¹⁵ See Note 14, supra.

- ¹⁶ Reyes v. Court of Appeals, 194 SCRA 402, 415, February 25, 1991, per Medialdea J.; citing Garcia v. The Faculty Admissions Committee, 68 SCRA 277, November 28, 1975; the latter in turn cited Justice Frankfurter's concurring opinion in Sweezy v. New Hampshire, 354 US 234, 263 (1957).
- ¹⁷ Cagayan Capitol College v. NLRC, 189 SCRA 658, September 14, 1990; citing Dizon, Law on Schools and Students, pp. 289-292, which cited Wilsons Institutional Academy. See also La Salette of Santiago v. NLRC, 195 SCRA 80, March 11, 1991.
- ¹⁸ 222 SCRA 644, 661, May 27, 1993, per Romero, J. (Italics supplied.)
- ¹⁹ Sinco, Philippine Political Law, 1962 ed., p. 489; *ibid*.
- ²⁰ Ateneo de Manila University v. Capulong, *supra*.
- ²¹ "Sec. 5. x x x
- (2) Academic freedom shall be enjoyed in all institutions of higher learning."
- ²² IV Constitutional Commission Record 439.
- ²³ 191 SCRA 663, November 26, 1990, per Narvasa, J.
- ²⁴ Annex "J" of Petition, *supra*.
- ²⁵ Annex "K" of Petition; rollo, p. 55.
- ²⁶ <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=385&invol=589>.
- ²⁷ *Id*.
- ²⁸ J.R. Coquia, *op. cit.*, *supra*, note 5 at 435.
- ²⁹ A.B. Nachura, Outline/Reviewer in Political Law 147 (1996).
- ³⁰ See REPUBLIC ACT NO. 9500, sec. 13 (k), *supra*.
- ³¹ J.R. Coquia, *op. cit.*, *supra*, note 5.
- ³² REPUBLIC ACT NO. 9500, sec. 30.
- ³³ This section of the paper draws substantially from Sale, Jonathan P. (2008). Philpost Privatization: Impact on Workers from a Socio-legal Perspective. Philippine Journal of Labor and Industrial Relations, XXVIII (1 & 2), pp. 150-172, 160, 161.
- ³⁴ The Civil Service Decree of the Philippines is Presidential Decree No. 807 of 1975 while The Labor Code of the Philippines is Presidential Decree No. 442 of 1974, as amended.
- ³⁵ The concept means that a person cannot be removed from employment except for cause and only after due process.
- ³⁶ PRESIDENTIAL DECREE NO. 807 (1975), sec. 36.
- ³⁷ REPUBLIC ACT NO. 6656, sec. 4.
- ³⁸ REPUBLIC ACT NO. 6656, sec. 4.
- ³⁹ LABOR CODE, arts. 282 to 284.
- ⁴⁰ REPUBLIC ACT NO. 9500, sec. 13 (k).
- ⁴¹ See LABOR CODE, arts. 211 to 265.
- ⁴² University of the Philippines v. Ferrer-Calleja, et al., G.R. No. 96189, July 14, 1992.
- ⁴³ EXECUTIVE ORDER NO. 180 (1987), sec. 13.
- ⁴⁴ LABOR CODE, art. 252.
- ⁴⁵ LABOR CODE, art. 263.
- ⁴⁶ See Civil Service Commission Memorandum Circular No. 6, Series of 1987, April 21, 1987.
- ⁴⁷ See LABOR CODE, arts. 124 (paragraphs 4, 5, 6), 128-129, 213-225, 226-233, 236, 241 (last paragraph), 254-259, 260-262-B, 263 (g), 277 (d), (i).
- ⁴⁸ REPUBLIC ACT NO. 7699, sec. 2 (b).
- ⁴⁹ REPUBLIC ACT NO. 7699, sec. 2 (e).
- ⁵⁰ REPUBLIC ACT NO. 9500, sec. 13 (k).
- ⁵¹ See *University of the Philippines and Alfredo De Torres, Petitioners, v. Civil Service Commission, Respondent*, G.R. No. 132860, April 3, 2001, *supra*.
- ⁵² REPUBLIC ACT NO. 8282.
- ⁵³ Under the Administrative Code of 1987, an "Agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein." "Instrumentality refers to any agency of the National Government, not integrated within the

department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.” “Chartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.” However, the University of the Philippines is no longer just a “state university.” Under the UP Charter of 2008, which is the later and controlling law, UP is declared “the national university.” It is the only university in the Philippines given such a status by law. Thus, UP is a university sui generis, which means it is of its own kind or in a class of its own (Webster’s New World Law Dictionary [2006], p. 247).

⁵⁴ LABOR CODE, art. 276.

⁵⁵ REPUBLIC ACT NO. 9500, sec. 20.

⁵⁶ REPUBLIC ACT NO. 9500, sec. 13 (k).

⁵⁷ http://www.kiko.ph/index.php?option=com_content&view=article&id=52&Itemid=56.

⁵⁸ Webster’s New World Law Dictionary [2006], p. 247.

⁵⁹ REPUBLIC ACT NO. 9500, sec. 5.

⁶⁰ J.R. Coquia, op. cit., supra, note 5 at 430-431, citing Garcia v. Faculty Admission Committee, 68 SCRA 283 (1975).

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