

More Plagiarism In The Del Castillo's Ponencia In "Ang Ladlad"

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One of my former students who is now pursuing further studies in the US made an independent review of the *ponencia* of SC Justice Mariano del Castillo in the "Ang Ladlad" case and listed the following instances of plagiarism:

Ladlad ponencia by J. del Castillo	Original source
Freedom of expression constitutes one of the essential foundations of a democratic society, and this freedom applies not only to those that are favorably received but also to those that offend, shock, or disturb. Any restriction imposed in this sphere must be proportionate to the legitimate aim pursued.	<p>The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a "democratic society". Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.</p> <p>Source: Section 49 of Handyside vs. United Kingdom (1979), a decision by the European Court of Human Rights (ECHR)</p>

<p>Otherwise stated, the COMELEC is certainly not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one.</p>	<p>While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.</p> <p>Source: Hurley vs. Irish-American Gay, Lesbian and Bisexual Group of Boston Inc., 515 U.S. 557, at 579.</p>
<p>However, as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.</p>	<p>Religion is an integral aspect of people's lives, and cannot be left at the boardroom door. What secularism does rule out, however, is any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community.</p> <p>Source: Section 19 of Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710, 2002 SCC 86, a decision by the Supreme Court of Canada</p>
<p>[42] x x x See also, <i>L. and V. v Austria</i> (2003-I 29; (2003) 36 EHRR 55) and <i>S.L. v Austria</i> (2003-I 71; (2003) 37 EHRR 39), where the European Court considered that Austria's differing age of consent for heterosexual and homosexual relations was discriminatory; it 'embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority', which could not 'amount to sufficient justification for the differential treatment any more than similar negative attitudes towards those of a different race, origin or colour'.</p>	<p>In <i>L. and V. v Austria</i>⁶⁵ and <i>S.L. v Austria</i>⁶⁶ the ECtHR considered that Austria's differing age of consent for heterosexual and homosexual relations was discriminatory; it 'embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority', which could not 'amount to sufficient justification for the differential treatment any more than similar negative attitudes towards those of a different race, origin or colour'.⁶⁷</p> <p>⁶⁵ <i>L. and V. v Austria</i> 2003-I 29; (2003) 36 EHRR 55.</p> <p>⁶⁶ <i>S.L. v Austria</i> 2003-I 71; (2003) 37 EHRR 39.</p>

	<p>⁶⁷ L. and V. v Austria, supra n. 65; and S.L. v Austria, <i>ibid.</i> at para. 44.</p> <p>Source: Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles by Michael O'Flaherty and John Fisher, Human Rights Law Review (2008) 8(2), 207-248, at 217.</p> <p><i>Note:</i></p> <p>(1) The Human Rights Law Review is published by the Oxford University Press.</p> <p>(2) The journal article by O'Flaherty and Fisher was <i>never cited</i> in the Ladlad ponencia.</p>
<p>[44] x x x Note that in <i>Baczkowski and Others v. Poland</i>, Application No. 1543/06; Judgment of May 3, 2007, the ECHR unanimously ruled that the banning of an LGBT gay parade in Warsaw was a discriminatory violation of Article 14 of the ECHR, which provides:</p> <p>The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p> <p>It also found that banning LGBT parades violated the group's freedom of assembly and association. Referring to the hallmarks of a "democratic society", the Court has attached particular importance to pluralism, tolerance and</p>	<p>63. Referring to the hallmarks of a "democratic society", the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see Young, James and Webster v. the United Kingdom, 13 August 1981, Series A no. 44, p. 25, § 63, and Chassagnou and Others v. France [GC], nos. 25088/95 and 28443/95, ECHR 1999-III, p. 65, § 112).</p> <p>Source: Paragraph 63 of <i>Baczkowski and Others v. Poland</i>, Application No. 1543/06; Judgment of May 3, 2007, a decision by the European Court of Human Rights.</p>

<p>broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.</p>	
<p>[46] x x x x</p> <p>So, too, in <i>Boy Scouts of America v. Dale</i> (530 U.S. 640 [2000]), the US Supreme Court held that the Boy Scouts of America could not be compelled to accept a homosexual as a scoutmaster, because “the Boy Scouts believe that homosexual conduct is inconsistent with the values it seeks to instill in its youth members; it will not “promote homosexual conduct as a legitimate form of behavior.”</p> <p>When an expressive organization is compelled to associate with a person whose views the group does not accept, the organization’s message is undermined; the organization is understood to embrace, or at the very least tolerate, the views of the persons linked with them. The scoutmaster’s presence “would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.”</p>	<p>When an expressive organization is compelled to associate with a person whose views the group does not accept, the organization’s message is undermined; the organization is understood to embrace, or at the very least tolerate, the views of the persons linked with them. We therefore held, for example, that a State severely burdened the right of expressive association when it required the Boy Scouts to accept an openly gay scoutmaster. The scoutmaster’s presence “would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.” <i>Boy Scouts of America v. Dale</i>, 530 U. S. 640, 653 (2000).</p> <p>Source: Justice Antonin Scalia’s Dissenting Opinion in <i>Washington State Grange v. Washington State Republican Party, et al.</i>, 552 US 442, at 463.</p>
<p>[49] The Committee on Economic, Social and Cultural Rights (CESCR) has dealt with the matter in its General Comments, the interpretative texts it issues to explicate the full meaning of the provisions of the Covenant on Economic, Social and Cultural Rights. In General Comments Nos. 18 of 2005 (on the right to work) (Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, E/C.12/GC/18, November 24, 2005), 15 of 2002 (on the right to water) (Committee on Economic, Social</p>	<p>The Committee on Economic, Social and Cultural Rights (CESCR) has dealt with the matter in its General Comments, the interpretative texts it issues to explicate the full meaning of the provisions of the Covenant on Economic, Social and Cultural Rights. In General Comments Nos. 18 of 2005 (on the right to work),³⁷ 15 of 2002 (on the right to water)³⁸ and 14 of 2000 (on the right to the highest attainable standard of health),³⁹ it has indicated that the Covenant proscribes any discrimination on the basis of, inter-alia, sex and</p>

and Cultural Rights, General Comment No. 15: The right to water, E/C.12/2002/11, November 26, 2002) and 14 of 2000 (on the right to the highest attainable standard of health) (Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, August 14, 2000), it has indicated that the Covenant proscribes any discrimination on the basis of, inter-alia, sex and sexual orientation.

The Committee on the Rights of the Child (CRC) has also dealt with the issue in a General Comment. In its General Comment No. 4 of 2003, it stated that, “State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention [on the Rights of the Child] without discrimination (Article 2), including with regard to ‘‘race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’’. These grounds also cover [inter alia] sexual orientation”. (Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, July 1, 2003, CRC/GC/2003/4).

The Committee on the Elimination of Discrimination Against Women (CEDAW), has, on a number of occasions, criticized States for discrimination on the basis of sexual orientation. For example, it also addressed the situation in Kyrgyzstan and recommended that, “lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished” (Concluding Observations of the Committee on the Elimination of Discrimination Against Women regarding Kyrgyzstan, February 5, 1999, A/54/38 at par. 128).

sexual orientation ‘that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of [the right at issue]’. The CESCR has consistently based this prohibition on the terms of the Covenant’s anti-discrimination provision, Article 2.2, which lists invidious categories of discrimination as

including ‘sex’ and ‘other status’. Presumably, since the CESCR distinguishes ‘sex’ and ‘sexual orientation’ in its General Comments, it locates sexual orientation within the rubric of ‘other status’. The CESCR, in the General Comments, also invokes the article addressing equal rights of men and women, Article 3, as a basis for its prohibition of sexual orientation-related discrimination. This linkage of the categories of sex and sexual orientation-related discrimination is discussed subsequently in the context of the practice of the Human Rights Committee (HRC).

The Committee on the Rights of the Child (CRC) has also dealt with the issue in a General Comment. In its General Comment No. 4 of 2003,⁴⁰ it stated that, ‘State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention [on the Rights of the Child] without discrimination (Article 2), including with regard to ‘‘race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’’. These grounds also cover [inter alia] sexual orientation’. The CRC thus appears to adopt the same approach as the CESCR in locating sexual orientation within the category of ‘other status’.

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The Committee on the Elimination of Discrimination against Women (CEDAW), notwithstanding that it has not addressed the matter in a General Comment or otherwise specified the applicable provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, on a number of occasions has criticised

States for discrimination on the basis of sexual orientation. For example, it also addressed the situation in Kyrgyzstan and recommended that, 'lesbianism be reconceptualised as a sexual orientation and that penalties for its practice be abolished'.⁴⁴ The Committee on the Elimination of Racial Discrimination (CERD) appears never to have engaged with issues of discrimination against persons who belong to both racial and sexual minority groups. This gap is startling when one considers the authoritative evidence of such persons facing forms of 'double discrimination', as reported, for instance, by the UN Human Rights Council's Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁴⁵

³⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, E/C.12/GC/18, 24 November 2005.

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, E/C.12/2002/11, 26 November 2002.

³⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.

⁴⁰ Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4.

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⁴⁴ Concluding Observations of the Committee on the Elimination of Discrimination Against Women regarding Kyrgyzstan, 5 February 1999, A/54/38 at para. 128.

⁴⁵ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Commission on Human Rights, 28 February 2006, E/CN.4/2006/16/Add.3 at para. 40.

Source: Sexual Orientation, Gender Identity and International

Human Rights Law: Contextualising the Yogyakarta Principles by Michael O'Flaherty and John Fisher,

	<p>Human Rights Law Review (2008) 8(2), 207-248, at 214-216.</p> <p>Note:</p> <p>(1) The Human Rights Law Review is published by the Oxford University Press.</p> <p>(2) The journal article by O' Flaherty and Fisher was <i>never cited</i> in the Ladlad ponencia.</p>
<p>[51] The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a set of international principles relating to sexual orientation and gender identity, intended to address documented evidence of abuse of rights of lesbian, gay, bisexual, and transgender (LGBT) individuals. It contains 29 Principles adopted by human rights practitioners and experts, together with recommendations to governments, regional intergovernmental institutions, civil society, and the United Nations.</p>	<p>The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a set of international principles relating to sexual orientation and gender identity, intended to address documented evidence of abuse of rights of lesbian, gay, bisexual, and transgender (LGBT) people, and further of intersexuality requested by Louise Arbour according to the International Human Rights Law.</p> <p>Source: Wikipedia – http://en.wikipedia.org/wiki/Yogyakarta_Principles</p> <p>It contains 29 Principles adopted unanimously</p>

by the experts, along with recommendations to governments, regional intergovernmental institutions, civil society, and the UN itself.

Source: Human Rights Watch World Report 2008, p. 36. Preview of the book (as well as the relevant page) is available at:
<http://books.google.com/books?id=4QL9BEIMSbkC>