

The Two Sovereignties

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Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's

— Matthew 22:21¹

I. INTRODUCTION

The field of separation of church and state is one area in Constitutional Law which is fraught with conflicts, confusions, and controversies. To understand the principle of separation of church and state, it is useful to trace its historical background and legal development.

II. HISTORICAL BACKGROUND

A. *Early Times*

1. Ancient Times

In ancient times, all areas of human life were dominated by religion. The distinction between the religious and the non-religious was meaningless. The king did not only rule his kingdom and lead it into war. As leader of his kingdom, he also performed priestly functions. In promulgating laws, the king did not only regulate relations between human beings but also defined obligations to the divine. The Code of Hammurabi² classified the gods and

1. *Matthew 22:21* (King James).

2. See Owen Jarus, Code of Hammurabi: Ancient Babylonian Laws, available at <http://www.livescience.com/39393-code-of-hammurabi.html> (last accessed Mar. 31, 2014).

assigned to them their places in the divine hierarchy. Thus, the relationship of religion to the state may be characterized as one of union in the person of the king, with the state as the dominant partner.³

a. The State of Israel

The rise of the State of Israel gave rise to theocracy.⁴ The authority of the Israel was ascribed to God. The Law of Moses⁵ combined civil laws with religious mandates. Religious decrees were of primary importance, because they came from God. The Israeli theocracy existed from the time of Moses until the era of Samuel. When Saul and David emerged as kings of Israel, they dominated Samuel, the prophet. During the reign of Solomon, the subordination to the State became complete.

b. The Roman Empire

Religion was also subordinated to the state in the days of the Roman Empire.⁶ Augustus Caesar included his uncle, Julius Caesar, among the gods.⁷ Upon his death, Augustus Caesar joined the ranks of the gods.⁸

The emergence of Christianity posed a challenge to the Roman emperor because of the Christian belief that there was only one true God.⁹ In the first

3. See *Estrada v. Escritor*, 408 SCRA 1, 63-64 (2003) [hereinafter *Estrada Case* (2003)].

4. Theocracy is a form of government in which a state is understood as governed by immediate divine guidance, especially a state ruled by clergy, or by officials who are regarded as divinely guided. See Mitchell Bard, *Israel & Theocracy*, available at <http://www.jewishvirtuallibrary.org/jsource/Politics/theocracy.html> (last accessed Mar. 31, 2014).

5. The Law of Moses is the collection of written laws through Moses to the House of Israel. The Law consists of various ceremonies, rituals, and symbols to remind the people of their duties and responsibilities. See The Church of Jesus Christ of Latter-Day Saints, *Law of Moses*, available at <http://www.lds.org/scriptures/bd/law-of-moses?lang=eng> (last accessed Mar. 31, 2014).

6. For the Romans, religion was a force that bound families together, bound subjects to their ruler, and bound men to their gods. See Public Broadcasting Service, *Religion*, available at <https://www.pbs.org/empires/romans/empire/religion.html> (last accessed Mar. 31, 2014).

7. See *Ancient History Encyclopedia*, *Augustus*, available at <http://www.ancient.eu.com/augustus/> (last accessed Mar. 31, 2014).

8. *Id.*

two centuries of the existence of Christianity, the Roman emperors persecuted the Christians.¹⁰

When Constantine became emperor, he issued the Edict of Milan which tolerated the Christians on condition that nothing is done by them contrary to religion.¹¹ The Edict provided that every person who cherishes the desire to observe the Christian religion shall freely and unconditionally proceed to observe the same without let or hindrance, and the same free and open power to follow their own religion or worship is also granted to others in accordance with the tranquility of our times, in order that every person may have free opportunity to worship the object of his choice.¹²

Constantine perceived Christianity as a tool he could use to unify the Roman Empire.¹³ At his command, churches were built for the Christians, the clergy were freed from public burdens, and pagan sacrifices were forbidden.¹⁴ In return, Constantine and his successors interfered in religious affairs. They dismissed ecclesiastical commands, and enforced unity and religious belief and worship.¹⁵

B. Europe

With the collapse of the Roman Empire, the Roman Catholic Church (Church) stood as the sole unifying power in Europe.¹⁶ The Church asserted superiority over the secular states, as symbolized by the coronation of kings and emperors by the pope.¹⁷ However, the secular rulers did not readily

9. See Sophie Lunn-Rockliffe, *Christianity and the Roman Empire*, available at http://www.bbc.co.uk/history/ancient/romans/christianityromanempire_article_01.shtml (last accessed Mar. 31, 2014).

10. *Id.*

11. See Fordham University, *Galerius and Constantine: Edicts of Toleration 311/313*, available at <http://www.fordham.edu/halsall/source/edict-milan.asp> (last accessed Mar. 31, 2014).

12. *Id.*

13. See Vision, *Constantine: The Man and the Church*, available at <http://www.vision.org/visionmedia/article.aspx?id=165> (last accessed Mar. 31, 2014).

14. *Id.*

15. *Id.*

16. See *Medieval Europe: From the Fall of Rome to the Renaissance*, available at <http://www.dcts.org/academics/documents/MedievalEuropefromtheFall.pdf> (last accessed Mar. 31, 2014).

17. *Id.*

yield to this. Medieval Europe witnessed the struggle for supremacy between the pope and the king.¹⁸

The abuses in the church brought about the Reformation.¹⁹ The establishment of Protestant sects gave rise to pleas for the toleration of religious differences, and the separation of church and state. In practice, religious persecution broke out from all sides.

The Reformation gave birth to three theories regarding the proper relationship between church and state: the Erastians,²⁰ the theocrats,²¹ and the separatists.²² Erastianism advocated the superiority of the State over religious matters. Theocracy, as promoted by John Calvin, supported the supremacy of religion and the use of the State to further religious interests. Separatism originated from the claim of religious minorities that the State should not meddle in religious affairs.

Erastianism swept Europe, except Geneva, which adopted the theocracy of John Calvin. Erastianism was at its height of dominance in England. The English monarchy became the head of the Anglican Church.²³

The Constitution²⁴ established by Oliver Cromwell in 1647 granted liberty to all Protestant sects but denied religious toleration to Catholics.²⁵

18. *Id.*

19. As the 15th Century came to a close, the decline and the corruption of the Church was well known. Bishops and priests alike openly broke their vows regarding celibacy. They even flaunted their illegitimate children. The ancient monastic discipline was increasingly relaxed as convents and monasteries became centers of leisurely living. Thus, the Reformation was a period in Europe wherein some people began to question the teachings of the Church. See JUSTO L. GONZALEZ, *THE STORY OF CHRISTIANITY: THE REFORMATION TO THE PRESENT DAY VOLUME II 7-20* (2010).

20. Erastianism is a political theory of absolute state primacy over the church. See *The Anglo-Catholic*, Erastianism, available at <http://www.theanglocatholic.com/2010/02/erastianism/> (last accessed Mar. 31, 2014).

21. Bard, *supra* note 4

22. Separatists are Christians who wished to separate from the Roman Catholic Church in order to form independent local churches. See *Encyclopedia Britannica*, Separatist, available at <http://global.britannica.com/EBchecked/topic/285064/Separatist> (last accessed Mar. 31, 2014).

23. See Wendy Fletcher, *Canadian Anglicanism and Ethnicity*, in *CHRISTIANITY AND ETHNICITY IN CANADA* 138 (Paul Bramadat & David Seljak eds., 2008).

24. The Instrument of the Government was a constitutional settlement drafted by Major-General John Lambert. It was adopted by the Council of Officers when the Nominated Assembly surrendered its powers to Oliver Cromwell.

The Act of Toleration,²⁶ which William III issued in 1689, established *de facto* toleration for everyone except Catholics. It was only in 1829 that the Roman Catholic Relief Act granted religious toleration to the Catholics.²⁷

C. America

A large number of the early settlers in the American colonies migrated to escape the laws in Europe which compelled them to support and attend churches favored by the state.²⁸ With the support of the state, to maintain their supremacy, religious sects persecuted the followers of other religious sects. However, the practices which the early settlers sought to escape were transplanted to the American colonies. The charters issued by the English Crown authorized the individuals and the companies to whom they were granted to require support and attendance to the established religion.²⁹ This resulted in religious persecution once again which aroused the indignation of the early settlers.

Afterwards, Cromwell was declared Lord Protector for Life. See BCW Project, The Instrument of Government, *available at* <http://bcw-project.org/church-and-state/the-protectorate/instrument-of-government> (last accessed Mar. 31, 2014).

25. See J. O. HOSLER, THE BAPTISMAL REGENERATION/BELIEVER'S BAPTISM DEBATE: A THEOLOGICAL AND HISTORICAL OVERVIEW OF THE MOST CONTESTED SUBJECT OF THE CHURCH AGE 148 (1999).
26. The Toleration Act of 1689 gave all non-conformists, except Roman Catholics, the freedom of worship, thus rewarding Protestant dissenters for their refusal to side with James II. See The Official Website of the British Monarchy, William III and Mary II, *available at* <http://www.royal.gov.uk/HistoryoftheMonarchy/KingsandQueensoftheUnitedKingdom/TheStuarts/MaryIIWilliamIIIandTheActofSettlement/MaryIIWilliamIII.aspx> (last accessed Mar. 31, 2014).
27. The Catholic Emancipation Act or the Roman Catholic Relief Act permitted members of the Catholic Church to sit in the British Parliament. See Lurgan Ancestry, The Catholic Emancipation Act of 1829, *available at* <http://www.lurganancestry.com/1829.htm> (last accessed Mar. 31, 2014).
28. Most of the early settlers that came to America were religious congregations seeking to escape religious persecution and to establish their own churches, schools, and local governments. See DAVID LIMBAUGH, PERSECUTION: HOW LIBERALS ARE WAGING WAR AGAINST CHRISTIANITY 8 (2003).
29. See Religion and the Founding of the American Republic, America as the Religious Refuge: The Seventeenth Century, *available at* <http://www.loc.gov/exhibits/religion/relo1.html> (last accessed Mar. 31, 2014).

Virginia gave impetus to the movement towards religious freedom. On 12 June 1776, the Virginia Assembly approved the Declaration of Rights.³⁰ Section 16 provided thus —

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to [practice] Christian forbearance, love, and charity towards each other.³¹

When the Virginia Assembly was about to review the law which imposed a tax for the support of the established religion, Thomas Jefferson and James Madison led the fight against it.³² James Madison wrote his Memorial and Remonstrance against Religious Assessments in which he argued that no person should be taxed to support a religion, and that the best interest of society required that the human mind be wholly free.³³ Because of the strong support James Madison received, the Virginia Assembly postponed the consideration of the tax measure until the next session.³⁴

At the next session of the Virginia Assembly, the tax measure died in the committee.³⁵ At the instruction of James Madison, the Virginia Assembly passed the Bill for Establishing Religious Liberty, which Thomas Jefferson filed in 1779.³⁶

30. Virginia's Declaration of Rights was drawn upon by Thomas Jefferson for the opening paragraphs of the Declaration of Independence. See National Archives, The Virginia Declaration of Rights, available at http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html (last accessed Mar. 31, 2014).

31. *Id.*

32. See Americans United for Separation of Church and State, Church-State History, available at <https://www.au.org/content/church-state-history> (last accessed Mar. 31, 2014).

33. See Joseph Loconte, James Madison and Religious Liberty, available at <http://www.heritage.org/research/reports/2001/03/james-madison-and-religious-liberty> (last accessed Mar. 31, 2014) & The Religious Freedom Page, Memorial and Remonstrance against Religious Assessments, available at http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html (last accessed Mar. 31, 2014).

34. JERALD FINNEY, GOD BETRAYED 319 (2008).

35. RANDALL P. BEZANSON, HOW FREE CAN RELIGIONS BE? 33 (2006).

36. *Id.*

Originally, the Constitution of the United States (U.S.) did not contain a Bill of Rights.³⁷ George Mason and Elbridge Gerry proposed to add one.³⁸ Mason said that such a Bill will “give great quiet to the people.”³⁹ In 12 September 1789, the U.S. Congress proposed the first 10 Amendments to the U.S. Constitution, which came to be known as the Bill of Rights.⁴⁰ They were ratified in the same year.⁴¹

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the [g]overnment for a redress of grievances.”⁴²

D. The Philippines

1. The Pre-Spanish Era

The problem of the relationship between church and state did not exist in the Philippines before the arrival of the Spaniards. The islands of the Philippine archipelago did not constitute one country. Instead, the Philippines was broken up into *barangays*, which existed as independent socio-political units.⁴³

The early Filipinos were considered as pagans.⁴⁴ They worshipped a myriad of spirits⁴⁵ and among the spirits they worshipped was a superior one

37. When the U.S. Constitution was signed, it did not contain a Bill of Rights because many of the Framers viewed its inclusion as unnecessary. See First Amendment Center, About the First Amendment, available at <http://www.firstamendmentcenter.org/about-the-first-amendment> (last accessed Mar. 31, 2014).

38. JOHNNY KILLIAN, ET AL., THE CONSTITUTION OF THE UNITED STATES OF AMERICA 999 (2002).

39. *Id.*

40. See National Archives, Bill of Rights, available at http://www.archives.gov/exhibits/charters/bill_of_rights.html (last accessed Mar. 31, 2014).

41. *Id.*

42. U.S. CONST. amend. I.

43. F. LANDA JOCANO, FILIPINO PREHISTORY 156 (1998)

44. DAMON L. WOODS, THE PHILIPPINES: A GLOBAL STUDIES HANDBOOK 25 (2006).

called *Bathala*.⁴⁶ *Bathala* had representatives called *anitos*, whom he sent to their world.⁴⁷ The *anitos* were represented by idols and the early Filipinos offered sacrifices to the *anitos* through priests.⁴⁸

Between the 12th and the 13th Centuries, Islam started gaining roots as a religion in the Philippines.⁴⁹ It started in Sulu and then spread slowly to Mindanao.⁵⁰

2. Spanish Era

On 16 March 1521, Ferdinand Magellan, a Portuguese navigator, came to the Philippines.⁵¹ Magellan was credited as having introduced Christianity in the Philippines.⁵²

The Philippines was evangelized as a Spanish colony under the regime of the *Patronato Real*.⁵³ This was an arrangement based on the *Bull Universalis Ecclesiae* of Pope Julius II.⁵⁴ Pope Julius II granted King Ferdinand and his successors to the Spanish throne the exclusive right to construct or to permit the construction of churches in the Spanish colonies and to present ecclesiastical candidates for bishoprics, abbacies, canonries, and other

45. Gregorio F. Zaide, *Filipinos Before the Spanish Conquest Possessed a Well-Ordered and Well-Thought-Out Religion*, in RELIGIONS AND MISSIONARIES AROUND THE PACIFIC, 1500-1900 33-34 (Tanya Storch ed., 2006).

46. *Id.* at 36.

47. *Id.* at 35-36.

48. *Id.*

49. See National Commission for Culture and Arts, *The History of the Muslim in the Philippines*, available at <http://www.ncca.gov.ph/about-culture-and-arts/articles-on-c-n-a/article.php?i=232&igm=4> (last accessed Mar. 31, 2014).

50. *Id.*

51. Philippine History, *Spanish Expeditions to the Philippines*, available at <http://www.philippine-history.org/spanish-expeditions.htm> (last accessed Mar. 31, 2014).

52. See A HISTORY OF CHRISTIANITY, IN ASIA, AFRICA, AND LATIN AMERICA, 1450-1990 21 (Klaus Koschorke, et al. eds., 2007).

53. A *Patronato Real* is a special right given by the Pope to the Spanish Crown to appoint bishops and priests in the colony in recognitions of Spain's contribution to the purposes of the Catholic Church. See SAMUEL K. TAN, A HISTORY OF THE PHILIPPINES 57 (1987).

54. Manfredi Merluzzi, *Religion and State Policies in the Age of Philip II: the 1568 Junta Magna of the Indies and the New Political Guidelines for the Spanish American Colonies*, in RELIGION AND POWER IN EUROPE: CONFLICT AND CONVERGENCE 187 (Joaquim Carvalho ed., 2007).

ecclesiastical benefices.⁵⁵ This concession was given in view of the undertaking of the Spanish king to promote the evangelization of his subjects and to provide for the support of the Catholic Church. Since the Spanish priests were the only Spaniards willing to live outside Manila and since they depended on the Spanish crown for support, in effect they became salaried government officials.⁵⁶ By force of necessity, the Spanish priests became the representatives of his subjects and to provide for the support of the Spanish Government outside Manila. Leon Ma. Guerrero summed it all up by writing that “the Spanish friar, as he was known to the Filipinos whatever his Order, was the pivot of the community which he ruled [for] all intents and purposes. He was priest of the Established Church and, as governors came and went [— 59] of them from the Napoleonic invasion to the American war [—] the real representative of the Spanish Crown.”⁵⁷

The law buttressed the position of the Catholic Church as the state religion of the Philippines. Article 38 of Spanish *Código Civil* recognized the right of the Catholic Church to possess and acquire properties in accordance with the concordats between the Holy See and the Spanish Crown, and to have a juridical personality and legal status.⁵⁸

Likewise, six of the articles in the Title “Crimes against Religion and Worship” in the Penal Code of Spain of 1870, which was extended to the Philippines by the Royal Decree issued on 4 September 1884 by King Alfonso XII, punished crimes against the Catholic Church as a state religion.⁵⁹

3. The Philippine Revolution

The Philippine Revolution broke out on 26 August 1896, when Andres Bonifacio and the members of the *Katipunan* gathered at Balintawak, tore up their *cedula*, and shouted, “Long Live the Philippine Republic!”⁶⁰

Meanwhile, in Cavite, Emilio Aguinaldo led the uprising against Spain.⁶¹ At the convention called on 22 March 1897 for the sake of unity, a

55. *Id.*

56. Horacio de la Costa, S.J., *The Development of the Native Clergy in the Philippines*, 8 THEOLOGICAL STUDIES 219, 223-24 (1947).

57. LEON MA. GUERRERO, *THE FIRST FILIPINO: A BIOGRAPHY OF JOSE RIZAL* xxi (1969).

58. *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 309-10 (1908).

59. *United States v. Balcorta*, 25 Phil. 273, 275-76 (1913).

60. GREGORIO ZAIDE, *HISTORY OF THE KATIPUNAN* 104 (1939).

61. *Id.* at 166.

revolutionary government was formed and Aguinaldo was elected president.⁶²

On 12 July 1898, President Aguinaldo proclaimed Philippine independence.⁶³ On 18 June 1898, President Aguinaldo issued a decree which organized the Municipal and Provincial Governments.⁶⁴ He then directed the town chiefs in all the provinces to elect members to the Malolos Congress from the residents in these provinces who are noted for their education and social position.⁶⁵ On 15 September 1898, President Aguinaldo convened the Malolos Congress to draft the Malolos Constitution.⁶⁶ On 28 November 1898, the Malolos Congress approved the Malolos Constitution.⁶⁷ President Aguinaldo then proclaimed its effectivity on 23 January 1899.⁶⁸

It was Felipe Calderon who drafted the Malolos Constitution.⁶⁹ Title III of the draft he prepared contained the following provisions:

- (1) Article 5. — The nation shall protect the cult and ministers of the Roman Catholic Apostolic religion, which is the religion of the State, and shall not use the revenues for the expenses of any other religion.
- (2) Article 6. — Any other religion may be practiced privately, provided that it is not contrary to morals and good customs, and does not subvert the security of the nation.
- (3) Article 7. — The engagement and the discharge of the duties and official functions in the Republic, as well as the acquisition and exercise of civil and political rights, shall be independent of the religion of the Filipinos.⁷⁰

62. *Id.* at 121-23.

63. MARIA CHRISTINE N. HALILI, *PHILIPPINE HISTORY* 162 (2004).

64. *Id.* at 163.

65. *Id.*

66. *Id.* at 165.

67. Vincent Kelly Pollard, *Malolos Constitution*, in *THE ENCYCLOPEDIA OF THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS* 364-65 (Spencer Tucker ed., 2009).

68. *Id.*

69. Reynato S. Puno, *Judicial Review: Quo Vadis?*, 79 *PHIL. L. J.* 249, 250 (2004).

70. *Id.*

Tomas del Rosario and Arcadio del Rosario led the opposition to these provisions.⁷¹ Tomas del Rosario argued that since not all the Filipinos were Catholics and that some of them were Muslims, the establishment of a state religion might provoke serious conflicts.⁷² For his part, Arcadio del Rosario contended that protecting a religion was tantamount to conferring upon it a privilege and there might in the long run spell disaster for the state.⁷³

In defense of his proposal, Felipe Calderon maintained that since the Filipinos had a Christian tradition and the majority of them were Catholics, the Catholic religion would serve as a cohesive force to unite them.⁷⁴ He added that to provide for the separation of church and state was to disregard the struggle and sacrifices of the Filipino clergy, who had been the first to clamor for reforms and to shed their blood in the movement for reforms.⁷⁵

The provision on the proper relationship was the most hotly debated issue in the Malolos Congress.⁷⁶ The impassioned debate lasted for nine days.⁷⁷ In the end, after two deadlocks, Chairman Pablo Tecson broke the tie in favor of separation of church and state.⁷⁸

Thus, the three articles proposed by Felipe Calderon were replaced with the following provisions authored by Tomas del Rosario and Arcadio del Rosario — “The State recognizes the freedom and equality of all religions, as well as the separation of the [c]hurch and [s]tate.”⁷⁹

4. The American Era

While the Philippine Revolution was raging, war broke out between Spain and the U.S. when the USS Maine blew up in Havana on 15 February

71. Socorro L. Reyes, *The Influence of the American Political Tradition on the Philippine Constitutional System: Theory and Practice, in THE UNITED STATES CONSTITUTION: ITS BIRTH, GROWTH, AND INFLUENCE IN ASIA* 264 (J. Barton Starr ed., 1988).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. Reyes, *supra* note 71, at 264.

78. Rene Escalante, *Collapse of the Malolos Republic*, 46 PHIL. STUDIES 452, 472 (2008).

79. 1899 PHIL. CONST. title III, art. 5 (superseded 1935).

1898.⁸⁰ Admiral George Dewey, who was with his squadron in Hong Kong, received a cable on 25 April 1898 instructing him to proceed to the Philippines and to attack the Spanish fleet.⁸¹ On 1 May 1898, the Spanish fleet was defeated.⁸²

The Spanish-American war ended when Spain and the U.S. signed the Treaty of Paris on 10 December 1898, which ceded the Philippines to the U.S.⁸³

When the American forces steamed into Manila Bay, they brought with them Protestantism and a new legal system.⁸⁴ The new legal system provided for the separation of church and state. As a result, the privileged position which the Catholic Church enjoyed under Spanish sovereignty was abolished. The transition was also facilitated by Article X of the Treaty of Paris which provides that “[t]he inhabitants of the territories over which Spain relinqu[is]hes or cedes her sovereignty shall be secured in the free exercise of their religion.”⁸⁵

Thus, the provisions of the Spanish Penal Code of 1870, which is penalizing direct assault upon persons in authority including religious officials, ceased to be of any effect. Likewise, the second paragraph of Article 38 of the Civil Code of Spain ceased to be in force.

The Filipinos took it for granted that after defeating Spain, the U.S. would grant them independence.⁸⁶ However, the U.S. intended to keep the Philippines as a colony to increase American foreign trade.⁸⁷ Inevitably, war

80. Library of Congress, *The World of 1898: The Spanish-American War*, available at <http://www.loc.gov/rr/hispanic/1898/intro.html> (last accessed Mar. 31, 2014).

81. *Id.*

82. *Id.*

83. *Id.*

84. See IBP USA, *PHILIPPINES COUNTRY STUDY GUIDE* 105 (4th ed. 2008).

85. Yale Law School Lillian Goldman Law Library, *Treaty of Peace Between United States and Spain, December 10, 1898*, available at http://avalon.law.yale.edu/19th_century/sp1898.asp (last accessed Mar. 31, 2014).

86. See LEON WOLFF, *LITTLE BROTHER* 67 (1961).

87. See also Howard Zin, *History is a Weapon: A People's History of the United States* (An OCR Conversion of the Published Version of the Same Book by the Same Author), available at <http://www.historyisaweapon.com/defcon1/zinnempire12.html> (last accessed Mar. 31, 2014).

broke out between the Philippines and the U.S. on 4 February 1899.⁸⁸ The war practically ended when President Aguinaldo was captured.⁸⁹

5. Organic Laws of the Philippines

From the arrival of the American colonial forces up to the present, all the Organic Laws of the Philippines have provided for the separation of church and state.

a. Instructions of President William McKinley

The instructions of President William McKinley to the Second Philippine Commission provide:

- (1) [T]hat no law shall be made respecting an establishment of religion prohibiting the free exercise thereof, and that free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed[; and]
- (2) [T]hat no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the Islands; that, upon the other hand, no minister of religion shall be interfered with or molested in following his calling, and that the separation between [s]tate and [c]hurch shall be real, entire, and absolute.⁹⁰

b. Philippine Bill of 1902

Section 5 of the Philippine Bill of 1902,⁹¹ as amended, states that — “That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of

88. U.S. Department of State Office of the Historian, *The Philippine–American War, 1899–1902*, available at <http://history.state.gov/milestones/1899-1913/war> (last accessed Mar. 31, 2014).

89. See Bernardita Reyes Churchill, *The Philippine–American War (1899–1902)*, available at <http://www.ncca.gov.ph/about-culture-and-arts/articles-on-c-n-a/article.php?igm=2&i=191> (last accessed Mar. 31, 2014).

90. See *President’s Policy in the Philippines*, N.Y. TIMES, Sep. 18, 1900, available at <http://query.nytimes.com/mem/archive-free/pdf?res=F6061EFF385A16738DDDA10994D1405B808CF1D3> (last accessed Mar. 31, 2014).

91. An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes [THE ORGANIC ACT OF 1902], *The Philippine Bill of 1902* (1902).

religious profession and worship without discrimination or preference, shall forever be allowed.”⁹²

c. The Autonomy Act of 1916

Section 3 (k) of the Autonomy Act of 1916,⁹³ more commonly known as the Jones Law of 1916, provides —

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.⁹⁴

d. The 1935 Philippine Constitution

Section 1 (7) of Article III of the 1935 Philippine Constitution provides that “[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”⁹⁵

Section 22 of Article VI of the 1935 Philippine Constitution provides that “[c]emeteries, churches, and parsonages[,] or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.”⁹⁶ The same article also provides —

No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution[,] or system of religion, for the use,

92. *Id.* § 5.

93. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a more Autonomous Government for those Islands [THE JONES LAW OF 1916], Public No. 240 (1916).

94. *Id.* § 3.

95. 1935 PHIL. CONST. art. III, § 1 (7) (superseded 1973).

96. 1935 PHIL. CONST. art. VI, § 22 (3) (superseded 1973).

benefit, or support of any priest, preacher, ministers, or other religious teacher or dignitary as such except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage[,] or leprosarium.⁹⁷

Section 5 of Article XIV of the 1935 Philippine Constitution provides that “[o]ptional religious instruction shall be maintained in the public schools as now authorized by law.”⁹⁸

e. 1973 Philippine Constitution

Section 9 of Article II of the 1973 Philippine Constitution provides —

The [s]tate shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The [s]tate shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The [s]tate may provide for compulsory arbitration.⁹⁹

Section 8 of Article IV of the 1973 Philippine Constitution provides that “[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”¹⁰⁰

Section 17 (3) of Article VIII of the 1973 Philippine Constitution states that “[c]haritable institutions, churches, parsonages[,] or convents appurtenant thereto, mosques, and non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious or charitable purposes shall be exempt from taxation.”¹⁰¹

Section 18 (2) Article VIII of the 1973 Philippine Constitution states —

No public money or property shall ever be appropriated, applied, paid, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or

97. 1935 PHIL. CONST. art. VI, § 23 (3) (superseded 1973).

98. 1935 PHIL. CONST. art. XIV, § 5 (superseded 1973).

99. 1973 PHIL. CONST. art. II, § 9 (superseded 1987).

100. 1973 PHIL. CONST. art. IV, § 8 (superseded 1987).

101. 1973 PHIL. CONST. art. VIII, § 17 (3) (superseded 1987).

dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.¹⁰²

Section 8 Article XII-C of the 1973 Philippine Constitution provides that “[n]o religious sect shall be registered as a political party, and no political party which seeks to achieve its goal through violence shall be entitled to accreditation.”¹⁰³

Section 8 (8) Article XV of the 1973 Philippine Constitution states that “[a]t the option expressed in writing by the parents or guardians, and without cost to them and the [g]overnment, religion shall be taught to their children or wards in public elementary and high schools as may be provided by law.”¹⁰⁴

Section 15 of Article XV of the 1973 Philippine Constitution states that “[t]he separation of church and state shall be inviolable.”¹⁰⁵

f. The 1987 Philippine Constitution

Section 6 of Article II of the 1987 Philippine Constitution states that “[t]he separation of [c]hurch and [s]tate shall be inviolable.”¹⁰⁶ Section 5 of Article III of the 1987 Philippine Constitution provides that “[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”¹⁰⁷

Section 28 (3) of Article VI of the 1987 Philippine Constitution states that “[c]haritable institutions, churches and parsonages[,] or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings[,] and improvements, actually, directly[,] and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.”¹⁰⁸ On the other hand, Section 29 (2) of the same article provides that —

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect,

102. 1973 PHIL. CONST. art. VIII, § 18 (2) (superseded 1987).

103. 1973 PHIL. CONST. art. XII-C, § 8 (superseded 1987).

104. 1973 PHIL. CONST. art. XV, § 8 (8) (superseded 1987).

105. 1973 PHIL. CONST. art. XV, § 15 (superseded 1987).

106. PHIL CONST. art. II, § 6.

107. PHIL CONST. art. III, § 5.

108. PHIL CONST. art. VI, § 28 (3).

church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.¹⁰⁹

Section 2 (5) of Article IX-C of the 1987 Philippine Constitution provides that —

The Commission on Elections shall exercise the following powers and functions:

...

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered.¹¹⁰

Section 3 (3) of Article XIV of the 1987 Philippine Constitution states that —

At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the [g]overnment.¹¹¹

Section 3 (1), Article XV of the 1987 Philippine Constitution states that “[t]he [s]tate shall defend [t]he right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood[.]”¹¹²

III. DEFINITION OF RELIGION

The Supreme Court (SC) has adopted the following definition of religion formulated by the U.S. SC — “It has reference to one’s views of his relations to His Creator and to the obligations they impose of reverence to His Being and character, and obedience to His Will.”¹¹³ However, the U.S.

109. PHIL CONST. art. VI, § 29 (2).

110. PHIL CONST. art. IX-C, § 2 (5).

111. PHIL CONST. art. XIV, § 3 (3).

112. PHIL CONST. art. XV, § 3 (1).

113. *American Bible Society v. City of Manila*, 101 Phil. 386, 398 (1957) (citing *Davis v. Beason*, 133 U.S. 333, 342 (1890)).

later on expanded the definition to include religions like Buddhism and Taoism, which do not believe in the existence of a Supreme Being.¹¹⁴ The definition of religion should also extend to atheism and agnosticism. While they are opposed to the traditional concept of religion, they address the question of whether or not there is a God.¹¹⁵ Thus, the meaning of religion is no longer limited to the theistic concept.

A. Church and State Relations

The flagship provision of the 1987 Constitution on the proper relationship between church and state is found in Section 5 of Article III which provides that “[n]o law shall be made respecting an establishment or religion, or prohibiting the free exercise thereof. The free exercise and engagement of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”¹¹⁶

The provision was taken from Section 3 of the the Jones Law of 1916 and it is broken down into two parts. The first part prohibits the establishment of religion, while the second part guarantees the exercise of religious freedom. Professor Laurence H. Tribe of Harvard Law School has referred to these two principles as separatism and voluntarism.¹¹⁷

Separatism is often referred to as the “non-involvement principle” because it means that “the state should not become involved in religious affairs, or derive its claims to authority from religious sources[.]”¹¹⁸ On the other hand, voluntarism guarantees freedom of conscience as it assures that the advancement of a church comes only from the voluntary support of its followers and not from the political support of the state.¹¹⁹

IV. PROHIBITION AGAINST ESTABLISHMENT OF RELIGION

Initially, the U.S. SC expounded on the meaning of the prohibition against establishment of religion in the following language, to wit —

114. See *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

115. See Stanford Encyclopedia of Philosophy, *Atheism and Agnosticism*, available at <http://plato.stanford.edu/entries/atheism-agnosticism/> (last accessed Mar. 31, 2014).

116. PHIL CONST. art. III, § 5.

117. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1160 (1988).

118. *Id.* at 1161.

119. *Id.* at 1160.

The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa.¹²⁰

Later on, the U.S. SC tried to capsulize this by stating that “[i]t is sufficient to note that for the men who wrote the Religious Clauses of the First Amendment, the ‘establishment’ of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity.”¹²¹

A. Interference to Favor a Religious Denomination

In 1982, the Department of Justice issued an opinion stating that the President cannot issue an Executive Order recognizing the religious authority of the Sultan of Sulu, as it will result in favoring a religious denomination.¹²² In *Iglesia Ni Cristo v. Court of Appeals*,¹²³ the SC held that the Board of Review for Motion Pictures and Television cannot ban the television programs of a religious sect for criticizing the faith of other religions.¹²⁴ The SC stated thus —

The respondent Board may disagree with the criticisms of other religions by petitioner[,] but that gives it no excuse to interdict such criticisms, however unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion.¹²⁵

120. *Everson v. Board of Ed. of Ewing Tp.*, 330 U.S. 1, 15-16 (1947).

121. *Walz v. Tax Commission of City of New York*, 397 U.S. 664, 668 (1970).

122. Department of Justice, DOJ Opinion No. 200, Series of 1982 (Sep. 9, 1982).

123. *Iglesia Ni Cristo v. Court of Appeals*, 259 SCRA 529 (1996).

124. *Id.*

125. *Id.* at 547.

Likewise, the U.S. SC ruled that a law cannot require the reading of at least 10 verses of the Holy Bible in public schools each school day, because the Holy Bible is indisputably a religious book.¹²⁶

Article 6 of the Family Code¹²⁷ provides that “[n]o prescribed form or religious rite for the solemnization of the marriage is required.”¹²⁸ In a number of cases, the validity of marriages solemnized in accordance with Muslim rites has been upheld in accordance with this principle.¹²⁹ The same holds true with a marriage solemnized according to the rites of the Tagbanuas¹³⁰ and Igorots.¹³¹ In addition, Article 93 of the Civil Code¹³² states that “[f]reedom of religion shall be observed by public officials in the issuance of authorization to solemnize marriages. Consequently, no public official shall attempt to inquire into the truth or validity of any religious doctrine held by the applicant or by his church.”¹³³

B. Legislation with a Secular Purpose

Article 91 of the Labor Code¹³⁴ requires employers to grant their employees a day of rest every week and to schedule their day of rest on the day chosen by the employees if their choice is based on religious grounds.¹³⁵ Although this will facilitate compliance with their religious obligations, the purpose of

126. *School Dist. of Abington Tp., Pa v. Schempp*, 374 U.S. 203, 223–24 (1963).

127. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1987).

128. *Id.* art. 6.

129. *See Adong v. Cheong Seng Gee*, 43 Phil. 43, 58 (1922); *People v. Bituanan*, 56 Phil. 23, 24 (1931); & *People v. Bitdu*, 58 Phil. 817, 821 (1933).

130. *See People v. Rosil*, 56 Phil. 722, 724 (1932).

131. Department of Justice, DOJ Opinion No. 010, Series of 1948 (Jan. 20, 1948); Department of Justice, DOJ Opinion No. 160, Series of 1952 (Aug. 15, 1952); & Department of Justice, DOJ Opinion No. 198, Series of 1955 (June 20, 1955).

132. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

133. *Id.* art. 93.

134. A Decree Instituting the Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment, and Human Resources Development and Insure Industrial Peace based on Social Justice [LABOR CODE], Presidential Decree No. 442 (1974).

135. *Id.* art. 91.

the law is primarily secular, to provide a day of rest to the employees every week and to promote their welfare.¹³⁶

In 1953, the Industrial Peace Act¹³⁷ was established in order to eliminate industrial unrest by protecting the employees in the labor sector. Republic Act No. 3350¹³⁸ amended Section 4 (a) (4) of the Industrial Peace Act so as to provide that a closed shop provision in a collective bargaining agreement shall not cover members of any religious sect which prohibits their members from affiliating with any labor organization.¹³⁹

The validity of this provision was attacked on the ground that it violated the constitutional prohibition against the establishment of religion.¹⁴⁰ However, the SC thrust aside the assault on the law by explaining that —

The purpose of Republic Act No. 3350 is secular, worldly, and temporal, not spiritual[,] religious[,] or holy and eternal. It was intended to serve the secular purposes of advancing the constitutional right to the free exercise of religion, by averting that certain persons be refused work, or be dismissed from work, or be dispossessed of their right to work[,] and of being impeded to pursue a modest means of livelihood, by reason of union security arrangements. To help its citizens to find gainful employment whereby they can make a living to support themselves and their families is a valid objective of the state.¹⁴¹

The SC also said that “[a]lthough the exemption may benefit those who are members of religious sects that prohibit their members from joining labor unions, the benefit upon the religious sects is merely incidental and indirect.”¹⁴² This ruling was also followed in subsequent cases.¹⁴³

136. *Asia Bed Factory v. National Bed and Kapok Industry Workers’ Union*, 100 Phil. 837, 839-40 (1957).

137. An Act to Promote Industrial Peace and For Other Purposes [Industrial Peace Act], Republic Act No. 875 (1953). *But see* LABOR CODE (the Labor Code already repealed the Industrial Peace Act).

138. An Act Amending Paragraph 4, Subsection (a) of Section Four of Republic Act Numbered Eight Hundred Seventy Five, Republic Act No. 3350 (1961).

139. *Id.*

140. *See Victoriano v. Elizalde Rope Workers’ Union*, 59 SCRA 54 (1974).

141. *Victoriano*, 59 SCRA at 74.

142. *Id.* at 75.

143. *See Basa v. Federacion Obrera de la Industria Tabaquero y Otros Trabajadores de Filipinas (FOITAF)*, 61 SCRA 93, 108 (1974); *Anucension v. National Labor Union*, 80 SCRA 350, 369 (1977); & *Gonzales v. Central Azucarera de Tarlac Labor Union*, 139 SCRA 30, 35 (1985).

C. Use of Public Funds and Public Properties for Religious Purposes

Section 29 (2) of Article VI of the 1987 Philippine Constitution provides that

—
No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.¹⁴⁴

This provision expressly authorizes the use of public funds or public properties for the use or benefit of priests, preachers, ministers, religious teachers, and dignitaries assigned to the Armed Forces of the Philippines (AFP), or to any penal institution, or government orphanage or leprosarium. This serves as an exception to the general prohibition in the provision against the use of public funds and public properties for the benefit of a religious denomination.

Pursuant to this, the government may provide a chaplain for the war veterans and disabled members of the AFP being treated at the Veterans Memorial Hospital, as service to them is still service to AFP.¹⁴⁵ Concomitant with this, the government may construct a building for the religious activities of the members of the AFP and purchase religious articles for the use of their chaplains in the performance of their task to minister to the spiritual needs of the members of the AFP provided there is no discrimination against other religions.¹⁴⁶

Similarly, the government may spend funds for the maintenance and repair of the church in a leprosarium, as it is for the benefit of the persons confined in the leprosarium, whose spiritual needs were being served by the chaplain.¹⁴⁷

The government may also spend public funds for legitimate secular purposes even if the expenditure might incidentally benefit a religious denomination. The SC justified the printing of postage stamps commemorating the celebration in Manila of the XXIII International Eucharistic Congress by stating that “[o]n the contrary, it appears from the

144. PHIL. CONST. art. VI, § 29 (2).

145. Department of Justice, DOJ Opinion No. 93, Series of 1958 (June 13, 1958).

146. Department of Justice, DOJ Opinion No. 76, Series of 1981 (May 11, 1981).

147. Department of Justice, DOJ Opinion No. 236, Series of 1953 (Nov. 17, 1953).

letter of the Director of Posts of [5 June 1936] incorporated on page [two] of petitioner's complaint, that the only purpose in issuing and selling the stamps was to 'advertise the Philippines and attract more tourists to the country.'"¹⁴⁸

The SC then added that —

[i]t is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the [g]overnment. We are of the opinion that the [g]overnment should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation.¹⁴⁹

On the basis of this precedent, the Secretary of Justice justified the printing of stamps to commemorate the international celebration in 1954 of the Marian Year, because it was being undertaken to raise funds for the government and to promote stamp collecting.¹⁵⁰ In the same vein, the SC sustained the expropriation of the parcel of land where Felix Manalo, the founder of the Iglesia ni Cristo, was born.¹⁵¹ Although the expropriation might incidentally benefit the members of the Iglesia ni Cristo, its principal purpose was secular — to preserve the property because of the distinctive contribution of Felix Manalo to the culture of the Philippines.¹⁵²

However, the government cannot undertake at its own expense the printing and distribution of the Koran. Since the Koran is a religious book, this involves the use of public funds to aid a religious sect.¹⁵³ Likewise, the government cannot construct in a military camp a candle stand for the religious shrine showing the image of the Blessed Virgin Mary and the Child Jesus.¹⁵⁴ Since only Catholic devotees would make use of it, the expenditure would be for the benefit of a particular religious denomination.¹⁵⁵

148. *Aglipay v. Ruiz*, 64 Phil. 201, 209 (1937).

149. *Id.* at 209-10.

150. Department of Justice, DOJ Opinion No. 199, Series of 1954 & Department of Justice, DOJ Opinion No. 289, Series of 1954.

151. *Manosca v. Court of Appeals*, 252 SCRA 412, 422-23 (1996).

152. *Id.*

153. DOJ Opinion No. 200, s. 1982.

154. Department of Justice, DOJ Opinion No. 244, Series of 1955 (July 13, 1955).

155. *Id.*

The conveyance of public property and the grant of public funds to a religious sect are constitutional if they were performed in connection with a valid contract. Thus, in *Orden de Predicadores v. Metropolitan Water District*,¹⁵⁶ the SC upheld the validity of the agreement of the City of Manila to supply the Order of Preachers with water in exchange for the conveyance to the City of Manila of a parcel of land to be used for laying pipes for the waterworks system.¹⁵⁷ The SC reasoned —

It should be observed, in the first place, that the free supply of water granted by the old city council of Manila to the convent of Sto. Domingo was made, not on account of any religious consideration, but in return for an act of liberality of the Dominican Fathers in donating part of their lands to the City of Manila for the laying of the water pipes of the Carriedo waterworks. Secondly, the donation was remuneratory; in other words, the free consumption of water is compensated by the value of more than [10,000] square meters of land which the party plaintiff had donated.¹⁵⁸

Likewise, a bishop may obtain a loan from the Rehabilitation Finance Corporation, a government financial institution, for the reconstruction of a church.¹⁵⁹ The loan would be repaid with interest. The loan simply involved a commercial transaction.¹⁶⁰

The Philippine Charity Sweepstakes Office, a government institution, can channel funds to a charitable institution managed by members of a religious sect, for the medical care of the destitutes without distinction as to their religion.¹⁶¹ What is decisive is that the purpose of the grant of the funds is not to propagate religion.¹⁶²

A province can contribute funds to a congress for rural development organized by a religious denomination to discuss economic problems in the rural areas, because the purpose of the contribution is to better the economic welfare of the inhabitants in the rural areas.¹⁶³

156. *Orden de Predicadores v. Metropolitan Water District*, 44 Phil. 292 (1923).

157. *Id.*

158. *Id.* at 301-02.

159. DOJ Opinion No. 244, s. 1955.

160. *Id.*

161. Department of Justice, DOJ Opinion No. 403, Series of 1955 (Dec. 2, 1955).

162. *Id.*

163. Department of Justice, DOJ Unnumbered Opinion, Series of 1968 (May 27, 1968).

Religious sects may use public property devoted to public use for religious services provided the use is merely temporary and is not discriminatory.¹⁶⁴ Thus, the Rizal National Park could be used for the celebration of the National Marian Year Congress.¹⁶⁵ Similarly, an altar and a coronation throne could be set up at the entrance of the provincial capitol for the celebration of the Marian Congress.¹⁶⁶

The Secretary of Justice has opined that a portion of the compound occupied by Welfareville Institute cannot be used to build a church for the exclusive use of the children who are Catholics.¹⁶⁷ However, the University of the Philippines may lease land to different religious sects for the construction of their places of worship provided that the rent is not nominal but is the same as the rent charged for non-religious purposes and there is no discrimination among the different religious sects.¹⁶⁸ In such a case, the University of the Philippines is being completely remunerated for the use of the property.¹⁶⁹ A public high school may be allowed to construct a religious grotto under the same terms and conditions.¹⁷⁰ The University of the Philippines may also lease land to a sectarian organization for a dormitory under the same conditions.¹⁷¹ A portion of the Veterans Memorial Hospital may be leased for the construction of a chapel for its patients under similar conditions.¹⁷² A parcel of land may be leased for the construction of a chapel under the same conditions.¹⁷³ Along the same line, a Protestant minister may be allowed to use the theater of the University of the Philippines to deliver a lecture if the regular fee for the use of the theater will be paid.¹⁷⁴

Earlier, the Secretary of Justice rendered an opinion stating that religious services may be held in public schools on Sundays and holidays, because the

164. *People v. Fernandez*, 46 O.G. 1089, 1098 (CA 1948).

165. Department of Justice, DOJ Opinion No. 311, Series of 1954 (Nov. 16, 1954).

166. Department of Justice, DOJ Opinion No. 310, Series of 1954 (Nov. 15, 1954).

167. Department of Justice, DOJ Opinion No. 245, Series of 1942.

168. Department of Justice, DOJ Opinion No. 396, Series of 1951 (Oct. 10, 1951);
Department of Justice, DOJ Opinion No. 013, Series of 1958 (Feb. 10, 1958); &
Department of Justice, DOJ Opinion No. 075, Series of 1958 (May 14, 1958).

169. *Id.*

170. Department of Justice, DOJ Opinion No. 012, Series of 1979 (Feb. 2, 1979).

171. Department of Justice, DOJ Opinion No. 293, Series of 1955 (Aug. 27, 1955).

172. Department of Justice, DOJ Opinion No. 093, Series of 1958 (June 13, 1958).

173. Department of Justice, DOJ Opinion No. 052, Series of 1955 (Feb. 22, 1955).

174. Department of Justice, DOJ Opinion No. 383, Series of 1955 (Nov. 25, 1955).

public schools are not being used for educational purposes on those days.¹⁷⁵ In other words, the use of the public schools for religious services does not interfere with their ordinary use for educational purposes. However, in a later opinion, the Secretary of Justice stated that the performance of religious services which are normally carried on in church, such as the hearing of confessions and the celebration of masses, cannot be held in public schools regularly but only occasionally.¹⁷⁶

Priests may be required to be members of the Social Security System.¹⁷⁷ The funds contributed as premiums are not public funds but are private funds belonging to the members and held in trust by the government through the Social Security System.¹⁷⁸ The benefits granted by the Social Security Law are not being paid to priests because they are priests but because they are employees.¹⁷⁹ Thus, the benefits are not being granted to priests for religious purposes but for a secular reason, to protect priests against the hazards of disability, sickness, and old age.¹⁸⁰

The acquisition by a *barangay* of the wooden image of a saint to be used for the celebration of the feast day of the saint was upheld by the SC, because the funds used came from private sources and not from taxes.¹⁸¹

D. Religion and Education

Religion may be taught in public schools in accordance with Section 3 (3) of Article XIV of the 1987 Philippine Constitution, to wit —

At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours, by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the [g]overnment.¹⁸²

175. Department of Justice, DOJ Opinion No. 033, Series 1963 (Jan. 22, 1963).

176. Department of Justice, DOJ Unnumbered Opinion, Series of 1965 (Nov. 24, 1965).

177. *Archbishop of Manila v. Social Security Commission*, 110 Phil. 616, 622 (1961).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Garces v. Estenzo*, 104 SCRA 510, 516 (1981).

182. PHIL. CONST. art. XIV, § 3 (3).

Under this provision, the teaching of religion is merely allowed. It cannot be made compulsory by incorporating it as part of the curriculum. It is the authorities of the religion, to which the students belong, who designate the person who will teach the religion. This is to enable the head of the school to determine whom he or she will allow to teach religion.¹⁸³ An excommunicated priest cannot teach religion in public schools, since he is no longer recognized as a priest of the officials of his religion.¹⁸⁴ A public school teacher should not teach religion to his or her own students because of his or her influence over the students.¹⁸⁵ There should be no additional cost to the government aside from the wear and tear of the building, the cost of electricity, and janitorial services.¹⁸⁶ The government should not pay any salary to the teacher of religion or provide him with teaching materials.¹⁸⁷ However, a religious sect may build a classroom in a public school for teaching religion subject to the following conditions: it shall be constructed at no expense to the government; the use to or administration of the building will be transferred to the government; and the privilege of using the classrooms for teaching religion shall be extended equally to other religious denominations.¹⁸⁸

Likewise, the inclusion of a program of daily prayer in public schools violates the constitutional prohibition against the establishment of religion.¹⁸⁹ Also, the U.S. SC held that requiring the reading of at least 10 verses of the Holy Bible in public schools each school day violates the constitutional prohibitions against the establishment of religion.¹⁹⁰ The Holy Bible is a religious book for Christians, and its compulsory reading is a religious exercise.¹⁹¹

With regard to education, students in a public school may form a sectarian organization and use school facilities, as this is for their moral upliftment and is consistent with the purpose of education.¹⁹² In fact, Section

183. IV RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 363.

184. Department of Justice, DOJ Opinion No. 26, Series of 1956 (Jan. 28, 1956).

185. Department of Justice, DOJ Opinion No. 208, Series of 1950 (Nov. 29, 1950)
& IV RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 356.

186. IV RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 362.

187. *Id.* at 361.

188. Department of Justice, DOJ Opinion No. 126, Series of 1994.

189. *Engel v. Vitale*, 370 U.S. 421, 424 (1962).

190. *School Dist. of Abington Tp., Pa.*, 374 U.S. at 223.

191. *Id.*

192. Department of Justice, DOJ Opinion No. 77, Series of 1958 (June 3, 1958).

13 of Article II of the 1987 Philippine Constitution provides that “[t]he [s]tate recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being.”¹⁹³

Financial assistance by the state to sectarian schools and their students is allowable under certain conditions. Section 2 (3) of Article XIV of the 1987 Philippine Constitution provides that the state shall “[e]stablish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the under-privileged[.]”¹⁹⁴ Under this provision, the state can grant scholarships to students in private schools without distinction. This includes sectarian schools.

In *Lemon v. Kurtzman*,¹⁹⁵ the U.S. SC laid down the following guidelines for state financial assistance to sectarian schools — “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally the statute must not favor an ‘excessive entanglement with religion.’”¹⁹⁶

If the financial assistance is given to the student rather than to the sectarian school, analysis of compliance with the guidelines is simpler. Thus, the state may provide students in sectarian schools the secular textbooks, since the purpose is secular.¹⁹⁷ Paying for the transportation of student attending sectarian schools is valid. Its purpose is secular, to facilitate their opportunity to get an education.¹⁹⁸

However, when the state extends the financial assistance to the sectarian school, the analysis of the application of the guidelines becomes more complicated. Thus, the U.S. SC held that the state cannot subsidize the salaries of teachers in sectarian schools.¹⁹⁹ It explained that —

The [s]tate must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion [—] indeed the [s]tate here has undertaken to do so. To ensure that no trespass occurs, the [s]tate has

193. PHIL. CONST. art. II, § 13.

194. PHIL. CONST. art. XIV, § 2 (3).

195. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

196. *Id.* at 612-13 (citing *Board of Education v. Allen*, 392 U.S. 236 (1968) & *Walz*, 397 U.S. at 674).

197. *Board of Education*, 392 U.S. at 248.

198. *Everson*, 330 U.S. at 7.

199. *Lemon*, 403 U.S. at 619.

therefore carefully conditioned its aid with pervasive restrictions. An eligible recipient must teach only those courses that are offered in the public schools and use only those texts and materials that are found in the public schools. In addition, the teacher must not engage in teaching any course in religion.

A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected.²⁰⁰

On the other hand, the U.S. SC ruled that the state may lend computers, software, and other needed materials to sectarian schools.²⁰¹ The materials themselves were secular and were prohibited to be diverted to religious purposes.²⁰² Lastly, a teacher of the public school cannot serve as adviser of a sectarian organization.²⁰³ Because of his or her influence over the students, his or her acceptance of the position may be interpreted as an expression of preference for that sectarian organization.²⁰⁴ Also, excessive entanglement between church and state connotes comprehensive, discriminating, and continuing state surveillance.²⁰⁵

V. GUARANTEE OF FREEDOM OF RELIGION

A. Aspects

Freedom of religion has two aspects: the right to believe and the right to act on that belief. The right to believe is absolute. However, the right to act on one's belief is not absolute, because the action may affect public welfare. Thus, one may believe anything, however strange, bizarre, and unreasonable it may appear to others. The right to act on one's belief is not absolute, because the action may adversely affect public welfare.²⁰⁶

Thus, a religious sect can be required to submit the tapes of its television programs in advance for review by the Board of Review for Moving

200. *Id.*

201. *Mitchell v. Helms*, 530 U.S. 793, 831 (2000).

202. *Id.*

203. Department of Justice, DOJ Opinion No. 92, Series of 1958 (June 12, 1958).

204. *Id.*

205. *Lemon*, 403 U.S. at 619.

206. See *Gerona, et al. v. Secretary of Education*, 106 Phil. 2, 9-10 (1959); *German v. Barangan*, 135 SCRA 514, 525-26 (1985); *Ebralinag v. The Division Superintendent of Schools of Cebu*, 219 SCRA 256, 270 (1993); & *Iglesia Ni Cristo*, 259 SCRA at 543.

Pictures and Television.²⁰⁷ Because television programs are accessible to the youth, they possess the potential for inflicting harm upon its members.²⁰⁸

B. Recognition of Freedom of Religion

The refusal of the students in public schools who were members of the Jehovah's Witnesses to take part in the flag ceremony as required by Republic Act No. 1265²⁰⁹ sparked a protracted litigation.

Initially, the SC upheld the dismissal from school of the students who belonged to the Jehovah's Witnesses despite their claim that under the teachings of their religion the flag ceremony is a form of idolatry.²¹⁰ The decision of the SC in *Gerona, et al. v. Secretary of Education*²¹¹ brought up several points. First, it rejected the claim of the members of the Jehovah's Witnesses that the flag ceremony involved a form of idolatry and reserved to the Judiciary the determination whether or not a ritual is a religious ceremony, when the decision reasoned, to wit —

The flag is not an image but a symbol of the Republic of the Philippines, an emblem of national sovereignty, of national unity and cohesion[,] and of freedom and liberty which it and the Constitution guarantee and protect. Considering the complete separation of church and state in our system of governments, the flag is utterly devoid of any religious significance. Saluting the flag consequently does not involve any religious ceremony.

...

After all, the determination whether a certain ritual is or is not a religious ceremony must rest with the courts.²¹²

Second, the decision of the SC belittled the dismissal of the members of the Jehovah's Witnesses by saying that “[n]either were they being criminally prosecuted under threat of penal sanction. If they chose not to obey the flag salute regulation, they merely lost the benefits of public education being maintained at the expense of their fellow citizen, nothing more.”²¹³

207. *Iglesia Ni Cristo*, 259 SCRA at 544.

208. *Id.*

209. An Act Making Flag Ceremony Compulsory to All Educational Institutions, Republic Act No. 1265 (1955).

210. *See Gerona*, 106 Phil. at 2.

211. *Gerona*, 106 Phil. at 2.

212. *Id.* at 11.

213. *Id.* at 14.

Thirdly, after alluding to the duty of schools under Section 5 of Article XIV of the 1935 Philippine Constitution to develop civic conscience and to teach the duties of citizenship, the decision of the SC conjured the rules that would follow if the members of the Jehovah's Witnesses were to be exempted from the flag ceremony, to wit —

If the children of [Jehovah's] Witnesses are exempted, then the other pupils, especially the young ones seeing no reason for such exemption, would naturally ask for the same privilege because they might want to do something else such as play or study, instead of standing at attention saluting the flag and singing the national anthem and reciting the patriotic pledge, all of which consume considerable time; and if to avoid odious discrimination this exemption is extended to others, then the flag ceremony would soon be a thing of the past or perhaps conducted with very few participants, and the time will come when we would have citizens untaught and uninculcated in and not imbued with reverence for the flag and love of country, admiration for national heroes, and patriotism — a pathetic, even tragic situation, and all because a small portion of the school population imposed its will, demanded[,] and was granted an exemption.²¹⁴

This decision was followed in the case of *Balbuna v. Secretary of Education*.²¹⁵

It took 24 years before the SC overruled this pronouncement in the 1993 case of *Ebralinag v. The Division Superintendent of School of Cebu*.²¹⁶ The ruling in this case tackled the three points discussed in the decision in the *Gerona* case. First, it emphasized the transcendental importance of freedom of religion, to wit —

The idea that one may be compelled to salute the flag, sing the national anthem, and recite the patriotic pledge, during a flag ceremony on pain of being dismissed from one's job or of being expelled from school, is alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights which guarantees their rights to free speech and the free exercise of religious profession and worship.²¹⁷

Second, the decision of the SC pointed out that students could not just be dismissed from school. The SC said that —

Moreover, the expulsion of members of Jehovah's Witnesses from the schools where they are enrolled will violate their right as Philippine citizens, under the 1987 Constitution to receive free education, for it is the

²¹⁴. *Id.* at 24.

²¹⁵. *Balbuna v. Secretary of Education*, 110 Phil. 150, 152 (1960).

²¹⁶. *Ebralinag*, 219 SCRA at 256.

²¹⁷. *Id.* at 270.

duty of the state 'to protect and promote the right of all citizens to quality education and [] to make such education accessible to all.'²¹⁸

Third, the decision of the SC negated the indispensability of the flag ceremony for inculcating patriotism. After pointing out that experience has dispelled the misgivings expressed in the decision in *Gerona*, the decision offered alternatives, to wit —

After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history[,] and culture but also receive training for a vocation or profession and be taught the virtues of 'patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values as part of the curricula.'²¹⁹

When the Solicitor General asked for the reconsideration of the decision by invoking the duty of the state under Section 13 of Article II of the 1987 Philippine Constitution²²⁰ to inculcate patriotism and nationalism in the youth, the SC again fell back on freedom of religion. The SC stated in the 1995 *Ebralinag* case that —

However, the government's interest in molding the young into patriotic and civic spirited citizens is 'not totally free from a balancing process' when it intrudes into other fundamental rights such as those specifically protected by the Free Exercise Clause, the constitutional right to education[,] and the unassailable interest of parents to guide the religion upbringing of their children in accordance with the dictates of their conscience and their sincere religious beliefs.²²¹

More incisive is the separate opinion of Justice Isagani R. Cruz in the 1993 *Ebralinag* case. He said that "[t]he [s]tate cannot interpret the Bible for them; only they can read it as they see fit. Right or wrong, the meaning they derive from it cannot be revised or reversed except perhaps by their own acknowledged superiors. But certainly not the [s]tate."²²² Along the same line, when the parents and students who belonged to the Pilgrim Holiness Church, and who objected to the participation of their children in folk

218. *Id.* at 272 (citing PHIL. CONST. art. XIV, § 1).

219. *Ebralinag*, 219 SCRA at 271 (citing PHIL. CONST. art. XIV, § 3 (2)).

220. See PHIL. CONST. art. 2, § 13.

221. *Ebralinag v. Division Superintendent of Schools of Cebu*, 251 SCRA 569, 580 (1995).

222. *Ebralinag*, 219 SCRA at 275 (J. Cruz, concurring opinion).

dances, because their religion preached against worldly amusements, the student should just have been asked to join in group exercises like calisthenics.²²³ Group exercises equally promote the health and physical development of the students.²²⁴

C. Good Faith

In *German v. Barangan*,²²⁵ the SC said that the courts can pass upon the question of whether or not a person is invoking religion in good faith.²²⁶ Thus, an accused who persuaded an Igorot to part with his carabao by giving him a piece of paper which the accused claimed would produce money if the Igorot would pray for seven Fridays was convicted of swindling.²²⁷ Similarly, a godfather who asked the mother of his godchild to pray for seven Wednesdays and 13 Fridays and to leave a monetary offering, assured her that her business would prosper, and then disappeared with the money was convicted of swindling.²²⁸

VI. SCOPE OF RELIGIOUS FREEDOM

Freedom of religion includes the right to disseminate religious information.²²⁹ Thus, a religious corporation which adhered to Christianity can sell copies of the Holy Bible.²³⁰ A religious sect has the right to broadcast religious information over a television station.²³¹

In safeguarding the right of a religious sect to disseminate religious information, the SC adopted the standard laid down in the “clear and present danger rule” applied to freedom of speech.²³²

The SC held that a religious corporation could not be required to pay license fees and to obtain a mayor’s permit, before it could sell copies of the Holy Bible.²³³ The SC said that “[a]ny restraint of such right can only be

223. Department of Justice, DOJ Opinion No. 332, Series of 1955.

224. *Id.*

225. *German*, 135 SCRA at 514.

226. *Id.* at 524.

227. *United States v. De los Reyes*, 34 Phil. 693, 694 (1916).

228. *People v. Rull*, 72 Phil. 111, 114 (1941).

229. *American Bible Society*, 101 Phil. at 398.

230. *Id.* at 401.

231. *Iglesia Ni Cristo*, 259 SCRA at 547.

232. *Id.*

233. *Id.*

justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of a substantive evil which the [s]tate has the right to prevent.”²³⁴

On the basis of that principle, the SC lifted the ban imposed by the Board of Review for Moving Pictures and Television on the broadcasting of video tapes prepared by a religious sect for its weekly program on the ground that they criticized other religions because of their own interpretation of the Holy Bible.²³⁵ Thus, the SC explained, to wit —

In fine, respondent board could squelch the speech of petitioner Iglesia ni Cristo simply because it attacks other religions, even if said religion happens to be the most numerous church in our country. In a [s]tate where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology.²³⁶

However, in *Ignacio and De la Cruz v. Ela etc.*,²³⁷ the SC upheld the refusal of a mayor to permit the members of the Jehovah’s Witnesses to hold a religious meeting at the part of the public square which was near a Catholic church on the ground that it might lead to disturbance of peace and order.²³⁸

Justice Roberto R. Concepcion dissented strongly. First, he explained that the temporary use of public property for religious purposes does not violate the Constitution. He said that —

Public squares, roads, highways and buildings are devoted to public use, and, as such, are open to all, without distinction. *Incidentally to such use*, religious acts may be performed in said public properties. It is the appropriation thereof *mainly* for religious purposes that the Constitution does not sanction. Thus, for instance, public lands may not be donated for the construction thereon of churches, convents[,] or seminaries. However, public streets, boulevards[,] and thoroughfares are used, almost daily, for religious processions in the Philippines. Masses and other religious services are often held at the Luneta, the Quirino Grandstand[,] and the Rizal Memorial Stadium, in the City of Manila, as well as in other public property, such as penal institutions, leprosaria[,] and army camps. So long as the use of public property for religious purposes is *incidental* and *temporary*, and such as to be reasonably compatible with the use to which other

234. *Id.* at 398-99 (citing LORENZO MARTINEZ TANADA & ENRIQUE M. FERNANDO, CONSTITUTION OF THE PHILIPPINES VOL. 2 297 (4th ed. 1953)).

235. *Iglesia Ni Cristo*, 259 SCRA at 547.

236. *Id.*

237. *Ignacio and De la Cruz v. Ela etc.*, 99 Phil. 346 (1956).

238. *Id.*

members of the community are similarly entitled, or may be authorized to make, the injunction in [S]ection 23 (3) of Article VI of the [1987 Philippine] Constitution is not infringed.²³⁹

Then, after stressing that the majority opinion relied merely on the speculative possibility of breach of peace, Justice Concepcion pointed out that the meeting of the members of the Jehovah's Witnesses could be scheduled at a time when there were no religious services in the Catholic Church.²⁴⁰ He said that "petitioners could be authorized to give their lectures at such times as would avoid any possible interference with the normal activities of said Catholic Church."²⁴¹

Indeed, the flaw in the reasoning of the majority opinion is that it made the exercise of freedom of religion depend on whether it would offend followers of another religious sect.

However, freedom of religion does not include the right to own land. Under Section 7 of Article XII of the 1987 Philippine Constitution, aliens cannot own land.²⁴² A religious association composed of aliens cannot insist on acquiring land by invoking freedom of religion, because ownership of land is not indispensable for the exercise of freedom of religion.²⁴³

A. State Protection for Freedom of Religion

To safeguard freedom of religion, the law has imposed criminal and civil sanctions for its violation. The Revised Penal Code (RPC) contains the following provisions:

Article 132. Interruption of Religious Worship. [—] The penalty of *prision correccional* in its minimum period shall be imposed upon any public officer who shall prevent or disturb the ceremonies or manifestation of any religion.

If crime shall have been committed with violence or threats, the penalty shall be *prision correccional* in its medium and maximum periods.

Article 133. Offending Religious Feelings. [—] The penalty of *arresto mayor* in its maximum period to *prision correccional* upon its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or

239. *Id.* at 354 (J. Concepcion, dissenting opinion).

240. *Id.* at 356.

241. *Id.*

242. See PHIL. CONST. art. XII, § 7.

243. Register of Deeds of Rizal v. Ung Sui Si Temple, 97 Phil. 58, 61 (1955).

during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.

...

Article 286. Grave Coercions. [—] The penalty of *prision correccional* and a fine not exceeding six thousand pesos shall be imposed upon any person who, without my authority of law, shall by means of violence, threats, or intimidation, prevent another from doing something and prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed for the purpose of compelling another to perform any religious act, or to prevent him from exercising such right or from so doing such act, the penalty next higher in degree shall be imposed.²⁴⁴

Entering uninvited in a private residence, where members of the Methodist Episcopal Church were conducting religious services, by threatening them with a club was held to be a violation of Article 132 of the RPC.²⁴⁵ A barrio lieutenant who prevented a priest from celebrating mass by threatening his life should he pursue his intention was found guilty of violating Article 132 of the RPC.²⁴⁶

An act is notoriously offensive to the religious feelings of the faithful if a person ridicules or makes light of a religious dogma, mocks or scoffs at anything devoted to religious ceremonies, plays with, damages, or destroys any object of veneration by the faithful.²⁴⁷ The SC held that the followers of a different religious sect who compelled the parish priest of a Catholic Church by means of force and threats of physical violence to allow the funeral of a member of their religious sect to pass through the churchyard could be held liable for violation of Article 133 of the RPC.²⁴⁸ Stoning the minister of a religious sect while he was preaching to its members at a public street was considered a violation of Article 133 of the RPC.²⁴⁹

On the other hand, the followers of a different religious sect who dispersed a religious procession by attacking the participants with clubs were

244. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 132, 133, & 286 (1932).

245. *Balcorta*, 25 Phil. at 279.

246. *People v. Mejia*, CA-G.R. No. 12980-R., Dec. 29, 1955.

247. *People v. Mandoriano*, 51 O.G. 4619, 4623 (C.A. 1955).

248. *People v. Baes*, 68 Phil. 203, 205-06 (1939).

249. *People v. Migallos*, CA-G.R. No. 13619-R., Aug. 5, 1955.

convicted under Article 286 of the RPC.²⁵⁰ The distinction between the acts punished in Articles 132 and 286 of the RPC lies in the motive of the offender. In Article 286 of the RPC, the intention of the offender is to coercively control the religious beliefs of another because of religious intolerance.²⁵¹

On its part, the Civil Code also contains provisions for the protection of religion. Article 26 provides —

Every person shall respect the dignity, personality, privacy[,] and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention[,] and other relief:

...

- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.²⁵²

Article 32 states that any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates, or in any manner impedes or impairs the freedom of religion of another person shall be liable to the latter for damages.²⁵³

In justifying Article 26 of the Civil Code, the Code Commission states that religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of the latter's religion.²⁵⁴ On the other hand, Article 32 of the Civil Code is intended to give those whose constitutional rights were violated but could not obtain redress by criminal prosecution an alternative remedy.

Good faith is not available as a defense in an action for damages based on Article 32 of the Civil Code, because the purpose of this provision is to prevent pleas of good faith in case of violation of constitutional rights.²⁵⁵

250. *United States v. Morales*, 37 Phil. 364, 370-71 (1917).

251. *See Balcorta*, 25 Phil. at 278-79 & *Morales*, 37 Phil. at 370-71.

252. CIVIL CODE, art. 26.

253. *Id.* art. 32.

254. *See Antonio T. Carpio, International Torts in Philippine Law*, 47 PHIL. L. J. 649, 671 (1972).

255. *See Lim v. Ponce de Leon*, 66 SCRA 299, 309 (1975) & *Vinzons-Chato v. Fortune Tobacco Corporation*, 525 SCRA 11, 24 (2007).

B. Power of Taxation

Freedom of religion is not synonymous with tax exemption. Thus, a gift tax can be imposed on money donated for the construction of a church.²⁵⁶ It does not impinge upon the exercise of freedom of religion. Rather, it is an excise tax on the transfer of property.²⁵⁷

Freedom of religion does not prohibit the imposition of the Value Added Tax (VAT) on the sale of religious articles by a religious organization, because it is a generally applicable tax.²⁵⁸ While the VAT may result in the increase of the selling price and the reduction of the volume of sales, the burden on the exercise of freedom of religion is merely incidental. It is not a tax on the exercise of the right to disseminate religious doctrines.²⁵⁹

The SC distinguished the imposition of the VAT on the sale of copies of the Holy Bible from the collection of a license for their sale by saying that —

The VAT is, however, different. It is not a license tax. It is not a tax on the exercise of a privilege, much less a constitutional right. It is imposed on the sale, barter, lease[,] or exchange of goods or properties or the sale or exchange of services and the lease of properties purely for revenue purposes.²⁶⁰

C. Freedom of Religion and Police Power

Any regulation which burdens the exercise of freedom of religion is subject to strict scrutiny.²⁶¹ In determining if the regulation passes muster, the following questions must be addressed:

- (1) First, has the law or state action created a burden on the exercise of freedom of religion?
- (2) Second, is there a compelling state interest to justify the infringement of freedom of religion?
- (3) Third, has the state in achieving its legitimate purpose used the least obtrusive means possible so that the exercise of freedom of

256. *Lladoc v. Commissioner of Internal Revenue*, 14 SCRA 292, 295 (1965).

257. *Id.*

258. *Tolentino v. Secretary of Finance*, 235 SCRA 630, 680 (1994).

259. *Tolentino v. Secretary of Finance*, 249 SCRA 629, 656 (1995).

260. *Id.* at 655.

261. See *Estrada Case (2003)*, 408 SCRA at 98–99 & *Estrada v. Escritor*, 492 SCRA 1, 74 (2006) [hereinafter *Estrada Case (2006)*].

religion is not infringed any more than necessary to achieve the legitimate goal of the State.²⁶²

Invocation of freedom of religion tends to be overridden when the questioned religious conduct inflicts direct harm upon the person or property of others.

The case of *Cantwell v. State of Connecticut*²⁶³ involved a law which required anyone soliciting funds for a religious cause from persons who were not members of the beneficiary of the solicitation must obtain a permit from the Secretary of the Public Welfare Council, who must determine whether the cause is religious.²⁶⁴ The U.S. SC held that to make the issuance of the permit dependent upon the determination that the cause was religious or not was an intrusion upon the exercise of freedom of religion.²⁶⁵

In the later case of *U.S. v. Ballard*,²⁶⁶ the two representatives who were soliciting funds for a religious sect were charged with fraud.²⁶⁷ The U.S. SC held that the determination of their guilt should not depend on whether their representations regarding the tenets of the religious sect were true or false, but on whether or not they believed their representations in good faith.²⁶⁸

In the Philippine setting, the case of *Centeno v. Villalon-Pornillos*²⁶⁹ involved the prosecution of two officers of a civic organization which solicited funds for the renovation of a chapel without obtaining a permit from the Department of Social Welfare and Development.²⁷⁰ Presidential Decree No. 1564 required any person soliciting for charitable or public welfare purposes to secure such a permit.²⁷¹

The SC acquitted the accused on the ground that solicitations for religious purposes are not included within the scope of the law.²⁷² By way of

262. See *Estrada Case (2003)*, at 126-28 & *Estrada Case (2006)*, at 74.

263. *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940).

264. *Id.* at 301-02.

265. *Id.* at 307-08.

266. *U.S. v. Ballard*, 322 U.S. 78 (1944).

267. *Id.* at 79.

268. *Id.* at 82.

269. *Centeno v. Villalon-Pornillos*, 236 SCRA 197 (1994).

270. *Id.* at 201.

271. *Id.*

272. *Id.* at 206-09.

obiter dictum, the majority opinion stated that to protect the public from fraud, solicitation for religious purpose may be regulated by the state in the exercise of its police power.²⁷³ However, the majority opinion ended without stating what standard should be used in determining the solicitation was for a fraudulent purpose.²⁷⁴

In his separate concurring opinion, Justice Vicente V. Mendoza disagreed. He said that “[t]o require a government permit before solicitation for religious purpose may be allowed is to lay a prior restraints on the free exercise of religion.”²⁷⁵

The separate opinion of Justice Mendoza did not close the door to the possibility of prosecuting solicitation for avowed religious purposes after the solicitation if it can be proven that it was conducted by means of fraudulent representations.

In *Reynolds v. United States*,²⁷⁶ the U.S. SC upheld the conviction for bigamy of a member of The Church of Jesus Christ of Latter-Day Saints, which imposed upon its male members the duty to practice polygamy.²⁷⁷ The U.S. SC rejected the defense of freedom of religion. The U.S. SC said that “[i]n the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.”²⁷⁸

In light of this, the split decision of the SC in the 2006 case of *Estrada v. Escritor*²⁷⁹ is controversial. Soledad Escritor, a court stenographer, was living with Luciano Quilapio, Jr. without the benefit of marriage.²⁸⁰ They were both members of the Jehovah’s Witnesses.²⁸¹ At the time that they started living together, their spouses were still alive but living separately from Soledad Escritor and Luciano Quilapio, Jr.²⁸² The husband of Soledad Escritor died later on. Soledad Escritor and Luciano Quilapio, Jr. signed a Declaration of Pledging Faithfulness, which was approved by the elders of

273. *Id.* at 208.

274. *Id.*

275. *Centeno*, 236 SCRA at 210 (J. Mendoza, concurring opinion).

276. *Reynolds v. U.S.*, 98 U.S. 145 (1879).

277. *Id.* at 150.

278. *Id.* at 165.

279. *Estrada Case (2006)*, 492 SCRA at 1.

280. *Id.* at 27.

281. *Id.*

282. *Id.*

the Jehovah's Witnesses as being in accordance with their beliefs.²⁸³ A complaint for immorality was filed against Soledad Escritor.

While conceding that the state has an interest in the protection of marriage and the family as social institution, and the sound administration of justice, the majority decision dismissed the complaint by explaining that the state failed to show that the state interest involved in this particular case was compelling.²⁸⁴ The SC said that the "government must do more than assert the objectives at risk of exemption is given; it must precisely show how and to what extent these objectives will be undermined if exemptions are granted."²⁸⁵

In other words, the holding of the majority opinion is that it must be shown that uniform application of the law is necessary for the protection of the compelling state interest. In fact, the SC said that "the records are bereft of even a feeble attempt to procure any such evidence to show that the means the State has adopted in pursuing this compelling interest is the least restrictive to respondent's religious freedom."²⁸⁶

Justice Antonio T. Carpio, who was one of the dissenters, expounded on his reason for disagreeing with the majority opinion, to wit —

Even assuming that the theory of benevolent neutrality and the compelling state interest test are applicable, the state has a compelling interest in exacting from everyone connected with the dispensation of justice, from the highest magistrate to the lowest of its personnel, the highest standard of conduct.

...

Equally compelling is the state's interest in the preservation of marriage and the family as basic social institutions, which is ultimately the public policy underlying Articles 334 and 349 of the [RPC]. This Court has recognized in countless cases that marriage and the family are basic social institutions in which the state is vitally interested and in the protection of which the state has the strongest interest.²⁸⁷

283. *Id.*

284. *Id.* at 91.

285. *Estrada Case (2006)*, 492 SCRA at 84-85.

286. *Id.* at 91.

287. *Id.* at 119-20 (J. Carpio, dissenting opinion).

In *U.S. v. Lee*,²⁸⁸ the U.S. SC rejected the plea of the members of the Old Order Amish Religion for exemption from payment of social security taxes on the basis of their religious beliefs.²⁸⁹

Also, members of the Seventh Day Adventists can be compelled to undergo compulsory military training, because Section 4 of Article II of the 1987 Constitution provides that “the prime duty of the [g]overnment is to serve and protect the people. The [g]overnment may call upon the people to defend the [s]tate and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military[,] or civil service.”²⁹⁰

The three-step analysis under the compelling interest test took off from the decision of the U.S. SC in *Sherbert v. Verner*.²⁹¹ In this case, Adell Sherbert, a member of the Seventh Day Adventists, was dismissed from work because of her refusal to work on Saturdays on religious grounds.²⁹² When she applied for employment compensation, the South Carolina Employment Security Commission denied her claim because her failure to work was due to her refusal to work on Saturdays, and religious reasons did not constitute a just cause for her refusal to accept work.²⁹³ In ruling that the denial of her claim effectively penalized Adell Sherbert because of her exercise of freedom of religion, the U.S. SC reasoned —

Plainly enough, appellant’s conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina [SC] is to withstand appellant’s constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the [s]tate of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant’s religion may be justified by a compelling state interest in the regulation of a subject within the [s]tate’s constitutional power to regulate[.]²⁹⁴

288. *U.S. v. Lee*, 455 U.S. 252 (1982).

289. *Id.* at 261.

290. PHIL. CONST. art. II, § 4.

291. *Sherbert v. Verner*, 374 U.S. 398 (1963).

292. *Id.* at 399.

293. *Id.* at 399-401.

294. *Id.* at 403 (citing *National Ass’n for the Advancement of Colored People v. Button*, 371 U.S. 415 (1963)).

In the case of *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*,²⁹⁵ the SC denied the request of Muslim employees to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday, the Muslim day of prayer by stating —

On the other hand, the need of the [s]tate to prescribe government office hours as well as to enforce them uniformly to all civil servants, Christians and Muslims alike, cannot be disregarded. Underlying Section 5 [of] Rule XVII of the Omnibus Rules Implementing Book V of E.O. No. 292 is the interest of the general public to be assured of continuous government service during office hours every Monday through Friday. The said rule enjoins all civil servants, of whatever religious denomination, to render public service of no less than eight hours a day or [40] hours a week. To allow Muslim employees in the Judiciary to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year would mean a diminution of the prescribed working hours. For then, they would be rendering service [12] hours less than that required by the civil service rules for each week. Further, this would encourage other religious denominations to request for similar treatment.²⁹⁶

The implications of this ruling are that continuity in government service involves a compelling state interest and that the achievement of this interest requires uniformity of working hours of court employees. In fact, the Secretary of Justice opined that teachers who were Seventh Day Adventists may be required to attend meetings and to submit their lesson plan on Saturdays, because this is a rule governing public school teachers.²⁹⁷

However, in *Employment Division v. Smith*,²⁹⁸ the U.S. SC deviated from the compelling interest test. In this case, two employees were fired from their jobs, because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of the Native American Church, to which they belonged.²⁹⁹ The State of Oregon denied them employment benefits on the ground that they were dismissed for misconduct which was related to their work.³⁰⁰

295. *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*, 477 SCRA 648 (2005).

296. *Id.* at 657.

297. Department of Justice, DOJ Unnumbered Opinion, Series of 1946 (July 26, 1946).

298. *Employment Division v. Smith*, 494 U.S. 872 (1990).

299. *Id.* at 874.

300. *Id.* at 875.

Ruling that compelling state interest should not apply to criminal laws of general application, the U.S. SC rejected the appeal to freedom of religion — “To make an individual’s obligation to obey such a law contingent upon the law’s coincidence with his religious beliefs, except where the State’s interest is ‘compelling’ — permitting him, by virtue of his beliefs, ‘to become a law unto himself’ — contradicts both constitutional tradition and common sense.”³⁰¹

In *People v. Diel*,³⁰² the SC said that a person charged with practicing medicine without a license cannot be acquitted on the ground that his actions were in accordance with his religion.³⁰³ However, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,³⁰⁴ the U.S. SC struck down a city ordinance which prohibited animal sacrifice as a religious practice.³⁰⁵ While its avowed purpose was to prevent cruelty to animals, it did not prohibit the killing of animals for non-religious purposes. While on its face the ordinance appeared to be neutral, the record of the sessions of the City Council showed that it was really directed against the Santeria religion.³⁰⁶ This prompted the U.S. SC to rule that “[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance ‘interests of the highest order’ and must be narrowly tailored in pursuit of those interests.”³⁰⁷ In this case, the U.S. SC reverted to the compelling state interest test. However, it based its action on the violation of equal protection, because the ordinance was not of general application.

Thus, whether jurisprudence will continue to adhere to or will deviate from the compelling state interest test is uncertain. Even if jurisprudence will continue to follow the compelling interest test, the circumstances under which it will do so remains unclear.

301. *Id.* at 885 (citing *Reynolds*, 98 U.S. at 145).

302. *People v. Diel*, 40 O.G. 590 (CA 1947).

303. *Id.* at 593.

304. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

305. *Id.*

306. *Id.*

307. *Id.* at 546.

VII. SEPARATION OF CHURCH AND STATE

A. Historical Background and Development

Section 15 of Article XV of the 1973 Constitution provides that “[t]he separation of [c]hurch and [s]tate shall be inviolable.”³⁰⁸ This has been retained as Section 6 of Article II of the 1987 Philippine Constitution.³⁰⁹

1. Meaning

Professor Thomas Berg condensed the meaning of this principle. He said that “[a]t the minimum, that means not only that church and state are two different institutions (as opposed to a theocracy like Iran), but also that neither state nor church should have any official role in directing the internal governance in the other.”³¹⁰ He recognized that in practice, the application of this principle is pervaded with difficulties and controversies.³¹¹

Rev. Jorge M. Kintanar, who was a member of the Committee on Church and State of the 1971 Constitutional Convention,³¹² explained the meaning of Section 15 of Article XV of the 1973 Philippine Constitution. He said that the provision simply means that there shall be no state religion, that public money or property shall not be used for purely religious purposes, and that shall be freedom of religion or public worship.³¹³

2. Origin of Principle

The principle of the inviolability of the separation of church and state originated from the letter of Thomas Jefferson in 1802 in reply to a letter of the Danbury Baptist Association in which he stated that the purpose of the First Amendment was to build a wall of separation between church and state.³¹⁴ This unfortunate metaphor has beclouded rather than illuminated the meaning of the prohibition against the establishment of religion.³¹⁵

308. 1973 PHIL. CONST. art. XV, § 15 (superseded 1987).

309. PHIL. CONST. art. II, § 6.

310. THOMAS BERG, *THE STATE AND RELIGION: IN A NUTSHELL* 15 (2004).

311. *Id.* at 16-18.

312. *See Pamil v. Teleron*, 86 SCRA 413, 445 (J. Teehankee, dissenting opinion) (1978).

313. CIRILO MONTEJO, *THE NEW CONSTITUTION* 302 (1973).

314. *See James Hutson, A Wall of Separation*, available at <http://www.loc.gov/loc/lcib/9806/danbury.html> (last accessed Mar. 31, 2014) & Library of

First, the letter has been understood out of context.³¹⁶ Thomas Jefferson was protesting against the establishment of Congregationalist state church in Connecticut.³¹⁷ He was objecting to state support of a religion. Second, Thomas Jefferson was in France as ambassador when the Bill of Rights was drafted and ratified.³¹⁸ Third, even in the U.S., the theory of Thomas Jefferson has been repudiated. The total separation between church and state is not possible.³¹⁹ The church and the state deal with the same individual. Each of them is supposed to promote the welfare of the individual, in its own way. Consequently, interaction between them is inevitable and accommodation is necessary.³²⁰ Fourth, the 1987 Philippine Constitution itself accommodates religion. It exempts church properties which are actually, directly, and exclusively used for religious, charitable, or educational purposes from real estate tax.³²¹ It allows payment of salary to priests and ministers assigned to the armed forces or to any penal institution, government orphanage or leprosarium.³²² It permits the teaching of religion in public schools.³²³ Fifth, during the discussions on Section 6 of Article II of the 1987 Philippine Constitution, Fr. Joaquin G. Bernas, S.J. pointed out that this is a purposeless statement, because the jurisprudence on Church-State relations has been based on the Bill of Rights rather than on the principle of separation of church and state.³²⁴ Lastly, the U.S. SC pointed out that the fears and political problems which gave rise to the prohibition against the establishment of religion in the 18th Century are of far less concerns today.³²⁵

Congress, Jefferson's Letter to the Danbury Baptists, *available at* <http://www.loc.gov/loc/lcib/9806/danpost.html> (last accessed Mar. 31, 2014).

315. LEONARD F. MANNING, *THE LAW OF CHURCH-STATE RELATIONS: IN A NUTSHELL* 191 (1981).

316. Matthew D. Staver, *The Myth Behind "Separation of Church and State"* (A Non-Paginated Unpublished Material Online), *available at* http://www.lc.org/resources/myth_of_separation_church_state.html (last accessed Mar. 31, 2014).

317. Leonard F. Manning, *Aid to Education-Federal Fashion*, 29 *FORDHAM L. REV.* 495, 499 (1961).

318. *Wallace v. Jaffree*, 472 U.S. 38, 92 (1985).

319. *See Lynch v. Donnelly*, 465 U.S. 668, 672 (1984).

320. *See Agostini v. Felton*, 521 U.S. 203, 233 (1997).

321. PHIL. CONST. art. VI, § 28 (3).

322. PHIL. CONST. art. VI, § 29 (2).

323. PHIL. CONST. art. XIV, § 3 (3).

324. IV RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 973.

325. *Lynch*, 465 U.S. at 680.

3. Involvement in Political Affairs

a. Stand on Public Issues

Section 1 of Article II of the 1987 Philippine Constitution provides that “[s]overeignty resides in the people and all government authority emanates from them”³²⁶ and every Filipino citizen shares in this sovereignty. Section 4 of Article III of the 1987 Philippine Constitution states that “[n]o law shall be passed abridging freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”³²⁷

In a democracy, freedom of speech is indispensable. The exercise by the people of their power of sovereignty is not limited to the casting of their ballots during election time. The people also have the right to participate in the administration of public affairs between elections. By the exercise of their freedom of speech, the people, who are sovereign, are able to communicate to the public officials, who are their servants, what is their will.

By heeding their religious calling, priests and religious ministers do not lose their freedom of speech. The U.S. SC has recognized that churches, as much as secular groups and private citizens, have the right to take strong positions on public issues.³²⁸ On this point, Professor Leonard Manning wrote that —

Not only the free exercise of religion and a freedom from establishment, but also the right to communicate, to advocate, to assemble, to associate, to petition the government was enshrined in the First Amendment. Certainly, those guarantees were not given to religious motivated citizens in some diluted measure. The First Amendment did not cast religious partisans as pariahs in our society. Nor does it dictate to anyone, not even those who may ‘find their votes aligned with their faith,’ that he must leave his religious and moral convictions outside the voting booth.³²⁹

In the same vein, Professor Laurence H. Tribe explained —

The [U.S. SC] has spoken of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. Carving out an exception for any form of rhetoric including religious rhetoric, would undercut that principle.

326. PHIL. CONST. art. II, § 1.

327. PHIL. CONST. art. III, § 4.

328. *Walz*, 397 U.S. at 670.

329. MANNING, *supra* note 315, at 238.

...

Second, actions that discourage religious involvement in politics raise exercise concerns by imposing disability on the basis of religious conduct and perhaps, belief. The disability remains problematic even if it requires believers who participate in politics to do no more than omit religious references, with the sanction that failing to do so may doom the legislation that they favor. Marxists, Republicans, ecologists, and members of other groups may voice their deep-seated beliefs during political debates without self-censorship; religious believers deserve no less. Indeed, under the free exercise clause they may deserve more, when religious doctrine itself requires active political involvement.

...

Finally, the purposes and divisiveness inquires fail to recognize religion's long history of positive contributions to public debate: church and religious groups in the [U.S] have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery war, gambling, drinking, prostitution, marriage, and education. As one commentator has asked: 'Should all laws that the churches have played an essential role in passing, like the civil rights laws of the 1960s, be declared unconstitutional?' Many observers have viewed such actions as natural and desirable aids to democracy, Tocqueville considered religion to be America's first political institution; one need not go that far in order to recognize religion's contributions to the American political system. Although other systems of belief and their attendant organizations could also serve such function, none has yet developed the audience, influence, and resources of religion.³³⁰

b. Candidacy for Public Office

Section 2175 of the Revised Administrative Code³³¹ provides that "[i]n no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractor for public works of the municipality."³³²

330. TRIBE, *supra* note 117, at 1279–82.

331. An Act Amending the Administrative Code [REVISED ADMINISTRATIVE CODE], Act No. 2711, § 2175 (1917). *But see* Instituting the Administrative Code of 1987 [ADMINISTRATIVE CODE OF 1987], Executive Order No. 292 (1987). The Administrative Code of 1987 repealed the Revised Administrative Code.

332. REVISED ADMINISTRATIVE CODE, § 2175.

Because of this provision, the SC disqualified a Protestant minister who was elected municipal mayor.³³³ The constitutionality of Section 2175 of the Revised Administration Code was challenged in the case of *Pamil v. Teleron*.³³⁴ A majority of seven Justices of the SC declared the law unconstitutional for violation of the constitutional prohibition against the imposition of a religious test for the exercise of a political right.³³⁵ The separate opinion of Justice Claudio Teehankee, who joined the majority reasoned thus —

It is conceded that the non-religious test clause constitutionally bars the state from disqualifying a *non-believer*, an atheist[,] or an agnostic from voting or being voted for a public office for it is tantamount to a religious test and compelling them to profess a belief in God and a religion. By the same token, the same clause is equally applicable to those at the opposite end, let us call them the full believers who in their love of God *and* their fellowmen have taken up the ministry of their church or the robe of the priest: to disqualify them from being voted for and elected to a municipal office (under the questioned Administrative Code provision) is to exact a religious test for the exercise of their political rights for it amounts to compelling them to shed off their religious ministry or robe for the exercise of their political right to run for public office.³³⁶

Justice Ramon C. Aquino, one of the five dissenters, argued that Section 2175 of the Revised Administrative Code was not a test act, to wit —

To require that a person should be a Protestant in order to be eligible to public office is different from disqualifying all clergymen from holding municipal positions. The requirement as to religious belief does violence to religious freedom, but the disqualification, which indiscriminately applies to all persons regardless of religious persuasion, does not invade an ecclesiastic's religious belief. He is disqualified not because of his religion but because of his religious vocation.

Consequently, [S]ection 2175 can [co-exist], as it has co-existed for several decades, with the 'no religious test' constitutional provision. It is not unconstitutional. It strengthens the constitutional provision for the separation of church and state.³³⁷

The majority of seven Justices failed to prevail over the minority of five Justices, because they failed to muster the qualified majority of eight votes to

333. *Vilar v. Paraiso*, 96 Phil. 659, 663-64 (1955).

334. *Pamil*, 86 SCRA at 413.

335. *Id.*

336. *Id.* at 441 (J. Teehankee, dissenting opinion).

337. *Id.* at 510 (J. Aquino, concurring opinion).

declare the law unconstitutional. The right to hold elective public office is a right which a Filipino citizen may exercise despite his religious vocation.

The U.S. SC explained why religious ministers can run for public office, to wit —

However, the right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions, or, in other words, to be a minister of the type McDaniel was found to be. Tennessee also acknowledges the right of its adult citizens generally to seek and hold office as legislators or delegates to the state constitutional convention. Yet under the clergy-disqualification provision, McDaniel cannot exercise both rights simultaneously because the State has conditioned the exercise of one on the surrender of the other. Or, in James Madison's words, the [s]tate is 'punishing a religious profession with the privation of a civil right.'³³⁸

B. Autonomy of Religious Sects

Because of freedom of religion, religious sects have autonomy in running their internal affairs.

1. Appointment and Ouster of Religious Leaders

The by-laws of a religious sect can provide that the members of its board of directors shall be elected by lay representatives of its districts instead of the members at large.³³⁹ However, the SC has held that the question of who is the rightful head of a religious sect is a justiciable question.³⁴⁰ Accordingly, the SC ruled that the removal of two bishops of a religious sect could be reviewed by the civil courts.³⁴¹ It explained at length the basis for its ruling —

The Court of Appeals entertained the view that since it is claimed that the ouster was made by an unauthorized person, or in a manner contrary to the constitution of the [c]hurch, and that the ousted bishops were not given notice of the charges against them nor were they afforded an opportunity to be heard, the civil courts, have jurisdiction to review the action regarding said ouster citing in support of its view some authorities from Vol. 45 of the American Jurisprudence which we believe to be pertinent and decisive of the issue under consideration. And, for the purposes of this decision, it is enough for us to quote the following as a representative

338. *McDaniel v. Paty*, 435 U.S. 618, 626 (1978).

339. *See Ao-As v. Court of Appeals*, 491 SCRA 339, 364 (2006).

340. *Jamias v. Rodriguez*, 81 Phil. 303, 309 (1948).

341. *See Fonacier v. Court of Appeals*, 96 Phil. 417 (1955).

authority: 'Where, however, a decision of an ecclesiastical court plainly violates the law it professes to administer, or is in conflict with the laws of the land, it will not be followed by the civil courts. In some instances, not only have the civil courts assumed the right to inquire into the jurisdiction of religious tribunals and the regularity of their procedure, but they have subjected their decisions to the test of fairness or to the test furnished by the constitution and laws of the church. Thus, it has been held that expulsion of a member without notice or an opportunity to be heard is not conclusive upon the civil courts when a property right is involved.'

The claim that the ouster in question was legal and valid because petitioner, as Supreme Bishop, could act alone pursuant to the constitution of the church wherein it is provided that the Supreme Bishop is the supreme head of the Iglesia Filipina Independiente and as such shall have full powers to impose the penalties of dismissal, confinement in the seminary, suspension, fine, transfer, etc., which, without contravening the penal laws of the constituted government, can be imposed upon the bishops, and that said power can be exercised even without the intervention of the Supreme Council, cannot be entertained in the light of the very provisions of the constitution of the church, it appearing that the alleged power of the Supreme Bishop under the constitution is not all-embracing but limited and, in any event, the final action shall be taken by the Supreme Council.³⁴²

Where there was no quorum at the meeting where the bishop of a religious sect was elected by the board of deacons and there was a quorum when the other claimant to the position was elected, the latter was declared the rightful head.³⁴³

On the other hand, the U.S. SC has ruled that civil courts cannot review the ouster of the bishop of a religious sect, to wit —

For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense 'arbitrary' must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.³⁴⁴

The U.S. SC added that —

342. *Id.* at 426-27.

343. *Chia v. Payanal*, CA-G.R. No. 49057-R, Apr. 19, 1976.

344. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976).

Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of ‘fundamental fairness’ or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.³⁴⁵

2. Dismissal of a Clergyman

Whether or not the civil courts can review the dismissal of a clergyman depends on whether he was dismissed on ecclesiastical reasons, such as the tenets of the religious sect, or on secular grounds, such as misappropriation of funds.

In ruling that the dismissal of a pastor for allegedly misappropriating funds could be reviewed by the civil court, the SC painstakingly explained that —

The case at bar does not concern an ecclesiastical or purely religious affair as to bar the [s]tate from taking cognizance of the same. An ecclesiastical affair is ‘one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership.’ Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship[,] and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the [s]tate cannot meddle are proceedings for excommunication, ordinations or religious ministers, administration of sacraments[,] and other activities which attached religious significance. The case at bar does not even remotely concern any of the abovesited examples. While the matter at hand relates to the church and its religious minister[,] it does not ipso facto to give the case a religious significance. Simply stated, what is involved here is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship[,] or doctrines of the church. In this case, petitioner was not excommunicated or expelled from the membership of the SDA but was terminated from employment. Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation.³⁴⁶

345. *Id.* at 714-15.

346. *Austria v. National Labor Relations Commission*, 312 SCRA 410, 421-22 (1999).

3. Discipline over Members

When a member joins a religious sect, he or she agrees to be bound by its rules and to submit to the jurisdiction of its authorities on ecclesiastical matters.³⁴⁷ Changes in doctrinal matters, restatement of articles of religion, abandonment of faith or abjuration, religious practice, form of worship, ecclesiastical law, customs, and rules are ecclesiastical matters. The correctness of the decisions of the religious authorities on such matters cannot be reviewed by the civil courts.³⁴⁸

Religious authorities may rebuke, censure, suspend, excommunicate, or expel as they may deem proper.³⁴⁹ Members of a religious sect who are preaching heresy can be expelled, because the basis of membership is absolute adherence to common religious beliefs.³⁵⁰

The SC rejected the appeal of the members of a religious sect who were expelled by their bishop. The bishop rejected their request to have their parish priest replaced because of his support for the political opponent of their candidate. They defied the order of the bishop not to get another parish priest. The SC tersely rationalized that “[i]t is not for the courts to exercise control over church authorities in the performance of their discretionary and official functions. Rather, it is for the members of religious [institutions] to conform to just church regulations.”³⁵¹

In *Arnaldo v. Catholic Bishop of Jaro*,³⁵² the daughter of the plaintiff, a Catholic, was buried in a Catholic cemetery.³⁵³ Later on, the plaintiff obtained a permit to transfer the remains of his daughter to a Masonic cemetery.³⁵⁴ The Bishop of Jaro objected to the transfer of the remains to a new Catholic cemetery because of the prohibition of Canon Law.³⁵⁵

When the plaintiff filed an action to compel the Bishop of Jaro to allow the transfer, the SC denied it. The SC stated that —

347. See *United States v. Canete*, 38 Phil. 253, 260-61 (1918) & *Roman Catholic Archbishop of Zamboanga v. Reyes*, CA-G.R. No. 20321-R, Jan. 18, 1963.

348. See *Canete*, 38 Phil. at 261; *Fonacier*, 96 Phil. at 447; *Romero v. De los Reyes*, 14 SCRA 115, 127-28 (1965); & *Long v. Basa*, 366 SCRA 113, 126 (2001).

349. *Canete*, 38 Phil. at 260-61.

350. *Long*, 366 SCRA at 126.

351. *Taruc v. De la Cruz*, 453 SCRA 123, 128 (2005).

352. *Arnaldo v. Catholic Bishop of Jaro*, G.R. No. 29443 (Jan. 23, 1928).

353. *Id.*

354. *Id.*

355. *Id.*

In view of the separation of [c]hurch and [s]tate in the Philippines, church canons form no part of the laws of the [s]tate. The right to disinterment of the body of a deceased must be determined by principles of equity and not by laws of the [c]hurch owning the cemetery. However, we do not consider this a valid reason why such canons, not being contrary to the laws of the [s]tate, shall not bind the members of the Catholic Church in the same way as the statutes and rules promulgated by any lawful association bind its members.³⁵⁶

4. Questions over Church Properties

Section 7 of Article XII of the 1987 Philippine Constitution states that “[s]ave in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.”³⁵⁷

A religious organization composed of foreigners cannot acquire land in the Philippines. The constitutional guarantee of freedom of religion cannot be invoked as basis to justify acquisition of land by the religious organization. Ownership of land is not necessary for the exercise of religious freedom.³⁵⁸

However, a foreigner who is the administrator of a corporation sole can register the private land he is administering.³⁵⁹ He does not acquire ownership of the private land and is merely administering it for the benefit of the members of the religious sect, who are overwhelmingly Filipino citizens.³⁶⁰ In addition, a corporation sole has no nationality.³⁶¹

The Roman Catholic Church has a juridical personality and can own property.³⁶² Churches, sacred objects, and ecclesiastical properties are outside the commerce of man. They cannot be owned by lay persons.³⁶³ The

356. JORGE RIOFLORIDO COQUIA, *CHURCH AND STATE LAW AND RELATIONS* 223 (4th ed. 2007).

357. PHIL. CONST. art. XII, § 7.

358. *Ung Sui Si Temple*, 97 Phil. at 61.

359. *Roman Cath. Apostolic Adm. of Davao, Inc. v. Land Reg. Com. et al.*, 102 Phil. 596, 606–12 (1957).

360. *Id.*

361. *Id.* at 612.

362. *See Barlin v. Ramirez*, 7 Phil. 41, 58 (1906); *Rom. Catholic Church v. Mcpity Placer*, 11 Phil. 315, 322 (1908); *Harty v. Sandin, et al.*, 11 Phil. 450, 452 (1908); & *Santos v. Roman Catholic Church*, 212 U.S. 463, 465 (1909).

363. *See Barlin*, 7 Phil. at 55; *Government of the P. I. v. Archbishop of Manila*, 35 Phil. 934, 938 (1916); *Roman Catholic Church v. Municipality of Cebu*, 36

ownership of the properties of a religious sect is vested upon the religious sect. Members who break away from the religious sect and change their allegiance have no right to the properties of the original religious sect. They lose their identity with the religious sect and forfeit all claims to any interests in the properties of the religious sect as the original religious sect still exists. This holds true even if the breakaway faction constitutes the majority of the members of the religious sect.³⁶⁴

The properties of a voluntary religious association which is composed of the laity and is independent of the church are not ecclesiastical properties. In case of a split among its members, the properties will remain with the numerical majority.³⁶⁵

Civil courts have jurisdiction to decide civil rights involving conflicting claims to the title, use, or possession of church properties.³⁶⁶ The dispute should be resolved on the basis of the rules and canons of the religious sect.³⁶⁷

C. Determination of Religious Permissibility

What stirred a controversy involving Islam is Executive Order No. 46.³⁶⁸ Executive Order No. 46, Section 7 authorized the Office of Muslim Affairs to issue Halal Certifications.³⁶⁹ The SC struck it down by reasoning that —

Without doubt, classifying a food product as halal is a religious function because the standards used are drawn from the Qur'an and Islamic beliefs. By giving OMA the exclusive power to classify food products as halal, [E.O. No. 46] encroached on the religious freedom of Muslim organizations like herein petitioner to interpret for Filipino Muslims what food products are fit for Muslim consumption. Also, by arrogating to itself

Phil. 517, 529 (1917); & *Trinidad v. Roman Catholic Archbishop of Manila*, 63 Phil. 881, 889 (1934).

364. See *Barlin*, 7 Phil. at 55 & *Roman Catholic Apostolic Church v. Municipalities*, 13 Phil. 486, 489-592 (1909).

365. *Canete v. Court of Appeals*, 171 SCRA 13, 20 (1989).

366. See *Catholic Church v. Tarlac and Victoria*, 9 Phil. 450, 454 (1907); *Archbishop of Manila v. Fajardo and Navarro*, 53 Phil. 82, 85 (1929); & *Negros District Conference, Inc. v. Court of Appeals*, 108 SCRA 458, 466 (1981).

367. See *Evangelista v. Ver*, 8 Phil. 653, 659 (1907) & *Santos v. Roman Catholic Bishop of Nueva Caceres*, 45 Phil. 895, 900 (1924).

368. *Authorizing the Office of Muslim Affairs to Undertake Philippine Halal Certification [E.O. No. 46]*, Executive Order No. 46 (2001).

369. E.O. No. 46, § 7.

the task of issuing halal certifications, the [s]tate has in effect forced Muslims to accept its own interpretation of the Qur'an and Sunnah on halal food.³⁷⁰

VIII. CONCLUSION

Benevolent neutrality has been the approach adopted by the SC in resolving conflicts between the prohibition against the establishment of a state religion and the guarantee of Freedom of Religion.³⁷¹ Justice Reynato S. Puno explained the meaning of this principle as follows —

The benevolent neutrality theory believes that with respect to these governmental actions, accommodation of religion may be allowed not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. The purpose of accommodation is to remove a burden on, or facilitate the exercise of a person's or institution's religion.³⁷²

History has shown that the establishment of a state religion usually results in religious persecution and civil strife. As a result, the principle of separation of church and state has been adopted. It is better to leave the choice of religion to the conscience of the individual rather than for it to be imposed by the state.

Separation of church and state should not necessarily mean that there should be hostility rather than harmony between them. The church and the state deal with the same individual. Interaction between them is inevitable. The church and the state do not operate separately in air-tight compartments. The church does not confine itself to the spiritual realm. The state does not restrict itself to the secular domain. The individual should not be placed in the same quandary as Saint Thomas More and be forced to be the king's good servant but God's first.

370. *Islamic Da'wah Council of the Philippines, Inc. v. Office of the Executive Secretary*, 405 SCRA 497, 504 (2003).

371. *Estrada Case (2003)*, 408 SCRA at 169.

372. *Estrada Case (2006)*, 492 SCRA at 42.