

mitted that these laws are mere surplusages because the same has already been provided under Articles 146 and 147 of the Revised Penal Code. It cannot therefore be denied that the passage of both PD 885 and PD 1835 are meant to quash the legalization of a communist party in this country. The words and phraseologies may be different, such having been twisted and juggled, but the singular intention cannot be denied, that communism is anathema to the Marcos regime. PD 885 impliedly repealing the harsher RA 1700 was passed merely to please the Russians and the Chinese when the Philippines felt the need to open diplomatic relations with them. PD 1835 was later decreed to squelch apparently growing communist insurgency in the provinces.

If the President is really sincere in his pronouncement, he must put it down in writing via another decree. What is casting doubt to his actions and creating an image of insincerity is his double standard stance and his skill in semantics defending it through legal hermeneutics. Whereas he would proclaim that there is no law outlawing the communist party, he would blame the assassination of Ninoy Aquino to the communists, or would accuse the We-Forum writers of espousing communism, ditto with labor union leaders, jeepney strikers, film directors, and cause-oriented movement members. To date, to be a communist connotes being a subversive, and hence the regime would order the issuance of a Preventive Detention Action (PDA) and arrest subversive elements with no bail recommended because the offense is decreed as capital.

What has been done in effect is to equate the existence of a communist party with that of fomenting civil strife, violence and the destabilization of government. This is unfair and is a classic example of *non-sequitur*. May be some have resorted to arms, but resorting to arms to fight injustice, greed, oppression, and downright curtailment of one's basic freedoms have been justified, as Rousseau would philosophize.

Somebody, therefore, has got to tell the President that his actions albeit shrewd and wise are becoming more ridiculous and disturbing.

by Perry L. Pe

THE CHURCH, THE STATE AND THE CHRISTIAN LAWYER

Jaime Cardinal L. Sin*

(Speech delivered by His Eminence, Jaime L. Cardinal Sin, Archbishop of Manila, before the Ateneo College of Law, held at the Ateneo College of Law Auditorium, Makati, on November 14, 1984 at 6:00 in the evening on the occasion of the Ateneo Law Journal - Ateneo Law Bulletin Lecture Series III.)

My dear brothers and sisters in Christ:

When I first received your kind invitation, I had this uneasy feeling that you had invited the wrong person. The three topics you asked me to discourse upon -- namely, the role that Christian lawyers are expected to play in present-day society, the support that the Church can give to them during these difficult and trying times, and the separation of Church and State -- these three topics, I am convinced, could be discussed much more competently and authoritatively by that very distinguished former dean of yours, now the president of Ateneo, Fr. Joaquin Bernas.

But since the mistake had been committed, and since I could not expect you to withdraw your invitation, well, here I am, manfully trying to fill Father Bernas' shoes. I hope you do not find my thoughts too disappointing.

As you know, I am not a lawyer. I may have several doctor of laws degrees to my name, but they do not count. For they were given *honoris causa* and *gratis et amore*. And precisely because I am not a lawyer, you cannot -- you should not -- expect me to give-- you a very learned dissertation on what a lawyer, more specifically, a Christian lawyer, is supposed to do and to be in the present critical times.

All I can do is to share my perceptions with you, to tell you what my gut feelings are about the role a Christian lawyer must play in today's society.

We are a predominantly Christian country, hence it is safe to assume that the overwhelming majority of Filipino lawyers are Christian. And yet, when we look around us, when we see the sorry mess that our politics is in -- and, mind you, most of our politicians are lawyers -- when I see how glibly our people talk about their low regard for the judiciary -- and all our judges are lawyers -- and when I hear people talk disparagingly about many of our fiscals, calling them "fixcals" for reasons I need not go into -- and again, all our fiscals are lawyers -- then I am tempted to despair about the state of the legal profession in the Philippines.

But let me stop talking in generalities and permit me to go into specifics. Let us take, as a concrete example, the current controversy raging about the propriety -- or impropriety -- of the President's action to refer the two Agrava reports to the Tanodbayan and the Sandiganbayan.

Mind you, I want to make it clear that I am stating no opinion on the matter. I am merely saying that there is a substantial number of people who believe that these two entities are not the proper venue for the indictment and possible trial of those pinpointed as indictable by the two reports. These same people are saying that the case is headed for a whitewash.

Now, this is what distresses me. For what these people are in effect expressing is a blatant, an absolute lack of confidence in the independence of these two bodies. What they are implying is that the Tanodbayan and the Sandiganbayan are composed of men who are loyally, even blindly, subservient to the President even if such subservience would cause an irreparable miscarriage of justice.

There are all sorts of ugly stories going around about the unimpressive record of the Tanodbayan, that it prosecutes only the small fry and the petty grafters, but that it will not touch the really important fish. Whether or not these stories have any basis in fact is beside the point now. What is to the point is that these stories are going around. And, to me, they are an indicator that there is a crisis of confidence, a gap in the credibility of the judiciary in the Philippines.

And this credibility gap, we must all admit, is not confined to the lower echelons of our judicial system. All of you surely must remember how the first commission organized by the President to look into the assassination of Senator Aquino had to be dissolved. The people just did not believe that that commission was capable of conducting an independent and credible investigation. For good or for ill, the members of that commission had to resign.

The picture, of course, is not all bad. The dark and bleak legal landscape is dotted here and there with bright patches. Take the sterling work, for instance, of the legal panel in the Agrava Fact-Finding Board. I followed the proceedings with considerable interest, and I cannot but express deep admiration for the steadfastness, the zeal, the devotion to duty and the uprightness of Dean Andres Narvasa and his group of outstanding lawyers. I have no doubt that they were subjected to a lot of pressure, and it is an enduring testimonial to their courage and their dedication that they were able to resist those pressures and to act in accordance with their conscience.

I must take my hat off also to the five members of the board -- all but one of whom were law graduates -- for the work they did. You may not all agree with their findings -- more specially, with the findings of the chairperson -- but you must all admit that they acted with conviction and integrity and in accordance with the highest standards of the legal profession.

There are other bright spots. For instance there are the highly visible lawyers' groups who are constantly in the forefront in the defense of our human rights, in upholding the cause of justice despite the manifold risks involved. We all must rejoice that there are such courageous lawyers in our midst, lawyers affiliated with such groups as FLAG, MABINI, BONIFACIO, to mention only three. I will not mention the names of specific lawyers for fear that I may miss some of them. It is these lawyers who are giving me hope that the legal profession, which has received such a heavy battering over the past two decades or so, which has seen many of its members barter their birthright for a mess of porridge, can yet regain its exalted place in the roster of Philippine professions.

In the light of all the foregoing, how then can I define the role of the Christian lawyer in the present time? I can do it very simply. I can do it by

merely stating that the Christian lawyer has a sacred duty to fight injustice in whatever form he sees it.

Fighting injustice in this context does not simply mean going to court to uphold the rights of a man who is the victim of torture, or of defending an accused person, no matter how guilty he may seem at first blush, to insure that due process is observed.

Fighting injustice, in the case of fiscals, would mean conducting a fair and thorough preliminary investigation and acting according to the findings. In far too many cases, unscrupulous fiscals have been known to drop cases because the defendant is too influential and wealthy while the plaintiff is a nobody.

Fighting injustice, in the case of judges, is to be invulnerable to pressures of any kind while trying a case. It is scrupulously and meticulously conducting one's self in such a way that their impartiality or their independence is never questioned. It is to be impervious to promises of promotion or pecuniary compensation.

In brief, the Christian lawyer is he who lives the Gospel.

Now, what can the Church give by way of support to the Christian lawyer during these critical times?

I have always maintained that, in a trying period such as the one we find ourselves in, a churchman must be a prophet of denunciation if he wishes to be an effective minister of reconciliation.

In more prosaic terms, this means that if the priest hopes to bring about a situation of peace and unity, then he must first expose the injustices that disrupt peace and prevent unity.

I have been criticized, on many occasions, for mounting a forum such as this one to assail certain actions of Mr. Marcos and then, the very next day, going to Malacañang to say Mass for him. I criticize him because it is my duty to be a prophet of denunciation. But I say Mass for him because, as a priest, I have to make peace with him since he is my parishioner.

What support can the Church give? The expertise of the Church is in the field of morality. She can render knowledgeable judgment on the morality or immorality of human actions. Since immorality almost always connotes injustice, then the Church joins hands with the Christian lawyer in fighting that injustice.

And that takes me to the last point you asked me to discuss, the separation of Church and State. This is a subject that your president, Father Bernas, has discoursed learnedly on. In at least two columns he wrote for *Veritas* last month, he propounded, with insightful profundity, on the matter. I suggest that you look up these columns. They were published in the October 14 and October 21 issues of *Veritas*.

Let me tell you my own views about the subject by recalling an experience in my boyhood. As you may have heard, I come from a small town in Aklan called New Washington. As a little boy, I remember how my father once took me to Iloilo City. And one of my lasting impressions of that metropolis was my first sight of a train, and the tracks on which it ran.

I looked at the railroad tracks for a long time, and I marvelled how they could stretch for such a long distance, always maintaining the proper space separating them, thereby enabling the train to carry its passengers to their destination.

Well, that is what separation of Church and State means to me. I see the State as one of the tracks, and I view the Church as the other one. If they