ECCLESIASTICS IN LOCAL POLITICS

PAMIL v. TELERON

By ANDRES B. SORIANO LI.B '83
CESAR L. VILLANUEVA LI.B '81

Religion, to paraphrase Jefferson, is a matter which lies solely between man and his God, and he owes account to none other for his faith or his worship; and the provision of the Constitution declaring that legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," effectively builds a "wall of separation" between church and State.

As Fr. Bernas has aptly observed: "What clearly appears from recent American jurisprudence on the subject is that Jefferson's metaphoric "wall of separation" is not without bends and may constitute a 'blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.' What in fact has been more useful for the Court in settling recent non-establishment problems is not the metaphor of a dividing "wall" but the concept of **neutrality**."[1]

The free exercise and establishment clauses express an underlying relational concept of separation between religion and secular government. Jurisprudence has brought into focus a built-in tension that exists between the free exercise clause and the non-establishment clause, a tension never perhaps thought of by the American formulators of the provisions: the first is premised on the vital civil right, the other is premised on an outmoded eighteenth century political theory that disabled the national government from taking positive action to make religious liberty effective.[2]

The basic religion text of the 1935 Constitution was Section 1(7) of the Bill of Rights, which provided:

> No 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.

The basic provision was accepted by the 1934 Constitutional Convention without debate. Whether the absence of debate indicated full agreement with the American provision or merely reflected fear of Roosevelt's disapproval, the fact remains that the 1935 Constitution effectively transplanted the American provision and earlier Philippine organic law and jurisprudence.[3]

The 1973 Constitution has reproduced the same text in Section 8, Article IV. In addition, Article XV, Section 15 now provides: "The separation of church and state shall be inviolable." Being of American origin, our own Supreme Court has often looked upon American jurisprudence for guidance whenever confronted with legal controversies involving the application of either the free exercise clause and the non-establishment clause.

History has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims.[4] But this should not be taken to mean hostility towards religion. Religion as a profession of faith in God and as elevating man to his Creator is recognized. And insofar as it instills into the mind the purest principles of morality its influence is deeply felt and highly appreciated.[5] We cannot read in the Bill of Rights a philosophy of hostility towards religion.[6]

Viewed in this proper light, we shall now proceed to the discussion of the case of **Pamil v. Teleron**,[7] decided by our Supreme Court on November 20, 1978.

The Facts

Father Margarito R. Gonzaga was, in 1971, elected to the position of municipal mayor of Alburquerque, Bohol. Therefore, he was duly proclaimed. A suit for quo warranto was then filed in the Court of First Instance of Bohol (presided over by Judge Teleron) by a defeated candidate, Fortunato R. Pamil, for the disqualification of Father Gonzaga based on Section 2175 of the Revised Administrative Code (1917), which provides:

In no case shall there be elected or appointed to a municipal office ecclesistics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality. (italics supplied).

The suit did not prosper. The lower court sustained the right of Father Gonzaga to the office of the municipal mayor. It ruled that such statutory ineligibility was impliedly repealed by Section 23 of the 1971 Election Code, which provides:

> Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and every officer or employee in government-owned or controlled corporations, shall ipso-facto cease in his office or position on the date he files his certificate of candidacy: Provided, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred.

Pamil elevated the case to the Supreme Court, contending that there is no implied repeal, that Section 2175 of the Revised Administrative Code is still in full force and effect.

The Result

The result of the appeal is best summarized in the main opinion penned by Justice (now Chief Justice) Fernando, thus:

> There is no clear-cut answer from this Tribunal. After a lengthy and protracted deliberation, the Court is deivided on the issue. Seven members of the Court are of the view that the judgment should be affirmed as the challenged provision is no longer operative either because it was superseded by the 1935 Constitution or repealed. Outside of the writer of this opinion, six other Justices are of this mind. They are Justices Teehankee, Munoz Palma, Concepcion Jr., Santos, Fernandez, and Guerrero. For them, the overriding principle of the supremacy of the Constitution or, at the very least, the repeal of such provision bars a reversal. The remaining five members of this Court, Chief Justice Castro,

> Justices Barredo, Makasiar, Antonio, and Aquino, on the other hand, hold the position that such a prohibition against an ecclesiastic running for elective office is not tainted with any constitutional infirmity.
>
> The vote is thus indecisive. While five members of the Court constitute a minority, the vote of the remaining seven does not suffice to render the challenged provision ineffective. Section 2175 of the Revised Administrative Code, as far as ecclesiastics are concerned, must be accorded respect. The presumption of validity calls for its application. Under the circumstances, certiorari lies. That is the conclusion arrived at by the writer of this opinion, joined by Justices Concepcion Jr., Santos, Fernandez, and Guerrero. They have no choice then but to vote for the reversal of the lower court decision and declare ineligible respondent Father Margarito R. Gonzaga for the office of municipal mayor. With the aforesaid five other members, led by the Chief Justice, entertaining no doubt as to his lack of eligibility, this petition for certiorari must be granted. [8]

Thus, the decision reversed the judgment *a quo* and ordered Father Gonzaga immediately to vacate the mayoralty of the municipality of Alburquerque, Bohol, there being a failure to elect.

In the main opinion, Justice Fernando stated: "The Revised Administrative Code was enacted in 1917. In the 1935 Constitution, as it is now under the present Charter, it is explicitly declared: 'No religious test shall be required for the exercise of civil or political rights.' *The principle of the paramount character of the fundamental law thus comes into play. There are previous rulings to that effect.*[9] The ban imposed by the Administrative Code cannot survive. So the writer of this opinion would hold" (italics supplied).

Citing the American case of **Torcaso v. Watkins,**[10] he argued: "The analogy appears to be obvious. In that case, it was lack of belief in God that was disqualification [for appointment as notary public]. Here being an ecclesiastic and therefore professing a religious faith suffices to disqualify for a public office. There is thus an incompatibility between the Administrative Code provision relied upon by the petitioner and an express contitutional mandate x x x."

The other five Justices who favored the validity of Section 2175 of the Revised Administrative Code wrote their individual concurring opinions. As to the issue of whether said section was repealed by Section 23 of the 1971 Election Code, their position was best stated by Justice Barredo, thus:

> That Section 2175 of the Revised Administrative Code has been repealed by Section 23 of the Election Code of 1971 is not legally correct. More than merely declaring ecclesiastics ineligible to a municipal office, the Administrative Code provisions enjoins in the most unequivocal terms their incapacity to hold such office whether by election or appointment. x x x If said Election Code provision has any incompatibility with the above-mentioned Administrative Code provisions, it is only by implication and only insofar as members of the Armed Forces of the Philippines are concerned, in the sense that said army men are now allowed to run for election to municipal offices provided that they shall be deemed to automatically cease in their army positions upon the filing of their respective certificate of candidacy. *Section 23 does not define who are qualified to be candidates for public elective positions, nor who are disqualified. It merely states what is the effect of the filing of certificates of candidacy by those referred therein which do not include ecclesiastics. x x x.* (Italics supplied).

The minority view also expressed fear of the consequences of allowing ecclesiastics to enter local politics. Thus, Chief Justice Castro warned that "it is thus entirely possible that the election of ecclesiastics to municipal offices may spawn small religious wars instead of promote the general community welfare and peace – and these religious wars could conceivably burgeon into internecine dimensions."

Justice Makasiar was apprehensive of an "era of religious intolerance and oppression which characterized the Spanish regime of about 400 years in the Philippines. It will resurrect in our political life that diabolical arrangement which permits the 'encroachment of Church upon the jurisdiction of the government, and the exercise of political power by the religious, in short, the union of the State and the Church – which historically spawned abuses on the part of the friars that contributed to the regressiveness, the social and political backwardness of the Filipinos during the Spanish Era' and bring about a truly theocratic state."

As to the issue of whether Section 2175 of the Revised Administrative Code provided for a "religious test" for the exercise of political rights, which is prohibited under both the 1935 and the 1973 Constitutions, Justice Aquino writes:

> The statutory provision that only laymen can hold municipal offices or that clergymen are disqualified to become municipal official is compatible with the "no religious test" provision of the 1935 Constitution which is also found in x x x the 1973 Constitution. x x x They are compatible because they refer to different things.
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> *The "no religious test" means that a person or citizen may exercise civil rights (like the right to acquire property) or a political right (the right to vote or hold public office)* without being required to belong to a certain church or to hold particular religious beliefs. (Italics supplied).
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> x x x
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> 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.* (Italics supplied).

Justice Teehankee, in his dissenting opinion, holds that Section 2157 of the Revised Administrative Code has been repealed by the 1971 Election Code under the following principle:

> There is no gainsaying that the Election Code of 1971 is a subsequent comprehensive legislation governing elections and candidates for public office and its enactment, under the established rules of statutory construction, "(as) a code upon a given subject matter contemplates a systematic and complete body of law designed to function within the bounds of its expressed limitations as a sole regulatory law upon the subject to which it relates. x x x. The enactment of a code operates to repeal all prior laws upon the same subject matter where, because of its comprehensiveness, it inferentially purports to be a complete treatment of the subject matter. x x x."[11]

As to the constitutionality of Section 2175 of the Revised Administrative Code, he says: "It is conceded that the no-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 in religion. By the same token,

then 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 x x x 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."

In answer to the main thrust of the five separate concurring opinions for upholding the questioned ban of ecclesiastics from public municipal office for fear of "religious intolerance and prosecution by ecclesiastics" and the "oppression, abuses, misery, immorality and stagnation" wreaked by the friars during the Spanish regime, Justice Teehankee responds that they have not appreciated that this was due to the union of the State and the Church then – a situation that has long ceased since before the turn of the century and is now categorically prescribed by the Constitution. He also noted that the only statutory prohibition was to ban ecclesiastics from appointment or election to **municipal** offices; there is no ban whatsoever against their election to or holding of **national** office, which by its nature and scope is politically more significant and powerful compared to a local office.

McDaniel vs. Paty

Teleron was decided by the Supreme Court in November 1978. It is unfortunate that the main opinion nor any of the concurring and dissenting opinions failed to discuss the recent American decision of **McDaniel v. Paty,**[12] which was earlier decided in April, 1978 by the U.S. Supreme Court. It was mentioned nowhere in **Teleron.** And yet, **Paty** dealt exactly with the issue involved in **Teleron:** whether ecclesiastics could be disqualified from holding local political positions.

McDaniel, an ordained minister of a Baptist Church, filed his certificate of candidacy for delegate to the constitutional convention in Tennessee. An opposing candidate, Selma Cash Paty, sued for a declaratory judgment that McDaniel was disqualified to serve as a delegate and for judgment striking his name from the ballot. The Chancery Court held that the Tennessee statute barring "Ministers of the Gospel, or priests of any denomination whatever" from serving as delegates to the State's limited constitutional convention deprived McDaniel of the right

to the free exercise of religion as guaranteed by the Constitution. McDaniel's name remained on the ballot and in the ensuing election he was elected by a vote almost equal to that of the three opposing candidates.

After the election, the Tennessee Supreme Court reversed the Chancery Court, holding the disqualification of clergy imposed no burden upon "religious belief" and restricted "religious action only in the law making process of government – where religious action is absolutely prohibited by the establishment clause." On appeal, the U.S. Supreme Court upheld the decision of the Chancery Court. All the seven Justices agree on only one point: the Tennessee statute that disqualifies ministers from becoming candidates for delegates to the state constitutional convention is violative of the Free Exercise Clause.

In a plurality opinion joined by Justices Powell, Rehnquist, and Stevens, Chief Justice Burger found that **Torcaso v. Watkins,**[13] which struck down a Maryland requirement that all state office holders declare their belief in God, does not govern, "because the Tennessee disqualification is directed primarily at status, act and conduct," whereas the requirement in **Torcaso** focused on **belief.**

However, he held that the statute's rationale of preventing the establishment of religion and avoiding the divisiveness and tendency to channel political activity along religious lines, which results from clergy participation in political rights – in short, that ministers elected to public office will promote sectarian interests – does not rise to the level of a state interest of the "highest order" necessary to overbalance the right to free exercise of religion. "The American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests than their unordained counterparts."

Justice Brennan, joined by Justice Marshall, agreed that the statute violates the Free Exercise Clause, but held that this conclusion is compelled by **Torcaso.** Unlike the plurality, Justice Brennan also found that the statute violated the Establishment Clause: "As construed, the exclusion manifests patent hostility toward, not non-neutrality in respect of, religion, forces or influences a minister or priest to abandon his ministry as the price of public office, and in sum, has a primary effect which inhibits religion."

> The essence of all that has been said and written on the subject is that only those interest of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

It is basic that no showing merely of a rational relationship to some colorable state interest would suffice to justify a substantial infringement of religious liberty; in this highly senstitive constitutional area, only the gravest abuses, endangering paramount interest, give occasion for permissible limitation.[16]

The disqualification of ecclesiastics from holding local political positions does not pass such test. We agree with the judgment in **McDaniel vs. Paty**.

FOOTNOTES

[1]Bernas, Constitutional Rights and Duties, pp. 148-149 (1974).

[2]Gianella, "Religious Liberty, Nonestablishment, and Doctrinal Development; Part 1. The Religious Liberty Guarantey." 80 Harv. Law Rev. 1381, 1389 (1967).

[3]Bernas, supra, p. 134.

[4]Aglipay v. Ruiz, 64 Phil. 201.

[5]Ibid.

[6]Zorach v. Clarson, 343 U.S. 306.

[7]86 SCRA 413.

[8]Ibid, 424-425. The five other justices, led by Chief Justice Castro, individually wrote concurring opinions. Justices Teehankee and Munoz-Palma wrote dissenting opinions.

[9]Cf. People v. Linsangan, 62 Phil. 646; De los Santos v. Mallare, 87 Phil. 289; Martinez v. Morfe, 44 SCRA 22.

[10]367 U.S. 488 (1961).

[11]I Sutherland Statutory Construction, pp. 479-481.

[12]46 U.S. Law Week 4329.

[13]Supra.

[14]Constantino, "The Philippines – A Past Revisited" (1975); cited by Justice Makasiar in his concurring opinion.

[15]40 U.S. Law Week 4476.

[16]Sherbert v. Verner, 374 U.S. 398, 406.

ERRATA

On page 52 of Ateneo Law Journal, Vol. XXV, No. 1, the last sentence of paragraph (e) should read: **At present, these are pegged at the maximum amount of ₱1,000 and ₱2,000, respectively.** Likewise, the last sentence of paragraph (f) should read: **This would prevent the normal tendency of the public from suspecting that public funds are channelled to some personal end, and encourage them to pay voluntarily the correct amount of taxes.**