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Editorial

ANATOMY OF A CONFUSING STATEMENT

The debate over the legality or illegality of the Communist Party of the Philippines is something which can be described as more amusing than erudite.

On the one hand, the President has categorically declared that there is no law outlawing the existence of the Communist Party of the Philippines because PD 885 enacted February 3, 1976 has repealed the previous law RA 1700, the Anti-Subversion Law, which had explicitly branded the Communist Party as illegal. On the other hand, the opposition refuted the presidential statement and pointed to PD 1835, issued on January 16, 1981 and published in the Official Gazette on July 25, 1983, as the law outlawing the Communist Party. Whereas the President through his Minister of Justice would later claim that there is no inconsistency between PD 885 and PD 1835, the opposition would contend that there was an implied repeal of PD 885 when PD 1835 took effect. What is therefore the better view? The answer would naturally depend on whose side you are in.

If one were to follow the newspaper accounts regarding this issue, a conclusion can easily be discerned, that is, the presidential pronouncement has beclouded rather than enlightened this already confusing problem. This is not to mention the fact that even the members of the Cabinet are incongruous in their own interpretation of this question.

It is worthy to note that we have two communist parties in the Philippines: one is the Marxist-oriented Partido Komunista ng Pilipinas (PKP) and its military arm the Huks (HMB); and the other is the Maoist-oriented Communist Party of the Philippines (CPP) and its military arm the New People's Army (NPA). When RA 1700 was enacted by Congress in 1957, the intention was to outlaw the PKP which was the force at that time. The CPP made its presence felt only sometime in 1968. To say therefore that the subsequent implementation of PD 885 as repealing RA 1700 is to pose one serious question: Has PD 885 redeemed the outlawing of the PKP? PD 1835 was promulgated in 1981, and a communist party was labelled as an illegal organization, or so it seems. Two queries can be posed: What communist party did PD 1835 outlaw, the PKP or the CPP? Did PD 1835 outlaw both communist parties, and henceforth put the idea of communism 100 years behind?

Of course, the underlying factor here or the catch-all answer is that, what is really being illegalized is the formation of an association whose aim is to destabilize and overthrow the government, and thereafter put it under the control of a foreign power. The name of that association is immaterial. It could be the CPP or the PKP or any other aggrupation. It so happens that there was a congressional finding back in 1957 to the effect that a communist party desired the overthrowing of a constituted government. From thereon, a communist party has always been made an example of what constitutes an illegal association. However, if this is the only underlying factor of RA 1700, PD 885 and PD 1835, then it is sub-

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.