

Benevolent Neutrality Theory: Retesting and Redefining the Boundaries of the Free Exercise Clause

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51 ATENEO L.J. 50 (2006)

SUBJECT(S): CONSTITUTIONAL LAW

*KEYWORD(S): RELIGION, FREE EXERCISE, NON-ESTABLISHMENT
CLAUSE, BENEVOLENT NEUTRALITY THEORY*

Religion and the exercise thereof vis-à-vis state imperatives and policymaking, as subsumed under the Free Exercise Clause, has been interpreted in Philippine law and jurisprudence in light of the Supreme Court's adoption of the Benevolent Neutrality Theory in the case of *Estrada v. Escritor*. Key concepts like religion, Free Exercise and Non-Establishment Clauses, and the Benevolent Neutrality Theory should be defined in no uncertain terms to support the theory that the adoption of the Benevolent Neutrality Theory best guarantees freedom of religion.

However, it is recognized that the theory also presents conceptual defects, as it fails to provide a judicially manageable standard in delineating the boundaries of the free exercise clause. The Benevolent Neutrality Theory requires the government to establish that a challenged law is justified by a compelling state interest. This involves a two-step process of first determining whether there is substantial burden on religious freedom, and second, the determination of whether the state-imposed burden is justified by a compelling state interest.

The insertion of an intermediate step is thus proposed: the Court should characterize a specific free exercise claim in terms of the state interest involved.

A discussion on Police Power in general becomes necessary, particularly when applied to religious freedom (expression and conduct), with jurisprudence buttressing the claim. Lastly, the forms of regulation the state employs, including the administrative interests of government, which is the legitimate conduct by the government of its own affairs, are also discussed. This includes the duties of the government's own agents. Another interest delved into is the revenue-raising interest of the government, in the form of levying taxes that involve religious conduct or exercise.