

ATENEO LAW JOURNAL



The First Among Equals

A Tribute to Fr. Joaquin G. Bernas, S.J.

JULY 2022

ATENEO LAW JOURNAL



ATENEO DE MANILA
UNIVERSITY



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THE FIRST AMONG EQUALS
A TRIBUTE TO FR. JOAQUIN G. BERNAS, S.J.

FOREWORD

Chief Justice Alexander G. Gesmundo

ARTICLES

A GLIMPSE OF THE MAN: FATHER JOAQUIN G. BERNAS, S.J.
Cesar L. Villanueva

FREEDOM IN THE CRUCIBLE OF TRIAL
Jose Maria G. Hofileña

JOAQUIN BERNAS, S.J.: THE TEACHER WITHIN
Sedfrey M. Candelaria
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THE MUSTARD SEED AND THE RULE OF LAW: THE CONSTITUTIONAL GOSPEL ON THE CHURCH AND STATE ACCORDING
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ON THE SHOULDERS OF A LEGAL GIANT: FATHER BERNAS AND PHILIPPINE ENVIRONMENTAL LAW
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THE LAW, THE CHURCH, & INFORMED CONSCIENCE: A PERSONAL APPRECIATION OF FR. BERNAS, PRIEST & LAWYER
Ismael Jose III V. Chan-Gonzaga, S.J.

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REMEMBERING FR. JOAQUIN G. BERNAS, S.J.

Eulogy: 15 March 2021 Funeral Mass for Fr. Joaquin G. Bernas, S.J.

The *Ateneo Law Journal* is published four times a year, August through May, by the students of the Ateneo de Manila University School of Law. The *Journal* contains articles and contributions of interest to law students and practitioners. The views expressed by the contributors do not necessarily reflect the views of either the Ateneo de Manila University School of Law or the Board of Editors of the *Ateneo Law Journal*. Editorial and general offices are located at the Law Publications Center, Room 306 of the Ateneo Professional Schools. Send all correspondence to the *Ateneo Law Journal*, 20 Rockwell Drive, Rockwell Center, 1251 Makati City, Philippines. The *Ateneo Law Journal* is officially cited as "ATENEO L.J."

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I am pleased to put a foreword to Number 1, Volume 1 of our Law Quarterly. It is the sign that our College of Law is coming of age, and is intent on becoming an influential force in the formation of legal opinion in our country.

Its dress is modest as the debut is simple. Most things of permanent value begin so. But backed by the driving energy of Fr. Bello, Regent, and depending unashamedly on its loyal and talented corps of professors and students, we feel that it will soon be a coveted periodical solid, progressive, radical in the first meaning of that word, but above all, Catholic to the core.

May Our Divine Lawgiver bless its pages with truth and beauty.

James J. McMahon, S.J., *Father Rector, Ateneo de Manila*

Foreword to Volume 1, Number 1 of the *Ateneo Law Journal* [1 ATENEO L.J. iv (1951)]

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JULY 2022

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ATENEO DE MANILA UNIVERSITY

The First Among Equals: A Tribute to Fr. Joaquin G. Bernas, S.J.

We live in a time that makes a mark as an unprecedented era in the history of the legal community. Members of the bench, the bar, and many legal scholars have been forced to endure a myriad of unpredictable events since the beginning of the COVID-19 pandemic.

Amidst all the uncertainty that has enveloped our lives, one of these surprising events that truly saddened the legal community was the passing of one of the legendary figures of Philippine law — Fr. Joaquin G. Bernas, S.J.

On the 70th founding anniversary of the *Ateneo Law Journal*, this Special Issue dedicated to commemorating the legacy of Fr. Joaquin G. Bernas, S.J., is being put forward this month of July — the birth month of Fr. Bernas.

This Issue provides a glimpse of the man revered to be the “First Among Equals.” Authors from different walks of life share their first-hand experiences on how Fr. Bernas directed and shaped the course of their lives and the Philippines’ legal landscape.

To the legal community, Fr. Bernas was an esteemed lawyer, priest, writer, and mentor. He was regarded as one of the pillars of the 1987 Philippine Constitution, being one of the drafters. He had always fought for the nation’s democratic ideals.

To his family and friends, despite the level of respect he commands, he was still regarded as a father, confidante, uncle, brother, and friend.

To everyone, he was a beacon of hope.

Fr. Bernas had always dedicated his life for others. A short overview of his life has also been included in this Special Issue.

The *Journal* hopes that through the publication of this Issue, legal practitioners, scholars, and even law students, will be inspired by the life that Fr. Bernas has led. May the current and future generations aspire to live up to

the ideals he has embodied and the standards that he has set, a standard that has earned him the title — The First Among Equals.

The *Journal* would also like to extend its great appreciation to the following:

- (1) Its partner for the Special Issue, the Joaquin Bernas Center Student Corps for continuously providing assistance all throughout;
- (2) The Bernas family, for the information and materials they have provided for the Special Issue; and
- (3) The Ateneo de Manila University Marketing and Communications Office, for providing the *Journal* with the original photo of Fr. Bernas that was used for the cover design of this Special Issue.

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Foreword

How do you measure the value of an entire life's work? For a man whose spirituality and intellect are inextricably intertwined, his life's work is the result of a continuous reflection on God's truth and of an individual quest for perfection. As conscience is deemed to be the "ultimate measure of a man," a person's life work becomes a path to social redemption and salvation.

This Special Issue of the *Ateneo Law Journal*, in honor of one of the most recognized and admired Filipino Jesuits, a legal luminary and socio-political thinker, and a staunch champion of democracy and justice in our country, gives us a fair glimpse of the priest-educator Fr. Joaquin G. Bernas, S.J. and his significant contributions to the development of Philippine law and jurisprudence. The Articles showcase the breadth of Fr. Bernas' legal knowledge and the intensity of his aspirations for social justice, human rights, and environmental preservation. In both his professional practice and religious vocation, Fr. Bernas has demonstrated the full integration of legal brilliance with faith-based morality.

Being one of the writers of our present Constitution, the insights of Fr. Bernas have lent constancy and stability to our systems and institutions and have provided the legal and ethical moorings for our rights and obligations as citizens. Having mentored generations of Filipino law students as professor of the Ateneo Law School and through his authoritative Constitutional Law textbooks, the influence of Fr. Bernas extends far beyond the academe and into the individual perspectives and goals of young lawyers with whom he shared his vision of a just, compassionate, and democratic Philippine society. Legal knowledge should serve our people to help build a better and more humane social order. Indeed, in life and even after his passing during the time of a global pandemic, the imprint of Fr. Bernas on our legal system remains to be a bright spot and a constant source of hope for the future of this nation.

I would like to extend my congratulations to the Board of Editors of the *Ateneo Law Journal* for coming up with this Special Issue commemorating the life and work of beloved priest-educator, Fr. Joaquin G. Bernas, S.J.

ALEXANDER G. GESMUNDO
Chief Justice of the Philippines

Biography¹

Fr. Joaquin G. Bernas, S.J. is one of the most recognized figures of the Ateneo and the Philippine legal community. He is most prominent for being a master of the Constitution and being a member of the 1986 Constitutional Commission. He was also the Dean Emeritus of the Ateneo de Manila University School of Law.

Fr. Bernas was born on 8 July 1932 in Camarines Sur, and was the second child among 12 siblings (six boys and six girls). Fr. Bernas always had a pious streak in him, and thus he was with the Jesuits for seven years. Having completed his Bachelor of Arts in English, Latin, and Greek Classics, as well as his Master's in Philosophy, Fr. Bernas went on to study law.

When Fr. Bernas went to law school, he was older than most of his classmates. He was an excellent student even back then, graduating valedictorian of Batch 1962 of the Ateneo de Manila University School of Law. Among his batchmates were Retired Supreme Court Justice Adolfo S. Azcuna, former Sandiganbayan Presiding Justice Francis Xavier Garchitorena, and another renowned author and Ateneo professor, Cesario A. Azucena, Jr. Fr. Bernas placed 9th in the bar examinations.

Immediately afterwards, he went to the United States and took his Master's and Doctorate in Law at the New York University, and concurrently studied Theology at Woodstock College. In 1965, he was ordained by then Cardinal Francis Spellman.

Fr. Bernas began to teach in the Ateneo de Manila University School of Law in 1966. He has been with the law school since then, except for the nine years he spent as President of the Ateneo de Manila University, and six years as Head of the Jesuit Order. He also taught Latin and English in the Ateneo High School.

Fr. Bernas eventually became Dean of the Ateneo de Manila University School of Law from 1972 to 1976, and 2000 to 2004. As a teacher and administrator, he has always focused on the academic side of the law.

1. This short biography is a modified version of an article published in 2014 by The Palladium, entitled, "Side B: The Other Side of Father B" written by Kim L. Rances and Mariel Sadang.

The details here were supplemented with information provided by the Bernas family.

He became President of the Ateneo de Manila University from 1984 to 1993. In 1986, Fr. Bernas became a member of the Constitutional Commission, where he played a pivotal role in the crafting of the Constitution that we use until today.

Upon his retirement as Dean of the Ateneo de Manila University School of Law in 2004, Fr. Bernas was conferred the position of Dean Emeritus. Afterwards, he continued to teach different subjects in the same law school.

Much of the work of Fr. Bernas as a lawyer in government, being a collaborator for several presidential administrations, was guided by his faith. He was able to reconcile his being a priest with being a lawyer, even though sometimes, what is legal cannot be equated with what is moral.

Such a legendary figure of Philippine law passed away on 6 March 2021, leaving the legal community to mourn his passing.

Throughout the years, Fr. Bernas has earned great respect, not just for what he has achieved, but also for what he stands for. He has been a voice of reason and wisdom for everyone in trying times, a voice of presidents and of the people — laughing and joking all the while. Students of the law and legal practitioners alike can only hope to fill the big shoes that Fr. Bernas has worn so well all these years, in service of the Ateneo, of country, and of God.



ATENEO DE MANILA
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ARTICLES

A Glimpse of the Man: Father Joaquin G. Bernas, S.J.

Cesar L. Villanueva*

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* '05 D.J.S., San Beda College of Law; '89 LL.M., Harvard University; '81, *class valedictorian*, Ateneo de Manila University School of Law. The Author is the founding partner of Villanueva Gabionza & Dy (VGS) Law Offices. He served as the Chairman of the Governance Commission for GOCCs. The Author is the former Dean of the Ateneo de Manila University School of Law (2004-2011) and a former Editor-in-Chief of the *Ateneo Law Journal*. The Author previously wrote *The Revised Code of Corporate Governance: A Reactionary Approach*, 54 ATENEO L.J. 453 (2009); *The Law and Practice on Philippine Corporate Governance*, 53 ATENEO L.J. 706 (2008); *The Evolution of the Philippine Commercial System*, 50 ATENEO L.J. 691 (2005); *Defining the Gravamen: The Bar Reform Movement*, 48 ATENEO L.J. 624 (2004); *Revisiting the Philosophical Underpinnings of Philippine Commercial Laws*, 46 ATENEO L.J. 707 (2001); *Revisiting the Philippine "Laws" on Corporate Rehabilitation*, 43 ATENEO L.J. 183 (1999); *The Law on Contratos Innominados*, 42 ATENEO L.J. 242 (1998); *Corporate Contract Law: Unifying Theme on Theories Relating to Promoter's Contracts, De Facto Corporations, Corporations by Estoppel, Articles of Incorporation, By-Laws, and Ultra-Vires Acts*, 38 ATENEO L.J. 1 (1994); *Restatement of the Doctrine of Piercing the Veil of Corporate Fiction*, 37 ATENEO L.J. 19 (1993); *The Fiduciary Duties of Directors and Officers Representing the Creditor Pursuant to a Loan Workout Arrangement: Parameters Under Philippine Corporate Setting*, 35 ATENEO L.J. 11 (1991); *Philippine Close Corporations*, 32 ATENEO L.J. 30 (1988); *The Trust Fund Doctrine Under Philippine Corporate Setting*, 31 ATENEO L.J. 40 (1987); *Tax Inquiries, Surveillance, Warrantless Searches and Seizures: Their Constitutional Limitations*, 25 ATENEO L.J. 41 (1981); & *The Conscientious Objector Under the New Labor Code*, 25 ATENEO L.J. 27 (1980).

The Author also co-wrote *Philippine Corporate Law Practice: Defining the Mandates of the Securities and Exchange Commission (SEC) Through the Resolution of the Jurisdictional Conflicts with the Regional Trial Courts (RTC) over Corporate and Securities Cases*, 60 ATENEO L.J. 652 (2016) with Teresa Villanueva-Tiansay; *Ecclesiastics in Local Politics: Pamil v. Teleron*, 25 ATENEO L.J. 76 (1980) with Andres Soriano; & *Recent Legislations*, 23 ATENEO L.J. 61 (1978) with Ma. Rosario Manalang.

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I. INTRODUCTION

The passing away of Fr. Joaquin G. Bernas, S.J., last 6 March 2021¹ represented a loss to the nation of a great Filipino intellectual and social philosopher. I had lost a friend and a life model. What was rather cruel was the fact that the then in force lockdown rules prevented the nation from properly honoring the passing away of a wonderful and well-esteemed Filipino.

II. REPUTATION PRECEDES THE GREAT FILIPINO INTELLECTUAL

When I learned of my acceptance to the Ateneo de Manila University School of Law (Ateneo Law School), I prepared myself psychologically for the challenges ahead by learning as much as I could about the person whom I heard was its Dean, Fr. Bernas, who had built quite a reputation as being one of the foremost constitutionalists of the land.² I was determined to be in his freshman class in Constitutional Law to learn the law in a grand manner from the luminary himself. Alas, shortly after attending my Introduction to Law class, I learned, with great disappointment, that Fr. Bernas had assumed his role as the Provincial Superior of the Society of Jesus a year earlier in the Philippines from 1976 to 1982,³ and would not be teaching at the Law School during such term.

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1. Resolution Honoring the Life of Father Joaquin G. Bernas, S. J., J. S. D., for His Immeasurable and Invaluable Contributions to the Legal Profession and Society as a Constitutionalist and a Dedicated Servant of God and Expressing the Profound Sympathy and Sincere Condolences of the Senate on the Untimely Demise of the Best Known Authority on the Constitution and One of the Framers of the 1987 Constitution, P. S. Res. Nos. 674 & 675, whereas cl. para. 1, 18th Cong., 2d Reg. Sess. (2021).
 2. *See id.*
 3. Ateneo de Manila University, Four Decades of ‘Magis’, available at <https://web.archive.org/web/20190924064317/https://www.ateneo.edu/news/features/four-decades-magis>.

I, however, did not lose the opportunity to learn the law from Fr. Bernas through reading (and re-reading) voraciously his two publications: Philippine Constitutional Law⁴ and A Historical and Juridical Study of the Philippine Bill of Rights,⁵ which were reputed to be the book versions of his LL.M. paper and dissertation from the New York University.⁶ My self-imposed reading of the early writing of Fr. Bernas was intended to supplement my studies in the class of Professor Teofisto T. Guingona, Jr. (who later on became one of the leading oppositionists to the Marcos regime),⁷ where the famous “green casebook” of Fr. Bernas entitled, “Philippine Constitutional Law”⁸ was prescribed as our official textbook.

It was through reading the published works of Fr. Bernas that I learned to appreciate the truism that the heart and spirit of the constitutional language and of the statutory provisions are learned best through how they are applied in resolving issues and controversies that beset society, as enunciated through the decisions of the Supreme Court. Fr. Bernas did not only carefully study the words used to frame a legal provision, but also in fact, found the “life” in the statutory language — on how it is appreciated in resolving many of the issues that confront society, ventilated through justiciable controversies, and funneled through the court system to find a distillation of the doctrine in the final language of the Supreme Court.

The style of looking at the “living law,” which takes shape from the vagaries of society, as borne out by decisions of the Supreme Court has since become the manner by which I would view legal provisions and doctrines in my learning and teaching of the law, as well as in my role as a legal advocate.

III. FR. BERNAS, THE INTELLECTUAL OPPOSITIONIST

As a young person growing up during the Marcos’ martial law rule, it was clear to me that a great part by which the martial law reign achieved constitutional *imprimatur* was because of the decision of the Court in *Javellana*

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4. JOAQUIN G. BERNAS, S.J., PHILIPPINE CONSTITUTIONAL LAW (1984).
 5. JOAQUIN G. BERNAS, S.J., A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS (1971).
 6. Stanford Libraries, A Historical and Juridical Study of the Philippine Bill of Rights, *available at* <https://searchworks.stanford.edu/view/2363893> (last accessed May 5, 2022) [<https://perma.cc/2EUC-8WN6>].
 7. Office of the Vice President Noli “Kabayan” De Castro, Teofisto T. Guingona, Jr., *available at* <http://ovp.5owebs.com/bio/tg.htm> (last accessed May 5, 2022) [<https://perma.cc/55DF-LMPZ>].
 8. BERNAS, *supra* note 4.

*v. Executive Secretary*⁹ — although I was not exactly aware of the case title, not until I began my legal studies in the Ateneo Law School. When President Ferdinand Emmanuel E. Marcos, Sr. declared martial law in September 1972,¹⁰ Fr. Bernas had just began his first deanship of the Ateneo Law School (1972-1976).¹¹ When I first cracked his green casebook, my impressionable mind was astounded in reading the brave words that Fr. Bernas used at that time in describing the *Javellana* decision, thus —

On [31 March] 1973, a divided Supreme Court ruled that ‘there is no further judicial obstacle to the new Constitution being considered in force and effect.’

The import of the Supreme Court decision will be examined in its proper place. Suffice it here to recall the oft-quoted observation of Holmes that ‘[g]reat cases like hard cases make bad law.’ History will judge whether *Javellana v. Executive Secretary* is a great case. But to judge by the splintering of the Supreme Court [J]ustices who collectively wrote the longest set of opinion yet in the history of the Philippine Supreme Court — a total of 338 printed pages — it is a hard case.

Whether *Javellana v. Executive Secretary* makes good or bad law, four facts remain:

- (1) the Supreme Court has ruled ‘that there is no further judicial obstacle to the new Constitution being considered in force and effect;
- (2) the Executive Department with vigor and with all the resources at its command, is implementing it;
- (3) the Legislative Department is nowhere to be found to object; [and]
- (4) *meanwhile, we ordinary mortals must live and find our fortunes (or misfortunes) under the new Constitution.*

One need not agree with Justice Antonio’s opiate that at the bottom of the divergent views in the *Javellana* case ‘is the degree of one’s faith — in the nation’s leadership and in the maturity of judgment of our people.’ This book nonetheless is written for believers and infidels alike who, for varying reasons,

9. *Javellana v. The Executive Secretary*, G.R. No. L-36142, 50 SCRA 30 (1973).
 10. Office of the President, Proclaiming a State of Martial Law in the Philippines, Proclamation No. 1081, Series of 1972 [Proc. No. 1081, s. 1972] (Sept. 21, 1972).
 11. Resolution Expressing the Profound Condolences of the House of Representatives to the Philippine Province of the Society of Jesus (SJ) and the Family of Father Joaquin G. Bernas SJ, Dean Emeritus of the Ateneo School of Law and Member of the 1986 Constitutional Commission, H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4, 18th Cong., 2d Reg. Sess. (2021).

perhaps, may wish to gain some understanding of what the 1973 Constitution means.¹²

If one considers the fact that these passages were written during the early years of martial law,¹³ Fr. Bernas' words displayed him to be a legal scholar who not only dealt with the technicality of the law, but more so on how it could affect the lives of the ordinary people. He conveys his own personal assessment that the *Javellana* decision is a "bad law" by showing that "it is a hard case."¹⁴ He points out the egregious circumstances under which the *Javellana* decision was rendered — where the Executive Department pursued the enforcement of what may be a constitution that has not been validly ratified by our people, with the senators and congressmen of the land missing from action — and then hints rather clearly that people should not just have faith in the nation's executive leadership. But more importantly, these words revealed Fr. Bernas' signature "order of battle" in fighting an evil enemy — understand the ways by which the devil sources his power and use it against him — "[t]his book [] is written for ... infidels alike who ... may wish to gain some understanding of what the 1973 Constitution means."¹⁵

IV. FR. BERNAS, THE PREMIER FILIPINO CONSTITUTIONALIST

Fr. Bernas' writings on the Philippine Constitution and its Bill of Rights were so insightful that he became one of the leading authorities on the subject matter.¹⁶ His works were being quoted by the Supreme Court in its decisions, by practitioners in their pleadings, and by legal scholars in their research papers.¹⁷

It was not surprising, therefore, that when President Corazon C. Aquino constituted a relatively small 1986 Constitutional Commission of 48

12. See JOAQUIN G. BERNAS, S.J., *CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT: NOTES AND CASES PART I 3* (3d ed. 2010) (citing *Javellana*, 50 SCRA at 376) (emphasis supplied) [hereinafter BERNAS, *CONSTITUTIONAL STRUCTURE*].

13. See BERNAS, *supra* note 4.

14. BERNAS, *CONSTITUTIONAL STRUCTURE*, *supra* note 12, at 3 (citing *Northern Securities Co. v. United States*, 193 U.S. 197, 400 (1904)).

15. BERNAS, *CONSTITUTIONAL STRUCTURE*, *supra* note 12, at 3.

16. *In Re: Petition for Exemption Under P.D. No. 27, O.P. Case No. 4554* (1992).

17. See, e.g., *Santiago v. Commission on Elections*, G.R. No. 127325, 270 SCRA 106, 125, 128, 136-38, & 172 (1997) & Katrina Vicente Goli, *An Examination of Selected Issues Involved in the Execution of Insane Deathrow Convicts*, 42 *ATENEO L.J.* 99, n. 31 (1997).

members¹⁸ that Fr. Bernas would be one of her early choices. Fr. Bernas was joined in the 1986 Constitutional Commission by his Ateneo Law batchmate, Professor Adolfo S. Azcuna,¹⁹ who later became the Presidential Legal Counsel, and much later appointed to the Supreme Court.²⁰ Fr. Bernas had a great influence in setting properly the framework upon which the Bill of Rights in the 1987 Constitution²¹ would ensure protection against the abuses of government. He wrote that

[t]he totality of government power is contained in three great powers: police power, power of eminent domain, and power of taxation. These belong to the very essence of government and without them no government can exist. They are inherent powers[,] and they belong to government as much as spirit and mind belong to the essence of man. *A constitution does not grant such powers to government; a constitution can only define and delimit them and allocate their exercise among various government agencies. The story of constitutional jurisprudence is the story of great minds striving to strike a balance between governmental power and personal freedom.*²²

These passages show how Fr. Bernas dealt with contemporary constitutional issues that were brought to him in his role as *amicus curiae*, or in his published articles and commentaries. He articulated to the public the issues which seek to strike a balance between governmental powers that must be exercised for the good of the country, and the personal freedoms of the few which are to be compromised because of the need to provide good for the greater majority.

It was Fr. Bernas who began to clearly articulate the constitutional concept of “hierarchy of rights” when it comes to due process and equal protection clauses of the Philippine Constitution, which tended to relegate to a lower degree the protection of property rights and afforded greater protection to rights to life and liberty, thus —

This is not to say, however, that the right to property is not a basic right. *Property has an intimate relation with life and liberty. ... Moreover, experience does teach a very clear lesson that property is an important instrument for the preservation*

18. I RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 1, at 2-3 (1986).

19. *Id.*

20. International Organization for Judicial Training, Adolfo S. Azcuna, *available at* <https://www.iojt.org/about-us/azcuna-bio> (last accessed May 5, 2022) [<https://perma.cc/24VS-JEB9>].

21. PHIL. CONST. art. III.

22. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 101 (2009) (emphasis supplied).

*and enhancement of personal dignity. The poor are the oppressed precisely because they are poor. In their regard therefore property is as important as life and liberty [—] and to protect their property is really to protect their life and their liberty. If in today's hierarchy of values property tends to be relegated to a lower level than life or liberty, it is not because its intimate connection with life or liberty is being forgotten. On the contrary, today's hierarchical arrangement of values is precisely a recognition of the importance of property for man. Hence, the precise object of more intensive and extensive government regulation of property is to make its beneficent purpose equitably available to all. Property is more closely regulated not in order to oppress the owner but in order to impress upon him the social character of what he holds.*²³

In his preface to the 2009 edition of his Commentary on the 1987 Constitution,²⁴ Fr. Bernas took note of the fact that the 1987 Constitution had survived 22 years since its passage on 2 February 1987, and that “[t]here have been attempts to amend or revise the document but none has succeeded.”²⁵

He, however, acknowledged that the 1987 Constitution is not a perfect document,

[b]ut part of the reason why it has survived attempts at alteration has been the controversy swirling around the meaning of the document's amendatory process in Article XVII. Initially designed for a unicameral National Assembly, by oversight, Article XVII has been forced into service for bicameral Congress. Hence, there has been a raging debate about how it should be read.²⁶

He further writes, “[u]ntil a definitive interpretation of its meaning can be arrived at, the document, for weal or woe, will remain untouched.”²⁷ Fr. Bernas did not lose every chance in private gatherings to say with obvious affection that the faulty language of Article XVII lies on the shoulder of Justice Azcuna, who was in charge of the language and style of the final draft of the Constitution.²⁸

23. *Id.* at 112-13 (emphases supplied).

24. *Id.* at iii.

25. *Id.* at iii, para. 1.

26. *Id.* at iii, para. 3.

27. *Id.* at iii, para. 4.

28. See Jodesz Gavilan, *Why 1987 PH Constitution Unclear on Congress' Charter Change Vote*, RAPPLER, Jan. 27, 2018, available at <https://www.rappler.com/newsbreak/iq/194568-article-xvii-philippine-constitution-not-clear-voting-charter-change-joint-separate-congress> (last accessed May 5, 2022) [<https://perma.cc/D38G-YCXQ>].

Eventually, the senators and congressmen of the land began to believe that the manner by which the 1987 Constitution may be amended outside of the constitutional convention and using the clause “[t]he Congress, upon a vote of three-fourths of all its Members[,]”²⁹ would be the “Bernas formula,” thus

The provision says nothing about a joint session. The provision thus raises two questions: First, must Congress assemble in joint session before it can propose amendments or call a constitutional convention? Or, alternatively, may the two Houses as they are and where they are propose amendments or call a constitutional convention by a vote of three[-]fourths of their respective membership?

Since nothing is said about a joint session, it is submitted that each House may separately formulate amendments by a vote of three-fourths of all its members, and then pass it on to the other [H]ouse for a similar process. Disagreements can be settled through a conference committee.

Alternatively, however, it is also submitted that Congress may decide to come together in joint session and vote separately on proposed amendments and revisions. Since the Constitution is silent about the method and since the amendatory process has been committed to Congress, under the ‘political questions’ doctrine[,] Congress should be free to choose whichever method[] it prefers.³⁰

The only way to test the validity of the Bernas formula would be a process by which the two Houses follow the formula, and then there would be proponents who would go to the Supreme Court and insist that a joint session of Congress is necessary for a proposal to amend the Constitution. It would be the Supreme Court, therefore, who would validate Fr. Bernas’ formulation.

This brings the story to the time when the Supreme Court was actively “recruiting” legal luminaries to make a bid for a seat in the highest court of the land, and the then incumbent Justices were unabashed in trying to recruit Fr. Bernas, who was then in his second term as the Dean of the Ateneo Law School (2000–2004).³¹ While Fr. Bernas was undoubtedly flattered by the invitation, accepting such would have meant being torn away from his priestly responsibilities as he was also very keen on the constitutional precept of separation of Church and State. When pressed on why he would not even attempt to get a dispensation from the Provincial Superior, Fr. Bernas would reply tongue-in-cheek that the one who would sit as Justice of the Supreme

29. PHIL. CONST. art. XVII, § 1 (1).

30. BERNAS, *supra* note 22, at 1349.

31. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4.

Court must be of good moral character. Levity aside, that statement always had a lot of implications in my mind when it was said to me.

There was no doubt that as an “insider” to the writing of the 1987 Constitution, Fr. Bernas stood unparalleled as the greatest mind and voice to the meaning of the document. A reading of his work entitled, “The Intent of the 1986 Constitution Writers,”³² will give any scholar and practitioner an insight into the meaning of the various provisions of the 1987 Constitution. During his term as Chief Justice of the land, Artemio V. Panganiban, Jr. had said in a public forum that no discussion on constitutional issues would be complete until we hear from Fr. Bernas.

V. FR. BERNAS, THE MUCH-DOTTED SOCIAL COMMENTATOR

Fr. Bernas was a sought-after social commentator,³³ pursued incessantly by the media to comment on burning issues of the day, especially those that went into constitutional issues enmeshed in the politics of the day. He eventually became a columnist in broadsheets, and finally hit his stride when he began to write a regular column for the Philippine Daily Inquirer.³⁴ It began to be a national habit to open the Philippine Daily Inquirer on the appointed days — Tuesdays and Thursdays — to find out what Fr. Bernas had to say about matters happening in the government, for after all, he was the living expert on the matter.³⁵ Like the short and spiteful homily that he would give when officiating a mass, Fr. Bernas would always present an insightful analysis that cuts through the chase, nestled in a language that the average man on the street could understand.

His writings would eventually be organized into a serial of books published by the Ateneo de Manila University Press and the Jesuit Communications Foundation, allowing any reader to get into political and constitutional issues that involved the President, such as *A Living*

32. JOAQUIN G. BERNAS, S.J., *THE INTENT OF THE 1986 CONSTITUTION WRITERS* (1995).

33. Mike Navallo, *Joaquin Bernas’ Legacy Lives on in the ‘Seeds’ He Planted*, ABS-CBN NEWS, Mar. 6, 2021, available at <https://news.abs-cbn.com/spotlight/03/06/21/joaquin-bernas-legacy-lives-on-in-the-seeds-he-planted> (last accessed May 5, 2022) [<https://perma.cc/2VSF-M7M7>].

34. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 8.

35. See, e.g., Fr. Joaquin G. Bernas S.J., *The President*, PHIL. DAILY INQ., Aug. 18, 2014, available at <https://opinion.inquirer.net/77583/the-president> (last accessed May 5, 2022) [<https://perma.cc/LAR9-NAF3>].

Constitution: The Abbreviated Estrada Presidency (2003);³⁶ A Living Constitution: The Troubled Arroyo Presidency (2007);³⁷ and A Living Constitution: Constitutional Issues Arising During the Troubled Gloria Arroyo Presidency Part II (2010).³⁸ There is no doubt that by reading Fr. Bernas' published columns and derivative books, one would get an insight into how institutions are being shaped into the very fabric of national life, as well as to what kind of people we are, and are becoming.

VI. FR. BERNAS AND HIS GREAT LOVE FOR THE ATENEO LAW SCHOOL

Shortly after his tenure as the Provincial Superior of the Society of Jesus in the Philippines,³⁹ Fr. Bernas was appointed the President of the Ateneo de Manila University from 1984 to 1993.⁴⁰ It was during his term as the University President that Fr. Bernas became an active member of a convenors' group that worked to push then widow Maria Corazon C. Aquino to be the opposition's contender against President Marcos⁴¹ in the snap election he called, and which eventually catapulted her into the Presidency of the Republic as a result of the 1986 EDSA People Power Movement.⁴²

Insofar as the Ateneo Law School was concerned, one of the more significant incidents that then University President Fr. Bernas became a major player was during the "Leonardo Villa incident."⁴³ This involved a meting out of a disciplinary action of dismissal on a number of law students who participated in the hazing activities that resulted in the death of one

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36. JOAQUIN G. BERNAS, S.J., *A LIVING CONSTITUTION: THE ABBREVIATED ESTRADA PRESIDENCY* (2003).
37. JOAQUIN G. BERNAS, S.J., *A LIVING CONSTITUTION: THE TROUBLED ARROYO PRESIDENCY* (2007).
38. JOAQUIN G. BERNAS, S.J., *A LIVING CONSTITUTION: CONSTITUTIONAL ISSUES ARISING DURING THE TROUBLED GLORIA ARROYO PRESIDENCY PART II* (2010).
39. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 7.
40. *Id.* whereas cl. para. 4.
41. Tony La Viña, @tonylavs, Tweet, TWITTER, Mar. 6, 2021: 8:27 a.m., available at <https://twitter.com/tonylavs/status/1367995149519708161> (last accessed May 5, 2022) [<https://perma.cc/A6NA-TRFC>].
42. Official Gazette, *A History of the Philippine Political Protest*, available at <https://www.officialgazette.gov.ph/edsa/the-ph-protest> (last accessed May 5, 2022) [<https://perma.cc/URP9-NBN3>].
43. *Ateneo de Manila University v. Capulong*, G.R. No. 99327, 222 SCRA 644 (1993).

neophyte.⁴⁴ In its decision in *Ateneo de Manila University v. Capulong*,⁴⁵ the Court related how Fr. Bernas as University President was back then —

Bernas wrote Dean [Cynthia R.] del Castillo that, ‘in cases where the Disciplinary Board is not prepared to impose the penalty of dismissal, I would prefer that the Board leave the decision on the penalty to the Administration[,] so that this case be decided not just on the Law School level but also on the University level.’⁴⁶

Although the Disciplinary Board found the respondent law students guilty of participating in the hazing,⁴⁷ there was a “lack of unanimity among the members of the [Disciplinary Board] on the penalty of dismissal, [and] the Board left the imposition of the penalty to the University Administration.”⁴⁸ The decision then held that

petitioner Fr. Joaquin G. Bernas, as President of the Ateneo de Manila University, accepted the factual findings of the Board ... describing the offense which led to the death of Leonardo Villa, concluded that the ‘offense of the respondents [law students] can be characterized as grave and serious, subversive of the goals of Christian education[,] and contrary to civilized behavior.’ Accordingly, he imposed the penalty of dismissal on all respondent students.⁴⁹

When Fr. Bernas related the incident back when he was at the Ateneo Law School, one would realize that it was a hard decision to make — to be the one making the decision to dismiss the respondent law students,⁵⁰ rather than just affirming the recommendations of then Dean Cynthia Roxas-Del Castillo. Fr. Bernas has always had a keen affection for Ateneo Law students, having been once in their ranks, and he enjoyed every moment that he was in social gatherings with law students. It must have been the most difficult decision for him to have directly decided the dismissal of the respondent students, when easily they could have been meted out a lesser penalty by the Disciplinary Board, had he not pre-empted the final decision. But you see, Fr. Bernas loved the Ateneo Law School the most, and he would not like to see the institution being debased in the eyes of civilized society.

44. *Id.* at 653.

45. *Ateneo de Manila University*, 222 SCRA.

46. *Id.* at 652.

47. *Id.*

48. *Id.* at 653.

49. *Id.*

50. *Id.*

When Fr. Bernas finished his term as University President in 1993,⁵¹ he came back to teach Constitutional Law and Public International Law to freshmen and sophomores, respectively,⁵² and eventually took up his second term as Dean of the Law School from 2000 to 2004.⁵³ He took me in as the Associate Dean for Academic Affairs and Dean Sedfrey M. Candelaria retained his position as Associate Dean for Student Affairs. Then Chief Justice Hilario G. Davide, Jr. commented in a public forum that Fr. Bernas was an amazing priest-dean since he would have two *sacristans* to do his duties — Dean Sedfrey and myself! I am told that Fr. Bernas rather “enjoyed” his second time of being the Dean of the Law School compared to his first deanship, where he was regarded as being rather stern. By the time Fr. Bernas took up his second deanship, he had grown into a man who understood what life was all about; he understood much of what makes the Filipino a Filipino. He treated the Ateneo Law faculty and students as his family and we all called, looked up to, and treated him as our “Fr. B.” He dealt and met with his contemporary Deans in the Philippine Association of Law Schools (PALS) with such camaraderie that was disarming, and the deans enjoyed his company very much — liking the fact that Fr. Bernas was rather a strong imbiber of the spirit who loved to join gossips on such ordinary things that one would not expect from such a renowned intellect.

There exists in the Ateneo Law School the Bernas Center⁵⁴ that was constructed during my term as the Dean of the Law School. Although I worked towards getting the project approved by the University Administration, much of the credit in getting the funding, building, and furnishing the Bernas Center is attributable to Associate Dean Lily K. Gruba, who always took care of the personal needs of Fr. Bernas. Associate Dean Lily was able to convince Ateneo High School alumnus, Engr. Gerardo “Gerry” A.I. Esquivel, to get his construction firm to build the structures on the open portion at the fourth floor of the Ateneo Professional Schools Building. While Fr. Bernas was still in the best of health then, we all thought that it was time to celebrate Jesuit lawyer’s life while he was among us, than to do so when he had passed away.

51. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4.

52. See P. S. Res. Nos. 674 & 675, whereas cl. para. 5.

53. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4.

54. Ateneo de Manila University School of Law, Fr. Joaquin G. Bernas, SJ Institute For Continuing Legal Education, *available at* <https://web.archive.org/web/20210224233156/https://www.ateneo.edu/aps/la/w/ateneo-law-center/bernas-center-continuing-legal-education-and-research>.

Fr. Bernas celebrated life on a daily basis in the ways and manners by which he taught his classes — in loving every moment that he was surrounded by his current and former law students; in the manner and warmth by which he shared stories and insights with his co-faculties; in the grind that he did on a daily basis putting into writing what he thought of the meaning of the law and of life; and most of all he enjoyed being a Filipino, and loved all of us in all the imperfection that we have as a people of God.

In a University convocation held to confer a doctorate degree of *honoris causa* to the then Chief Justice of the Supreme Court of Israel, Fr. Bernas was asked to share his insights on both the University and the Law School. Although he was a former University President, he highlighted his fascination for the Ateneo Law School. At the end of his talk, he shared that despite the many positions and roles he has played in Jesuit institutions in the Philippines, his heart was always closest to the Ateneo Law School. The Ateneo Law School was Fr. Bernas' home, socially and intellectually.

VII. FR. BERNAS, THE IDEAL FILIPINO LAWYER

In his second term as Dean of the Ateneo Law School from 2000 to 2004,⁵⁵ Fr. Bernas retooled the Law School's Mission towards the various aspects of its role in society, thus —

The Ateneo Law School is a Catholic and Jesuit institution situated within the larger Ateneo de Manila University.

As a Catholic school, it is committed to making in an institutional manner a Christian presence in the legal world by fidelity to the Christian message as it comes through the Church and by service to others, especially to the underprivileged.

As a Jesuit institution, it shares in the core mission of all Jesuit institutions as this has been delineated by the 34th General Congregation, the most recent (1995) and the highest legislative assembly of the Jesuit Order. The 34th General Congregation placed all Jesuit institutions within the framework of the Church's overall mission to evangelization understood not only as proclamation of Christian faith, but also as life witness especially to a faith that accomplishes justice.

As a school of law, the Ateneo Law School's mission is the formation of men and women not only skilled in the science and art of the law, but also imbued with a burning passion for justice and the fervent desire to serve others.

Towards the accomplishment of its mission as a school in the service of the legal profession, the Ateneo law School insists on the intellectual rigor in the tradition of Jesuit education. Intellectual rigor demands, inter alia, a thorough grasp of the

55. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4.

nature and ends of law, the ability to express legal conviction in forceful oral and written communication, and sensitivity to the role of law as an instrument of service towards individuals and of social engineering.

Towards the accomplishment of its Catholic and Jesuit mission, the *Ateneo Law School integrates into its program opportunities for the deepening and maturing of Christian commitment and for participation in the social mobilization for the creation of a more just social order.*⁵⁶

I saw Fr. Bernas write those words — thinking long and hard in front of his desktop on what would be the meaningful manner by which a Filipino lawyer could lead a truly “successful professional life.” A Filipino lawyer must maintain fidelity to the Christian message and service to others, especially the underprivileged. He or she must professionally conduct himself or herself in a manner that proclaims one’s Christian faith and as a life witness that one’s Christian faith actually accomplishes justice. A Filipino lawyer must not only be skilled in the science and art of the law, but also be imbued with a burning passion for justice and the fervent desire to serve others. He or she must have a thorough grasp of the nature and end of law, with both the ability to express legal conviction in a forceful manner and the sensitivity to the role of law as an instrument of service towards individuals and of social engineering. More importantly, a Filipino lawyer must pursue his or her profession towards the deepening and maturing of his or her Christian commitment and participate in the social mobilization for the creation of a more just and social order in our beloved Philippines.

Fr. Bernas lived his personal and professional life as he described in the Mission for the Ateneo Law School — and he made it seem so easy to do! His life and work will remain a beacon for those of us who choose to follow his footsteps.

VIII. FR. BERNAS, THE MAN WHO LIVED A GOOD *PINOY* LIFE

When my spouse was installed as President of the Holy Angel University in Pampanga,⁵⁷ Fr. Bernas and Associate Dean Lily attended the proceedings, but merely as guests, since it was then President Maria Gloria M. Macapagal

56. ATENEO DE MANILA UNIVERSITY SCHOOL OF LAW, CATALOGUE OF THE ATENEO DE MANILA UNIVERSITY LAW SCHOOL, ISSUED IN THE SCHOOL YEAR 2004-2007 7 (2004-2007) (emphases supplied).

57. Sicangco Menor Villanueva & Co., Professionals (information on Arlyn S. Villanueva, CBA, MBM, DBA), *available at* <http://smv.com.ph/index.php?page=ARLYN-VILLANUEVA> (last accessed May 5, 2022) [<https://perma.cc/EP86-ZMKB>].

Arroyo who would administer the oath and deliver her message. President Arroyo was very happy to see Fr. Bernas at such a “provincial affair” and the two got into a lively conversation.

The following morning in Rockwell, Fr. Bernas gave me an original copy of the column he submitted to the *Philippine Daily Inquirer* entitled, “An Afternoon at the Holy Angel University,” which described the proceedings and the agenda of the newly-installed University President — and with nary of word about President Arroyo being there at the occasion, much less of any of the things that the President spoke about. There were three things that struck me when the column came out, and the reactions poured in from his various readers.

First, Fr. Bernas was such a well-read social commentator that many of his friends and colleagues begged him to also write about their institutions and companies since it seemed that the nation would be interested in his commentaries on both national and local matters. Second, Fr. Bernas is his own man and would write about occasions and affairs that were really important rather than dropping the names of important people in attendance. Finally, Fr. Bernas in all his national and international prominence, remained so firmly footed that the greatest value you bring into this life is to be a friend for others.

When I invited Fr. Bernas to go to Pampanga for my spouse’s induction, it was merely as a friend, for no role was given to him in the occasion. He made that long trip to Angeles City because he was asked by a colleague in the Ateneo Law faculty, and he must have known that his presence would add *gravitas* to the occasion. Fr. Bernas enjoyed the proceedings and wrote about it in his column where the nation saw how much of a true *Pinoy* he was. He also knew that the greatest gesture you could give to a friend, is to honor his wife.

I would like to end this tribute by quoting from the last stanza of Joseph Rudyard Kipling’s poem entitled, “If,” which sums up our esteem for Fr. Bernas —

If you can talk with crowds and keep your virtue,
Or walk with Kings—nor lose the common touch,
If neither foes nor loving friends can hurt you,
If all men count with you, but none too much;
If you can fill the unforgiving minute
With sixty seconds’ worth of distance run,

Yours is the Earth and everything that's in it,

And—which is more—you'll be a Man, my son!⁵⁸

Thank you, Fr. Bernas, for having been a great friend of this nation, which everyday seems inexplicably more and more devoted to both God and *mamon*.

58. Rudyard Kipling, *If*, in REWARDS AND FAIRIES 176 (Rudyard Kipling, 1910).

Freedom in the Crucible of Trial

Jose Maria G. Hofileña*

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I. PRIEST, LAWYER, AND EDUCATOR

“It is with deep sadness that Ateneo de Manila University announces the demise of priest, lawyer, and educator[,] Fr[.] Joaquin [G.] Bernas, [S.J.],”¹ was the opening sentence of the official announcement of the Ateneo de Manila University on the passing away of the Reverend Fr. Joaquin G. Bernas of the Society of Jesus at the age of 88.

While men and women are most always far greater than words can ever depict them, that brief obituary kickoff sentence properly highlighted what are likely the most significant public roles Fr. Bernas assumed in his prodigious terrestrial life — a priest, lawyer, and educator.²

Fr. Bernas did not merely clothe himself with those credentials but was the sort of individual who innately tended to excel consistently, and

* '90 LL.M., Harvard Law School; '87, LL.B., *valedictorian*, Ateneo de Manila University School of Law. The Author is the Dean of the Ateneo de Manila University School of Law, from 2018 to present. He is also a professional lecturer on Commercial Law Review, Corporation Law, Banking Law, Foreign Investments and Investment Incentives Law, and Insurance Law at the said university. The Author's previous works for the *Journal* include *Whither the Personal Property Security Act*, 64 ATENEO L.J. 422 (2019); *Corporations as Partners in a Philippine Civil Code Partnership: Innovations in the Revised Corporation Code*, 64 ATENEO L.J. 311 (2019), co-written with Sergio Luis M. Mercado; & *Gone Without a Trace: A Re-Examination of Bank Secrecy Laws and Anti-Money Laundering Laws in Light of the 2016 Bangladesh Bank Heist*, 62 ATENEO L.J. 90 (2017), co-written with Jason L. Sy.

1. Ateneo de Manila University, RIP Fr Joaquin G Bernas SJ, 1932–2021, *available at* <http://2012.ateneo.edu/aps/law/news/rip-fr-joaquin-g-bernas-sj-1932-2021> (last accessed May 5, 2022) [<https://perma.cc/R64M-Y847>].

2. *See id.*

consequently, found his way naturally to the top echelons of that which he had involved himself in — in many instances without his having actively sought it.

His journey and mission as a clergyman saw him enter the Society of Jesus in 1950, ordained a priest in 1965, and by 1976, appointed Provincial Superior of the Philippine Province of the Jesuits.³ Among the ways by which the Society of Jesus is organized is through geographical territories referred to as “provinces,” each headed by a Provincial who directly reports to the Jesuit Superior General.⁴

As a lawyer, his preeminence glowed from the moment he prepared for qualification into the profession, having earned his Bachelor of Laws from the Ateneo de Manila University in 1962 as valedictorian,⁵ and shortly thereafter landing in the profession’s traditional and much ballyhooed elite top 10 of the Philippine bar examinations.⁶

Fr. Bernas steered his career as a lawyer to the field of Constitutional Law, developing a highly regarded expertise that brought him membership into what may very well be considered as the paramount public office, the 1986 Constitutional Commission, in that the body drafted, debated, and approved the 1987 Philippine Constitution, which is the fundamental law of the land as to which all statutes and acts of government must conform.⁷ Adding to a further substantiation of a respected competence, Fr. Bernas’ counsel had been sought on several occasions by the Supreme Court of the Republic of the Philippines itself, as *amicus curiae* on cases involving Constitutional Law.⁸

In the academe, as an educator and school administrator, in addition to his teaching load, Fr. Bernas was eventually seen fit by the Ateneo de Manila University to be entrusted with critical leadership roles such as: Dean of the

3. *Id.*

4. Jesuits, *Who We Are*, available at <https://www.jesuits.org/about-us/who-we-are> (last accessed May 5, 2022) [<https://perma.cc/T4KU-LZUC>].

5. Ateneo de Manila University, *supra* note 1.

6. Patricia Esteves, *People’s Priest Still Strong at 75*, PHIL. STAR, July 11, 2007, available at <https://www.philstar.com/headlines/2007/07/11/5032/peoplesquos-priest-still-strong-75> (last accessed May 5, 2022) [<https://perma.cc/U27L-X35Q>].

7. Ateneo de Manila University, *supra* note 1.

8. Daxim L. Lucas, *Joaquin Bernas, 88: Jesuit Priest, Eminent Constitutionalist*, PHIL. DAILY INQ., Mar. 7, 2021, available at <https://newsinfo.inquirer.net/1403823/bernas-88-jesuit-priest-eminent-constitutionalist> (last accessed May 5, 2022) [<https://perma.cc/PR5Q-Z8MV>].

College of Arts and Sciences (1970–1971); Dean of the School of Law (1972–1976 and 2000–2004); and as the 28th President of the University (1984–1993), during what had been described as “one of the most tumultuous and critical periods in Philippine history.”⁹

Having lived many productive and impactful years with this tri-identity admixture of priest, lawyer, and educator, had Fr. Bernas continued to be on the move to date, the Author imagines he would have taken a particular interest — perhaps even written about or formally intervened — in the Petition for Prohibition and the Petition for Certiorari and Prohibition filed in 2017 and 2018, respectively, with the Supreme Court that resulted in a consolidated case that was styled, *Pimentel v. Legal Education Board*,¹⁰ and its resulting final decisions handed down in September 2019 and November 2021.¹¹

This is one of those litigated matters which, at its core, involved a most fundamental issue of the type that Fr. Bernas has advocated and espoused in his combined religious, academic, and constitutionalist persuasions: freedom.

II. THE MORAL RESPONSE OF THE UNIVERSITY

In 1984, Fr. Bernas — the priest, lawyer, and educator — assumed his responsibilities as the 28th President of the Ateneo de Manila University.¹² His eloquent and affecting inaugural address to the University community, “The Moral Response of the University,”¹³ was opportunity for him to disclose his view as to the calling of a university during those then particularly tumultuous times.¹⁴ Central to his theme was the imperative of freedom as among the five components to the “*vision which shapes the spirit and the method of our approach to the educational enterprise*”¹⁵ —

9. Ateneo de Manila University, *supra* note 1.

10. Oscar B. Pimentel, et al. v. Legal Education Board, G.R. No. 230642, Sept. 10, 2019, *available at* <https://sc.judiciary.gov.ph/8986> (last accessed May 5, 2022).

11. *See* Press Release by Supreme Court of the Philippines, *SC Reaffirms LEB’s Jurisdiction over Legal Education; Reiterates Unconstitutionality of PhiLSAT* (Nov. 12, 2021) (on file with the Supreme Court of the Philippines).

12. Ateneo de Manila University, *supra* note 1.

13. Joaquin G. Bernas, S.J., *The Moral Response of the University*, 32 PHIL. STUD. 458 (1984) [hereinafter Bernas, *Moral Response*].

14. *See generally* Herbert S. Malin, *The Philippines in 1984: Grappling with Crisis*, 24 ASIAN SURV. 198 (1985).

15. Bernas, *Moral Response*, *supra* note 13, at 460.

Second, our vision includes the conviction that God's noblest gift to men and women is freedom, and that each is called to growth in radical freedom. Hence, true Jesuit education is personal. It focuses on the person and nurtures the person's growth in total freedom — freedom from enslavement to passion and to self, and freedom from enslavement to personal and structural masters.

Third, we see freedom as growing in the crucible of trial. Freedom is not a hothouse product. The history of nations and peoples is a constant struggle between light and darkness, between virtue and malevolence. We see a university as bridge between students and the battlefronts where choices are made[,] lessons learned[,] character shaped[,] and freedom tested. For the Ateneo university today, the opportunity is dramatic. Between the isolation brought on by affluence and gentility on the one hand[,] and the turbulent action in streets and hamlets and slums on the other, the Ateneo must be [a] bridge and guide. The Ateneo — its administrators, the teachers, the students — must be willing to experiment, to experiment with courage, to reflect without regret, to learn with a nation in transition[,] and, in the process, nurture the growth of freedom.¹⁶

Indeed, to enunciate and believe that the noblest gift of God is freedom, and that against the backdrop of grave challenges to freedom, administrators, teachers, and students must be willing to nurture the growth of freedom, is a reflection that stems from one deeply and instinctively immersed simultaneously in faith, education, and the guarantees of the Constitution.

III. *PIMENTEL V. LEGAL EDUCATION BOARD: ON ACADEMIC FREEDOM*

The constitutionally guaranteed academic freedom of law schools as Higher Education Institutions was the core issue in *Pimentel*, with the more prominent subset of the issue of academic freedom focused on the extent of the freedom of law schools to decide who they can admit and teach.¹⁷

By way of a very brief background, the Legal Education Board (LEB), through its Legal Education Board Memorandum Order (LEBMO) No. 7-2016, issued directives that established a Philippine Law School Admission Test (PhiLSAT) that was made mandatory to be taken and passed by law school applicants, at a minimum of 55% passing rate, to be qualified to be admitted into a Philippine law school.¹⁸ The petitioners in *Pimentel* argued

16. *Id.* at 460-61.

17. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 23.

18. Legal Education Board, Policies and Regulations for the Administration of a Nationwide Uniform Law School Admission Test for Applicants to the Basic Law Courses in All Law Schools in the Country, LEB Memorandum Order No. 7, Series of 2016 [LEBMO No. 7-2016], ¶¶ I & 14 (Dec. 29, 2016). Other than the

that the PhiLSAT encroached upon the constitutional academic freedom rights of law schools — the freedom to determine who to teach — and is therefore unconstitutional.¹⁹

In its ruling, the Supreme Court made clear that the regulatory authority of the LEB is bounded by considerations of the constitutional guarantee of academic freedom to Higher Education Institutions together with the constitutional mandate upon the State to take action to render quality education at all levels accessible to all citizens.²⁰ While careful not to castigate aptitude tests as constitutionally offensive per se, the High Court held that when the same are, as the PhiLSAT is, unduly exclusionary and restrictive, then the regulation trespasses into the protected realm of the law schools' essential academic freedom to choose whom to admit into their law program.²¹

Insofar as LEBMO No. 7-2016 was concerned, therefore, the requirements for the passing (at 55%) of the PhiLSAT were, in the September 2019 decision, considered unconstitutional and stricken down.²² But the decision stopped short of declaring the entirety of such regulatory issuance void for being contrary to the Constitution.²³ Subsequent to the *Pimentel* decision in September 2019, however, the LEB did not have the opportunity to implement a restructured PhiLSAT that simply did away with the mandatory passing requirement, as it opted to indefinitely suspend the same on account of the onset of the COVID-19 pandemic.²⁴

In disposing of the various motions for reconsideration that followed, the Supreme Court in its November 2021 ruling, announced that it had reached its decision not to reconsider its September 2019 ruling, and, moreover, ruled this time that the entirety of LEBMO No. 7-2016, being in essence an

College of Law of the University of the Philippines. University of the Philippines College of Law, Law Aptitude Examination, available at <http://web.archive.org/web/20201010071617/https://law.upd.edu.ph/jd-program/law-aptitude-examination-lae> (last accessed May 5, 2022).

19. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 20.

20. *Id.* at 64 (citing PHIL. CONST. art. XIV, § 1).

21. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 84-85.

22. *Id.* at 89 & 104.

23. *Id.* at 89 (citing LEBMO No. 7-2016, § 16).

24. Legal Education Board, Special Guidelines on Admission to the Basic Law Program in Academic Year 2020-2021, LEB Memorandum Order No. 57, Series of 2020 [LEBMO No. 57-2020], § 1 (Apr. 23, 2020).

administrative issuance that intended to enforce an exclusionary law school admissions requirement, is to be stricken down.²⁵ Consequently, without a new regulatory issuance, the status at the present is that no admissions aptitude test can be imposed on law school applicants.²⁶

The *Pimentel* decision was received by law school stakeholders, particularly by university and law school administrators, as a significant reaffirmation of the inviolability of the constitutionally-protected academic freedom.²⁷ As a former school and university administrator and a respected constitutionalist (and even as a clergyman), how might have Fr. Bernas reacted to the essential rulings in *Pimentel* handed down in September 2019 and November 2021?

To begin with, Fr. Bernas recognized and accepted the basic authority of the State to set out admissions standards for so long as they are reasonable and equitable in their application —

Section 5 (3) explicitates an aspect of academic freedom. It recognizes the right of every citizen to study and prepare himself for any profession of his choice. However, as already seen, there is also recognition of the right of schools to impose admission standards. The [S]tate itself may also set admission standards. When the [S]tate, however, imposes standards, either by [way of] law or [] regulation, these standards must be reasonable and equitable in their application. ... It should be understood that the standards must be reasonable not just for the applicant[,] but also for the school.²⁸

From the general perspective of Fr. Bernas on constitutional interpretation, however, what is reasonable and equitable should be determined based on the circumstances prevailing at the time they are made

25. Oscar B. Pimentel, et al. v. Legal Education Board, G.R. No. 230642, Nov. 11, 2021, at 40, available at <https://sc.judiciary.gov.ph/27638/> (last accessed June 10, 2022).

26. See *id.* & LEB Memo. Order No. 57- 2020.

27. See, e.g., Tony La Viña, *Leonen on Academic Freedom*, MANILA STAND., Jan. 14, 2020, available at <https://www.manilastandard.net/opinion/columns/eagle-eyes-by-tony-la-vina/314822/leonen-on-academic-freedom.html> (last accessed May 5, 2022) [<https://perma.cc/MA8P-H2R9>] & Ma. Luisa Rose P. Caybot & Gil E. Garcia II, *Legal Education in a Global Pandemic: Perspective of an Ateneo Law School as an Ignatian Institution*, 1 COGITANT LEGALIS 163, 194-99 (2021).

28. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1306 (2009) [hereinafter BERNAS, THE 1987 CONSTITUTION].

and based on the constitutional provision's historical context.²⁹ As he wrote, “[a] constitution is not written in a vacuum. It is born under the auspices of prevailing political convictions. For this reason, constitutional interpretation cannot dispense with historical context.”³⁰

On the realm of constitutional history, such a context would appear to provide basis for an expanding or liberalizing view on academic freedom, rather than one that favors greater government regulation. It is of note that in the 1935 Constitution, academic freedom was an express guarantee for state universities³¹ while the later 1973³² and 1987³³ Constitutions broadened this articulated guarantee to encompass all institutions of higher learning, whether state-owned or private.³⁴

In a manner similar to the writing of Fr. Bernas writings on the subject,³⁵ the Court in *Pimentel* actually takes us along that historical journey, and in addition, takes time to narrate the expansion of the concept of the constitutionally-protected academic freedom in jurisprudence, detailing how an institutional academic freedom has extended to notions of academic freedom on the individual faculty, researcher, and student levels.³⁶

29. JOAQUIN G. BERNAS, S.J., A LIVING CONSTITUTION: THE ABBREVIATED ESTRADA PRESIDENCY 5 (2003) [hereinafter BERNAS, A LIVING CONSTITUTION].

30. *Id.* (emphasis supplied).

31. 1935 PHIL. CONST. art. XIII, § 5 (superseded in 1973) (“Universities established by the State shall enjoy academic freedom.”).

32. 1973 PHIL. CONST. art. XV, § 8 (2) (superseded in 1987) (“All institutions of higher learning shall enjoy academic freedom.”).

33. PHIL. CONST. art. XIV, § 5 (2) (“Academic freedom shall be enjoyed in all institutions of higher learning.”).

34. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 60 (citing PHIL. CONST. art. XIV, § 5 (2) & 1973 PHIL. CONST. art. XV, § 8 (2) (superseded in 1987)).

35. BERNAS, THE 1987 CONSTITUTION, *supra* note 28, at 1294-1306.

36. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 60-63 (citing *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, 194 SCRA 317, 325 (1991) (citing *Maxwell vs. Dow*, 176 U.S. 581 (1900)); PHIL. CONST. art. XIV, § 5 (2); 1973 PHIL. CONST. art. XV, § 8 (2) (superseded in 1987); 1935 PHIL. CONST. art. XIII, § 5 (superseded in 1973); *Ateneo de Manila University v. Judge Capulong*, G.R. No. 99327, 222 SCRA 644, 661-63 (1993); *Keyishian v. Board of Regents*, 385 U.S. 589, 603; *Villar v. Technological Institute of the Philippines*, G.R. No. L-69198, 135 SCRA 706 (1985); *Non v. Dames II*, G.R. No. 89317, 185 SCRA 523 (1990); *Malabanan v. Ramento*, G.R. No. L-62270, 129 SCRA 359 (1984);

This analysis of PhiLSAT against academic freedom as a constitutional concept through a review of important historical background would align itself with the position of Fr. Bernas that constitutional interpretation would be more responsibly undertaken with full regard of relevant historical context.³⁷

Viewed from this perspective, although it cannot outright be said whether Fr. Bernas would have had no issues with PhiLSAT's passing rate pegged at 55%; or if it would, for him, address infirmities if it were retained mandatory albeit at a lower threshold; or if in fact, he would believe it should, as the Court concluded, be merely recommendatory, the Author posits that as the analytical process undertaken by the Supreme Court in *Pimentel* is not inconsistent with the biases of Fr. Bernas — that Fr. Bernas would have expressed a respect for the conclusions of the Court on the PhiLSAT.

Moreover, having in mind the view of Fr. Bernas on the irrevocable value of freedom in the role of the University as expressed in *The Moral Response of the University*,³⁸ it may plausibly be assumed that Fr. Bernas would look with approval, as a fundamental basis for the attitude of the Court in *Pimentel*, the decision's having incorporated this excerpt from *Garcia v. Faculty Admission Committee*³⁹ —

For it is to be noted that the reference is to the 'institutions of higher learning' as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent.⁴⁰

Guzman v. National University, G.R. No. L-68288, 142 SCRA 699 (1986); Garcia v. The Faculty Admission Committee, Loyola School of Theology, G.R. No. L-40779, 68 SCRA 277, 284-85 (1975) (citing VICENTE SINCO, PHILIPPINE POLITICAL LAW 489 (11th ed. 1962)); & Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957)).

37. See BERNAS, A LIVING CONSTITUTION, *supra* note 29.

38. Bernas, *Moral Response*, *supra* note 13.

39. Garcia v. The Faculty Admission Committee, Loyola School of Theology, G.R. No. L-40779, 68 SCRA 277 (1975).

40. *Id.* at 284.

IV. *PIMENTEL V. LEGAL EDUCATION BOARD: ON STAKEHOLDER PARTICIPATION*

While the November 2021 ruling in *Pimentel* reaffirmed that the LEB may validly exercise supervisory authority over law schools within the bounds of academic freedom, and that the PhiLSAT, as intended under LEBMO No. 7-2016, exceeded those bounds.⁴¹ In contrast with the September 2019 decision, the entire LEBMO No. 7-2016 was directed by the Court to be stricken without prejudice to the enactment of a new regulation on a law school admissions aptitude test that is compliant with the Constitution.⁴²

But an interesting aspect disclosed by the November 2021 resolution in *Pimentel* was how the Supreme Court effectively elevated the importance, or necessity even, of receiving and considering input from the law schools themselves in the formulation by the LEB of regulations, or perhaps even policies, affecting them.⁴³

To begin with, it is noteworthy that the Philippine Association of Law Schools (PALS) was permitted to acquire a standing in the case, initiated by a letter requesting for clarification which itself raised arguments against the constitutionality of PhiLSAT, and which the Court decided to consider as a motion for intervention.⁴⁴ As a result of such leave of court, PALS was able to successfully enter its arguments into the record which the Court required the other parties to comment on.⁴⁵

That the Supreme Court consented to allowing PALS' voice to be formally heard,⁴⁶ through a process that is understood by experienced litigators not to be common, reflects the value that the Court saw in allowing the law schools themselves — directly affected as they were by the litigated issues in *Pimentel* — to effectively be a party to the case, even as it sought to be heard formally on it only after the September 2019 ruling was promulgated.

41. *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 32 (November 21 Resolution).

42. *Id.*

43. *See id.* “Accordingly, it would be more appropriate to strike down all remaining provisions. This gives the LEB a fresh start, devoid of any arbitrary preconceived ideas when it sits down with the law schools or PALS for genuine and meaningful discussions on a possible acceptable replacement of the present PhiLSAT[.]” *Id.*

44. Supreme Court of the Philippines, *supra* note 11.

45. *Id.*

46. *Id.*

But more telling of a belief in the intrinsic necessity to have the law schools and other direct stakeholders be part of regulatory development on legal education is the clear directive of the *ponencia* of the November 2021 ruling —

Accordingly, it would be more appropriate to strike down all remaining provisions [of LEBMO No. 7-2016]. This gives the LEB a fresh start, devoid of any arbitrary preconceived ideas *when it sits down with the law schools or PALS for genuine and meaningful discussions on a possible acceptable replacement of the present PhiLSAT[.]*⁴⁷

The foregoing decree follows a brimful castigation of the LEB's unilateral construction and implementation of PhiLSAT —

What makes matters worse is that the LEB did not even seek the participation of law schools in any discussion before formulating the relevant issuances relating to the current PhiLSAT. There was also no prior study conducted to determine the propriety of PhiLSAT. The LEB merely likened it to the NMAT of medical schools and the Law School Admission Test abroad. It is crystal clear that the LEB arbitrarily flexed its power and exceeded its permissible authority by totally depriving law schools of a fair and reasonable opportunity to be heard given the lack of consultations before the formulation of LEBMO No. 7-2016. Indeed, it is quite ironic that the formulation of PhiLSAT, as one of the State's measures to uplift the standard of legal education by doing away with mediocrity, appears to have been done haphazardly.⁴⁸

The eventual pronouncement is an order upon the LEB to conduct good faith discussions with the law schools in the matter of coming up with an aptitude exam for law school applicants that is not only legally valid but, implicitly, carries the general acquiescence of the law schools themselves.

Whether or not this would evolve into a requirement for consultations or discussions with the law schools prior to the issuance by the LEB of any resolution or regulation beyond the PhiLSAT or its replacement, would still have to be seen in the future.

It is difficult to conceive of Fr. Bernas having any fundamental issues with a directive from the Court addressed to the LEB to require good faith discussions as a prerequisite to finalization of administrative regulations. After

47. *Id.* (emphasis supplied).

48. *Id.* at 32 (citing *Oscar B. Pimentel, et al.*, G.R. No. 230642, at 17-18 (J. Leonen, concurring and dissenting opinion)).

all, arriving at the best possible informed decision through listening and discernment are key components of Ignatian spirituality.⁴⁹

But what of a potential observation that having another layer in the process would engender delays and, thus, inefficiencies in administrative supervision and regulation?

Fr. Bernas would very likely take a view that seeks a wise balance between the valid concern stemming from diminished consultation on the one hand, and administrative logjams, on the other. But to be sure, he would not treat efficiency as an immutable primary value, even on matters pertaining to the Constitution and constitutional doctrine and interpretation.

In a lecture he delivered at the Fifth Jaime V. Ongpin Annual Memorial Lecture in October 2006, Fr. Bernas discoursed on extant efforts to amend or revise the Constitution, pointing out nuances from a historical and legal perspective —

I have always maintained myself that for our society[,] success or failure depends not so much on the system as on the people running the system. It is easy to write a Constitution; it is more difficult to make a Constitution work.

...

I adhere to the proposition that the primary purpose of a Constitution in the democratic tradition is not so much to achieve efficiency as to avoid tyranny in its various varieties. The founders of the American Constitution provided for check and balances as a safeguard against monarchic tyranny.⁵⁰

It may be a safe bet that if the choice on this was binary, Fr. Bernas would opt for the LEB to be informed than to be efficient.

49. Jesuit Resource, Introduction to Inspired Decision-Making: Personal and Communal Discernment, *available at* [https://www.xavier.edu/jesuitresource/taking-time-to-reflect/inspired-decision-making1/intro-to-decision-making#:~:text=\(last accessed May 5, 2022\) \[https://perma.cc/795G-EMVP\]](https://www.xavier.edu/jesuitresource/taking-time-to-reflect/inspired-decision-making1/intro-to-decision-making#:~:text=(last%20accessed%20May%205,%202022)[https://perma.cc/795G-EMVP]).

50. Joaquin G. Bernas, S.J., Speech at the Fifth Jaime V. Ongpin Annual Memorial Lecture on Public Service in Business and Government (Oct. 27, 2006) (transcript on file with Author).

Joaquin G. Bernas, S.J.: The Teacher Within

Sedfrey M. Candelaria*

* '90 LL.M., University of British Columbia; '84 LL.B., Ateneo de Manila University School of Law. The Author served two terms as the Dean of the Ateneo de Manila University School of Law (2010–2018). He joined the law school's faculty in 1990 and currently teaches Constitutional Law, Public International Law, and International Economic Law. Dean Candelaria also heads the Research, Publications and Linkages Office of the Philippine Judicial Academy (PHILJA). He is a member of the PHILJA Corps of Professors and is the Vice-Chairperson of the Constitutional Law Department. He was a holder of the 2015 Metrobank Foundation Professorial Chair in Law and Economics. In 2016, he was the recipient of the Founding Chancellor Emeritus Justice Ameurfina A. Melencio Herrera Award for the Most Outstanding Professorial Lecturer. A Fellow of the Commonwealth Judicial Education Institute (CJEI) in Dalhousie University, Halifax, Canada, Dean Candelaria has also authored several articles on constitutional law, law and economic development, judicial education, peace process, human rights, and international law.

The Author's previous works published in the *Journal* include *The Philippines and the IMF: Anatomy of a Third World Debt*, 36 ATENEO L.J. 16 (1992); *The Legal Characterization of the Asia-Pacific Economic Cooperation (APEC) and the Individual Action Plans in International Law*, 44 ATENEO L.J. 405 (2000); *The Rights of Indigenous Communities in International Law: Some Implications Under Philippine Municipal Law*, 46 ATENEO L.J. 273 (2001); *Introducing the Indigenous Peoples Rights Act*, 47 ATENEO L.J. 571 (2002); *The Philippines and the Convention on the Rights of the Child: Evaluating Compliance with Respect to the International Standards for Procedural Rules Involving Children*, 49 ATENEO L.J. 1016 (2005), co-authored with Rosalyn C. Rayco; *Courts and Social Context Theory: Philippine Judicial Reform as Applied to Vulnerable Sectors*, 50 ATENEO L.J. 823 (2006), co-authored with Carissa Agnes L. Olmedo; *Testing Constitutional Waters: Balancing State Power, Economic Development and Respect for Human Rights*, 51 ATENEO L.J. 1 (2006), co-authored with Floralie M. Pamfilo; *Legal Concept of Terrorism Under International Law and Its Application to Philippine Municipal Law*, 51 ATENEO L.J. 823 (2007), co-authored with Vera M. de Guzman & Ivy D. Patdu, M.D.; *The Juvenile Justice and Welfare Act of 2006: Changing Patterns and Responses for Juvenile Offending*, 52 ATENEO L.J. 293 (2007), co-authored with Nimfa Cuesta-Vilches & Rita Marie L. Mesina; *An Overview of the International Legal Concept of Peace Agreements as Applied to Current Philippine Peace Processes*, 53 ATENEO L.J. 263 (2008), co-authored with Regina Ann L. Nonato; *Consultation and the Courts: Reconfiguring the Philippine Peace Process*, 54 ATENEO L.J. 59 (2009), co-authored with Maria Luisa Isabel L. Rosales; *Postscript to the Supreme Court MOA-AD Judgment: No Other Way but to Move Forward*, 54 ATENEO L.J. 269 (2009); *Testing Constitutional Waters II: Political and Social Legitimacy of Judicial Decisions*, 55 ATENEO L.J. 1 (2010), co-authored with Maria Eloisa Imelda S. Singzon; *A Review of Legal Education in the Philippines*, 55 ATENEO L.J. 567 (2010), co-authored with Maria Cristina T. Mundin; *Testing Constitutional Waters III: Areas for Constitutional Reform in the System of Checks and Balances — Making*

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This Article builds upon the Author's essay entitled *Fr. Joaquin G. Bernas, S.J.: A Beautiful Mind* in "To Give and Not to Count the Cost: Ateneans Inspiring Ateneans 1859-2009," an anthology of tributes published by the Ateneo de Manila University Press in 2010.

** '24 J.D. cand., Ateneo de Manila University School of Law. The Author is a Member of the Board of Editors of the *Ateneo Law Journal*. He joined the Board of Editors of the *Journal* for its 65th Volume in 2020 and served as the Associate Lead Editor for the fourth Issue of the same Volume.

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III. CONCLUSION 39

I. INTRODUCTION

My first academic encounter with Father Joaquin G. Bernas, S.J. was during the pre-bar review in 1984 when he delivered special sessions on Political Law for our batch. In a concise yet substantive manner, he synthesized the whole of Political Law. He was indeed inspiring. Little did I know, as fate would have it, that six years later, I would serve as a member of the faculty of the Ateneo Law School under the deanship of Cynthia Roxas-del Castillo,¹ and the presidency of Fr. Bernas at the Ateneo de Manila University.²

Fr. Bernas, despite his busy schedule as university president, took the time to teach at the law school. It was in 1991 when my good friend, Atty. Carlos “Chochoy” P. Medina, Jr.,³ and I were called in by Dean Cynthia and Fr. Bernas to handle separate freshman sections in Political Law, in substitution of a professor who had to give up his classes in the middle of the semester. Atty. Chochoy and I were then full-time lawyers with the Ateneo Human Rights Center (AHRC),⁴ which made us the most convenient choices for the law school administration.

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1. Joseph Giancarlo C. Agdamag, *Cynthia Roxas del-Castillo: Breaking the Mold*, THE PALLADIUM, Jan. 2015, at 25.
 2. Resolution Expressing the Profound Condolences of the House of Representatives to the Philippine Province of the Society of Jesus (SJ) and the Family of Father Joaquin G. Bernas SJ, Dean Emeritus of the Ateneo School of Law and Member of the 1986 Constitutional Commission, H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4, 18th Cong., 2d Reg. Sess. (2021).
 3. See Antonio G.M. La Viña, *Chochoy Medina, My Friend and Hero*, MANILA STAND., Sept. 25, 2018, available at <https://www.manilastandard.net/opinion/columns/eagle-eyes-by-tony-la-vina/276356/chochoy-medina-my-friend-and-hero.html> (last accessed May 25, 2022) [<https://perma.cc/UF3M-2GUV>].
 4. Formed in 1986, the Ateneo Human Rights Center (AHRC) is an auxiliary unit of the Ateneo de Manila University School of Law, and a university-based institution engaged in the promotion and protection of human rights in the country. The Ateneo Human Rights Center, About the Ateneo Human Rights

It was our baptism by fire with Fr. Bernas in Political Law. He would initially give plenary lectures to both sections, and for the rest of the week, Chochoy and I would conduct recitations. I remember being only two to three cases ahead of my class each day of recitation (now, our students know better!).

After Fr. Bernas finished his presidency in 1993,⁵ he resumed teaching first year law students with us. Thus began our priceless journey with him in law school.

The snippets of significant cases in Political Law that I am going to share are coated with the human-interest narratives surrounding the events which triggered these test case litigations.

II. THE CASES

In some Supreme Court cases of national importance that the AHRC lawyers and I were involved with, Fr. Bernas served as the moving spirit and inspiration. He knew how to motivate people without necessarily imposing his views upon them in the course of litigation.

A. Agabin, et al. v. Hon. Bacalla

One such occasion was at the height of our preparation for the holding of the Asia-Pacific Conference on East Timor in the Philippines during the Ramos administration.⁶ The AHRC kept in safe haven some East Timorese

Center, available at <https://ahrc.org.ph/about-ahrc> (last accessed May 25, 2022) [<https://perma.cc/D869-HX4Z>]. See also La Viña, *supra* note 3.

5. H. Res. Nos. 1630, 1634, & 1636, whereas cl. para. 4.
6. William Branigin, *Manila Bends to Indonesian Pressure, Bars East Timor Exiles at Conference*, WASH. POST, May 22, 1994, available at <https://www.washingtonpost.com/archive/politics/1994/05/22/manila-bends-to-indonesian-pressure-bars-east-timor-exiles-at-conference/f8cbb838-b6c5-4766-b6f5-a46e376894aa> (last accessed May 25, 2022) [<https://perma.cc/SP2D-ME4F>] & William Branigin, *Philippines Fails to Stop E. Timor Meeting*, WASH. POST, June 1, 1994, available at <https://www.washingtonpost.com/archive/politics/1994/06/01/philippines-fails-to-stop-e-timor-meeting/994a2abd-a979-41ed-9e3d-272e49677983> (last accessed May 22, 2022) [<https://perma.cc/L955-9FK8>]. See also Salustiano Freitas, *The Indonesians Teach Us How to Hate Their Violence but Also How to Resist: East Timor — 19 Years of Resistance*, at 41-42 (Dec. 1994) (unpublished B.A. thesis, Victoria University of Technology) (on file with the Victoria Library University, Victoria University of Technology).

conference participants at the Salcedo campus to avoid surveillance by immigration authorities. Fr. Bernas supported the AHRC's decision to contest a Quezon City Regional Trial Court's temporary restraining order, which was issued upon the insistence of a fly-by-night organization and aimed at frustrating the efforts of the conference organizers.⁷ The AHRC and its lawyers consulted Fr. Bernas on a strategy to test the case successfully before the Supreme Court.⁸ Pressure was exerted upon the Ateneo administration by some government officials to dissuade the AHRC from pursuing the conference in light of national security and diplomatic implications. Two hours before the opening of the conference at Malcolm Hall, University of the Philippines College of Law,⁹ the Supreme Court quashed the lower court's injunctive order.¹⁰ The decision triggered successful advocacy for the East Timorese struggle for independence.¹¹

B. Cruz v. Secretary of Environment and National Resources, et al.

In another test case,¹² Fr. Bernas, together with the AHRC and a group of lawyers representing the National Commission on Indigenous Peoples, crafted the legal strategy and theory in defending the constitutionality of a piece of landmark legislation — the Indigenous Peoples' Rights Act (IPRA) of 1997¹³

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7. UPI Archives, E. Timor Conference to Defy Court Order, *available at* <https://www.upi.com/Archives/1994/05/28/E-Timor-conference-to-defy-court-order/7808770097600> (last accessed May 25, 2022) [<https://perma.cc/VU33-CMKX>].
 8. Melencio S. Sta. Maria, Jr., [Just Saying] *Fr. Joaquin Bernas SJ: Simply a Priest*, *RAPPLER*, Mar. 9, 2021, *available at* <https://www.rappler.com/voices/thought-leaders/just-saying-opinion-father-joaquin-bernas-simply-priest> (last accessed May 25, 2022) [<https://perma.cc/B2XD-88FR>].
 9. UPI Archives, *supra* note 7.
 10. Sta. Maria, Jr., *supra* note 8 & Branigin, *supra* note 6.
 11. *See* Freitas, *supra* note 6, at 42.
 12. *Cruz v. Secretary of Environment and Natural Resources*, G.R. No. 135385, 347 SCRA 128 (2000).
 13. An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission of Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples' Rights Act of 1997], Republic Act No. 8371 (1997).

and its accompanying implementing rules and regulations.¹⁴ The law was challenged due to certain provisions allegedly being contrary to the well-established Regalian Doctrine,¹⁵ as written in Section 2, Article XII of the 1987 Constitution.¹⁶ The opinion defending the validity of the law held that ancestral domain and lands do not form part of the public domain and are instead the private property of indigenous people.¹⁷ The opinion cited *Cariño v. Insular Government*,¹⁸ which recognized the title held by indigenous people since time immemorial, thus excluding property covered by such title from the scope of the Regalian Doctrine.¹⁹ However, it was opined that this ownership by indigenous people does not extend to natural resources contained in their land, which can only be explored for purposes of environmental protection.²⁰ The right of management by indigenous people refers to utilization as permitted by Section 2, Article XII of the 1987 Constitution.²¹ The IPRA likewise recognizes the government's rights over the land, as the right of indigenous people over the same is only a priority right and not an exclusive one.²² The law does not prohibit the State from entering into co-production, joint venture, or production sharing agreements with the private sector.²³

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14. National Commission on Indigenous Peoples, Rules and Regulations Implementing the Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371 (1998).
 15. For some short commentaries of Fr. Bernas on the concept of ancestral domain in relation to the Regalian Doctrine, the compilation of Philippine Daily Inquirer articles in the three-part series entitled "A Living Constitution: Constitutional Issues Arising During the Troubled Gloria Arroyo Presidency Part II," edited by Lorna Kalaw-Tirol, and published by the Jesuit Communications Foundation, Inc., prove to be insightful. See JOAQUIN G. BERNAS, S.J., A LIVING CONSTITUTION: CONSTITUTIONAL ISSUES ARISING DURING THE TROUBLED GLORIA ARROYO PRESIDENCY PART II 82-93 (2010).
 16. *Cruz*, 347 SCRA at 159-60 & PHIL. CONST. art. XII, § 2.
 17. *Cruz*, 347 SCRA at 219.
 18. *Cariño v. Insular Government*, 212 U.S. 449 (1909).
 19. *Id.* at 460 & *Cruz*, 347 SCRA at 269.
 20. *Cruz*, 347 SCRA at 295 & JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1201 (2009).
 21. PHIL. CONST. art. XII, § 2 & BERNAS, *supra* note 20, at 1201-02.
 22. BERNAS, *supra* note 20, at 1202.
 23. *Id.* & *Cruz*, 347 SCRA at 229.

In his reassuring and humble manner, Fr. Bernas provided us with incisive and novel constitutional legal theories in support of the claims of millions of indigenous peoples to their ancestral domain around the country. As I detailed in my piece in the Philippine Judicial Academy (PHILJA) Judicial Journal's Issue on the IPRA²⁴ —

Now, our argument before the Supreme Court, involved looking at the timeframe by which the principle of *jura regalia* evolved. We also looked at the principle of intertemporal law, the validity of the law during the time that it evolved. It was a time when colonial powers were justified under international law to occupy what you call *terra nullius*. From the perspective of the Spaniards who came over here, the whole set of islands of the Philippines did not belong to anyone. And yet, the Banaue Rice Terraces have been there for a long time. There were already indigenous peoples with established traditions and political structures that were not recognized from the point of view of international law as belonging to 'civilized nations.' So[,] Spain came over here, transposed its law, and made all land, as far as the eye could see, owned by the King of Spain. Then it was transposed in a non-personal way from the King to the State. Therefore, all lands belonged to the State. That is as simple as we can approach it for the meantime. And that is also the context in which we can view the case of *Cariño* as decided by the United States Supreme Court.²⁵

The legal team would have wanted him to argue the case during the summer session of the Supreme Court in Baguio City on 13 April 1999, considering that the counsel for the petitioners was retired Associate Justice Isagani A. Cruz.²⁶ However, Fr. Bernas had to conduct an annual retreat for our senior law students during that period in Baguio. Atty. Chochoy and I had no choice but to take on the task that day. We took refuge in Mirador, where Fr. Bernas was conducting the retreat.

Before we left for the hearing, Fr. Bernas, in a very unassuming manner, asked whether we had orally argued a case before the Supreme Court. Realizing that we were new to the process, he called on the retreatants to pray for us. Then, to build our confidence, he instructed us to use short notes as guides in outlining the fundamental issues and key contentions. With a 7-7 vote eventually revealing a divided Court, the decision did not generate the required number of votes to declare the IPRA unconstitutional, thus paving

24. Sedfrey M. Candelaria, *The Constitutional Issues and the Supreme Court Decision (Cruz v. Secretary of Environment and Natural Resources)*, 4 PHILJAJUD. J. 80 (2002).

25. *Id.* at 83-84.

26. *Cruz*, 347 SCRA at 157.

the way for the processing of claims of indigenous peoples to ancestral domain.²⁷

C. Francisco, Jr. v. Nagmamalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.

During a casual conversation one lunchtime at the AHRC office with Fr. Bernas, some of us AHRC lawyers, together with Dr. Henedina Razon-Abad of the Ateneo School of Government²⁸ and a number of Ateneo Law School professors, expressed our concern over the second impeachment case brewing against Chief Justice Hilario G. Davide, Jr. involving the Judiciary Development Fund.²⁹

The first complaint, filed by former President Joseph E. Estrada, was dismissed for lack of substance.³⁰ The day after its dismissal, Representatives Gilberto C. Teodoro, Jr. and Felix William B. Fuentesbella filed a second complaint.³¹ The proponents of the second posited that the initiation of their complaint was not barred by the one-year prohibition imposed by the Rules of Impeachment.³² According to them, the dismissal of the preceding complaint did not result in the “initiation” contemplated by the Rules.³³

Immediately, we arrived at a consensus over filing a petition supporting the assumption of jurisdiction by the Supreme Court over matters affecting the impeachment case initiated in the House of Representatives.³⁴ During Fr. Bernas’ presentation as a friend of the court,³⁵ the public listened in awe of his incisive treatment of the intricate constitutional issues involved. He

27. *Id.* at 161-62.

28. See JOHN JOSEPH S. CORONEL, *COMPELLED BY DUTY, CONSCRIPTED BY DESTINY: PORTRAITS OF 16 ASIAN WOMEN AT THE FRONTLINE OF DEMOCRATIC STRUGGLE* 75 (2018).

29. *Francisco, Jr. v. Nagmamalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, 415 SCRA 44, 181 (2003). Fr. Bernas also formulated his own theory on the impeachment scenario in Today’s newspaper article entitled, “Impeaching Chief Justice Davide.” Joaquin G. Bernas, S.J., *Impeaching Chief Justice Davide*, TODAY, Oct. 26, 2003, at 10.

30. *Francisco, Jr.*, 415 SCRA at 109.

31. *Id.* at 109-10.

32. *Id.* at 164.

33. *Id.*

34. *Id.* at 112.

35. *Id.* at 167.

propounded early on, even before the oral arguments, what the Supreme Court would finally resolve, i.e., that an impeachment is initiated when a complaint is filed.³⁶ During the oral arguments, he brilliantly explained that

an impeachment proceeding is not a single act. It is a complexus of acts consisting of a beginning, a middle[,] and an end. The end is the transmittal of the articles of impeachment to the Senate. The middle consists of those deliberative moments leading to the formulation of the articles of impeachment. The beginning or the initiation is the filing of the complaint and its referral to the Committee on Justice.

Finally, it should be noted that the House Rule relied upon by Representatives Cojuangco and Fuentebella says that impeachment is ‘deemed initiated’ when the Justice Committee votes in favor of impeachment or when the House reverses a contrary vote of the Committee. Note that the Rule does not say ‘impeachment proceedings’ are initiated but rather are ‘deemed initiated.’ The language is recognition that initiation happened earlier, but by legal fiction there is an attempt to postpone it to a time after actual initiation.³⁷

Indeed, another precedent-setting judgement was pronounced by the Court. A second impeachment case against Chief Justice Davide was barred.³⁸ It was a delight to listen to contending parties quote Fr. Bernas during the 1986 Constitutional Commission’s deliberations in support of their respective arguments.³⁹

D. Tecson v. Commission on Elections

During the oral arguments of the Fernando Poe, Jr. (FPJ) citizenship case,⁴⁰ the Supreme Court Justices witnessed Fr. Bernas transcend the rigors of a prolonged session of the Court — which ended close to midnight — only to once more deliver a most impressive opinion as a friend of the Court.⁴¹ In defense of FPJ’s right to serve the public, he poetically explained —

What is the relevance of legitimacy or illegitimacy to elective public service? What possible state interest can there be for disqualifying an illegitimate child from becoming a public officer[?] It was not the fault of the child that his parents had illicit liaison. Why deprive the child of the fullness of political

36. *Francisco, Jr.*, 415 SCRA at 169.

37. *Id.* at 165 (emphases omitted).

38. *Id.* at 179.

39. *See id.* at 148-49.

40. *Tecson v. Commission on Elections*, G.R. No. 161434, 424 SCRA 277 (2004).

41. *Id.* at 346.

rights for no fault of his own? To disqualify an illegitimate child from holding an important public office is to punish him for the indiscretion of his parents. There is neither justice nor rationality in that. And if there is neither justice nor rationality in the distinction, then the distinction transgresses the equal protection clause and must be reprobated.⁴²

Unknown to the public that witnessed him that night, Fr. Bernas, upon reaching the Jesuit dormitory past midnight at the Ateneo Professional Schools with Professor Rubén F. Balane,⁴³ decided to take a long-deserved rest in his seat. After a few minutes, Prof. Balane noticed Fr. Bernas beginning to convulse before passing out in his seat. Equally exhausted, as he himself had been asked to serve as *amicus curiae* that day,⁴⁴ Prof. Balane sought help from a group of law students in one of the classrooms who were then preparing for their international moot court competition. Timely medical assistance was administered to Fr. Bernas. His response to the call of legal and moral duty far outweighed his concern for his own physical needs.

42. *Id.* at 347-48.

43. See Tranquil Gervacio S. Salvador III, *Professor Ruben Balane: A Polymath*, MANILA STAND., Oct. 22, 2021, available at <https://manilastandard.net/opinion/columns/footnotes-by-tranquil-g-s-salvador-iii/367934/professor-ruben-balane-a-polymath.html> (last accessed May 25, 2022) [<https://perma.cc/Q2K8-DAK4>].

44. *Tacson*, 424 SCRA at 348.

*E. Province of North Cotabato v. Government of the Republic of the Philippines
Peace Panel on Ancestral Domain (GRP)*

The nationally debated case⁴⁵ on the Memorandum of Agreement on Ancestral Domain (MOA-AD),⁴⁶ recognizing the historic right of the Bangsamoro people to claim their homeland, which was supposed to be signed by the Moro Islamic Liberation Front and the Government of the Republic of the Philippines Negotiating Panel (GRP Panel) in August 2008,⁴⁷ again became an occasion for me to understand the mind of Fr. Bernas and his non-judgmental predisposition as a legal scholar.⁴⁸ He had the opportunity to sit with the GRP Panel and myself, in my capacity as chief legal consultant to the Panel,⁴⁹ to discuss the constitutional aspects of the MOA-AD. At the height of public criticism towards the agreement and the oral arguments before the Supreme Court, Fr. Bernas tackled the sensitive political and legal issues with much respect for the integrity and sincerity of the negotiating panel, although he may have differed in the end with respect to his view of the entire process.⁵⁰ As one deeply immersed in the negotiations over the MOA-AD, I found reassurance in how Fr. Bernas handled the dynamics of law and politics in the

45. *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, 568 SCRA 402 (2008). The following Philippine Daily Inquirer articles of Fr. Bernas in “A Living Constitution” are instructive: *Surgical Constitutional Change; Federalism Soon?; The Controversial RP-MILF MOA; That “Piece of Paper” or Relax Lang!; The MOA and Treaty Making; Peace Negotiations; & The MOA is Dead, is AD also Dead?* BERNAS, *supra* note 15, at 55-81.

46. *Government of the Republic of the Philippines (GRP) & Moro Islamic Liberation Front (MILF), Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001*, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_080805_Memorandum%20on%20the%20ancestral%20domains.pdf (last accessed May 25, 2022) [<https://perma.cc/UG5R-SCLH>].

47. *Province of North Cotabato*, 568 SCRA at 432 & 435.

48. Once again, Fr. Bernas was an *amicus curiae* in the case. Press Release by Vicente C. Sotto III, Senate President, 18th Congress, *Sponsorship Speech: Resolution on Fr. Joaquin Bernas* (Mar. 8, 2021) (on file with the Senate of the Philippines).

49. *Province of North Cotabato*, 568 SCRA at 528. See also Sedfrey M. Candelaria, *Silencing Peace: The Story of MOA*, ABS-CBN NEWS, Sept. 5, 2008, available at <https://news.abs-cbn.com/views-and-analysis/09/05/08/silencing-peace-story-moa> (last accessed May 25, 2022) [<https://perma.cc/U8S9-N2MS>].

50. Joaquin G. Bernas, S.J., *The MOA-AD Decision*, in VOICES OF DISSENT: A POSTSCRIPT TO THE MOA-AD DECISION (2009).

context of social issues like the Bangsamoro claim. Our previous involvement, as far back as 1995, in the peace negotiations with the Communist Party of the Philippines–New Peoples’ Army–National Democratic Front (CPP–NPA–NDF)⁵¹ provided him with a broader understanding of constitutional changes in light of the demands arising from peace processes.

III. CONCLUSION

Discovering the depth of Fr. Bernas’ mind through the years was a distinct privilege and, at the same time, a rare opportunity to be mentored not only in law but, more importantly, in life itself. Interspersed throughout my 30 years of service in the Ateneo were the daily masses, recollections, and retreats wherein I personally got to know Fr. Bernas as a humble servant of the Lord, sharply honed with the principles of justice and humanity in light of his Christian faith. I am forever grateful to you, Fr. B!

51. Sedfrey M. Candelaria, *The Plight of Indigenous Peoples Within the Context of Conflict Mediation, Peace Talks and Human Rights in Mindanao, the Philippines*, 145 THESIS ELEVEN 28, 33–35 (2018).

The Mustard Seed and the Rule of Law: The Constitutional Gospel on the Church and State According to Fr. Joaquin Bernas, S.J.

*Eugene T. Kaw**

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I. PROLOGUE

I too firmly believe that the pursuit of justice and morality is a religious obligation for all believers.

— Fr. Joaquin G. Bernas, S.J.¹

* '05 J.D., Ateneo de Manila University School of Law. The Author is currently a Lecturer at the Ateneo de Manila University School of Law, where he teaches Administrative Law, Public Corporations, Legal Profession, and Legal Research. He is also an Assistant Professor at the Ateneo de Manila University John Gokongwei School of Management-Marketing and Law Department, where he teaches Obligations and Contracts, Hospitality Business Law, and Legal Research. He is the recipient of the Professorial Chair in Political Law for A.Y. 2021-2022. He likewise teaches Administrative Law, Labor Relations, and Legal Profession at the Far Eastern University Institute of Law. He previously served as Assistant Secretary (2011-2016) and OIC-Undersecretary (2012-2015) in the Department of Tourism during the administration of the late President Benigno Simeon C. Aquino III. The Author likewise held positions of Director IV in the Office of the President-Presidential Management Staff (2010-2011) and Director III and Deputy Chief of Staff in the Office of Senator Manuel Araneta Roxas II (2007-2010). This Article was prepared with the assistance of the Tan Yan Kee Foundation Endowment Fund.

If there was one subject that Fr. Joaquin G. Bernas, S.J. loved to write and talk about, it was the Church and State. It comes as no surprise that as a reverend, like all other Jesuits with indomitable and progressive Ignatian spirit,² Fr. Bernas did not confine himself to the Jesuit Residence and found himself consistently immersed in law and politics,³ which was a controversial venture, given the unavoidable entanglement between his spiritual coat as a priest and his professional hat as a constitutionalist.⁴

The convergence of spiritual and legal brilliance consequently made it impossible for him to separate his Catholic faith from his legal mind. One can only imagine how shocked Fr. Bernas must have been every time he was asked about the separation of Church and State whenever church leaders would figure prominently in the public sphere by voicing out their opinions for or against government policies and political affairs.

In a predominantly Catholic country like the Philippines, the influence of religion over State matter is undeniable.⁵ It is part and parcel of local culture

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1. JOAQUIN G. BERNAS, S.J., *A LIVING CONSTITUTION: CONSTITUTIONAL ISSUES ARISING DURING THE TROUBLED GLORIA ARROYO PRESIDENCY* 106 (2010) [hereinafter BERNAS, *A LIVING CONSTITUTION: ARROYO*].
 2. Eugene T. Kaw, *The Legend of Fr. Joaquin Bernas, SJ and the Transcendental Importance of His Legacy of Infinities*, THE GUIDON, Mar. 11, 2021, available at <https://theguidon.com/1112/main/2021/03/the-legend-of-fr-joaquin-bernas-sj-and-the-transcendental-importance-of-his-legacy-of-infinities> (last accessed May 5, 2022) [<https://perma.cc/TVA5-84K6>] [hereinafter Kaw, *The Legend of Fr. Joaquin Bernas*].
 3. Resolution Honoring the Life Dedicated to Service and Glory of God of Constitutionalist Father Joaquin Bernas SJ and Expressing the Profound Sympathy and Sincere Condolences of the Senate on His Passing, P.S. Res. No. 675, whereas cl. paras. 4-5, 18th Cong., 2d Reg. Sess. (2021). Father Joaquin G. Bernas, S.J. played a significant role in drafting what eventually became the highest law in the land. On the Constitutional Commission of 1986, he served as Vice-Chairman of the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights. He was also a member of the Committee on the Executive, the Committee on Public Hearings, and the Steering Committee. See also 3 RECORD OF THE CONSTITUTIONAL COMMISSION (1986).
 4. See Kaw, *The Legend of Fr. Joaquin Bernas*, *supra* note 2.
 5. Eric Vincent Batalla & Rito Baring, *Church-State Separation and Challenging Issues Concerning Religion*, RELIG., Volume No. 10, Issue No. 3, at 5 (citing Raul C. Pangalangan, *National Report for the Philippines*, in RELIGION AND THE SECULAR

as a counterpoint to government policies,⁶ which have been reflected in the laws of the land to mirror societal values that are universal in character. Such impact is general and not parochial to avoid divisiveness and as a way of advancing the role of religion. Fr. Bernas explained as follows —

Religious beliefs are a part of culture, and law is a reflection of the prevailing culture. A public official, and any person for that matter, can legitimately influence the direction of law by influencing the substantive content of culture. In the formation of culture, religion has a legitimate voice. Neither the non[-]establishment clause nor the free exercise clause is a limit on religious discourse. Together[,] the two clauses are a guarantee that there can be robust debate even about religion. And robust debate can lead to a moral consensus that can legitimately be reflected in law.

Many of the laws we now have are in the ultimate analysis rooted in religious beliefs which, even stripped of religious garb, have become part of a common culture. And many a social policy have been hammered out after long debate couched in explicitly religious rhetoric. Slavery, for instance, was once legally acceptable. But the focused and well[-]reasoned voices of believers were able to forge a consensus against slavery until it became outlawed. Segregation was also once firmly positioned in American law. But religious leaders imbued with a deep sense of justice and human rights played a key role in the passage of the Civil Rights Act. The Civil Rights Act is inseparable from the Old Testament rhetoric of Martin Luther King. Similarly, the development of labor laws in our country is in no small measure attributable to the work of persons imbued with a deep sense of justice nurtured by their religious beliefs.

In order to avoid offending against the non[-]establishment clause, however, religious belief, if it is to become part of law in a pluralistic society, must often be presented not in parochial terms but in the form of universal value acceptable to the generality of society. Quoting Scripture or the Pope as justification for secular law can easily invite constitutional objections. One would have to argue in universal categories such as human rights or justice or general welfare.

STATE: NATIONAL REPORTS 568 (Javier Martínez-Torrón ed., 2010)). See also *Aglipay v. Ruiz*, 64 Phil. 201, 205 (1937). Jurisprudence holds that

our history, not to speak of the history of mankind, has taught [] that the union of [C]hurch and [S]tate is prejudicial to both, for occasions might arise when the [S]tate will use the [C]hurch, and the [C]hurch the [S]tate, as a weapon in the furtherance of their respective ends and aims.

Aglipay, 64 Phil. at 205 (emphasis supplied).

6. See, e.g., *Imbong v. Ochoa, Jr.*, G.R. No. 204819, 721 SCRA 146, 331-47 (2014).

There are in contemporary society quite a number of social and moral issues crying out for reasoned debate. Marriage laws, abortion, the death penalty, housing policies, agrarian reform[,] and rights of indigenous cultural communities are but a few of these. The formation of social consensus on these subjects will come about after much debate. There will inevitably be a religious element in the debate. But because we live in a society of religious pluralism, the debate will not be won simply by quoting religious authority. *Appeal to parochial religious authority without a corresponding appeal to universal reason can not only be divisive but can even be disservice to religion.*⁷

Of course, there is no one religious group or congregation that has a monopoly of beliefs,⁸ which is the very heart of the religious liberty that has spawned religious diversity in a pluralist society such as ours.⁹ Religious diversity is certainly something that we have chosen to embrace and respect as a manifestation of our conscious decision to commit to a middle ground that purposely avoided either a purely secular state or an exclusively religious one, as Fr. Bernas himself would explain —

The fundamental fact of the matter is that our nation today is characterized by religious diversity more pronounced than when we first accepted a democratic system of government. We have chosen to reject the established church of Spanish times. But ‘We,’ the sovereign people in the Preamble of our Constitution, who have covenanted to ‘establish a government that shall embody our ideals’ are a people who, while firmly adhering to certain common ideals, are nevertheless divided on many vital matters, many of them flowing from religious belief. *Hence, for the purpose of maintaining unity*

7. JOAQUIN G. BERNAS, S.J., A LIVING CONSTITUTION: THE ABBREVIATED ESTRADA PRESIDENCY 151-52 (2003) [hereinafter BERNAS, A LIVING CONSTITUTION: ESTRADA] (emphases supplied).

8. MVR Publications, Inc. v. Islamic Da’wah Council of the Philippines, Inc., G.R. No. 135306, 396 SCRA 210, 223 (2003).

9. *Imbong*, 721 SCRA at 146.

At the outset, it cannot be denied that [Filipinos] all live in a heterogeneous society. It is made up of people of diverse ethnic, cultural[,] and religious beliefs and backgrounds. History has shown us that our government, in law and in practice, has allowed these various religious, cultural, social[,] and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all — the religious people of different sects and the nonbelievers.

Id.

amid diversity, we have also covenanted to respect religious liberty within a system that institutionally divides [C]hurch and [S]tate.

Our embrace of religious liberty is [a] manifestation of our belief that religion is profoundly meaningful and that we can draw from religion guidance in our social and political options. At the same time, however, we have also drawn a demarcation line, not always clear, which separates the functions of government and religion, thereby potentially severing government from a source of social and moral values dear to many believing citizens.

On the one hand, we have decided to avoid the extreme of a purely secular state like that of France; on the other hand, we do not want a state governed by religion like Muslim states. We consider religion as possessing an important role in government. In the Preamble to our Constitution[,] we implore the aid of God. At the same time, however, we do not wish government to interfere with religion nor religion to rule government.

Maintaining the balance between religious liberty and Church-State separation is a continuing challenge.¹⁰

In that regard, Fr. Bernas noted the importance of respect for religious liberty, while at the same time exploring the need for openness between the Church and the government in working together —

What is obviously needed is for [the] people to come and reason together in an atmosphere of open give and take. We should not allow our nation to be divided by God. There should be room for respecting religious liberty as well as openness[,] not only to drawing the difficult dividing line between religion and government[,] but also to exploring areas where the two institutions, Church and government, and the various religions can work together.¹¹

Notwithstanding the value of religious beliefs and the reality of religious diversity, Fr. Bernas has nonetheless been very clear that when it comes to the constitutional mandate on the Church and State, it fundamentally covers two principles: (1) the Non-Establishment Clause and (2) the Free Exercise Clause.¹²

10. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 126-27 (emphases supplied).

11. *Id.* at 128 (emphasis supplied).

12. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 329 (2009) [hereinafter BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES]. “The twin clauses of free exercise and non-establishment express an underlying relational concept of separation between religion and secular government.” *Id.*

With these in mind, this Article is a former student's feeble attempt to capture and string together the insightful thoughts and timeless commentaries of Fr. Bernas on the Church and State, on religion and politics, on faith and policy, and on churchmen and statesmen, all of which have been taken from his "*A Living Constitution*" book series covering the presidencies of Joseph Ejercito Estrada, Gloria Macapagal-Arroyo, and Benigno Simeon Aquino III.¹³

II. THE SEPARATION COMETH

*The separation of Church and State shall be inviolable.*¹⁴

Despite the explicit wording contained in the Constitution, and despite being included under the *Declaration of Principles and State Policies*, the provision on the separation of Church and State is not a self-executing principle that is judicially enforceable, serving merely as a guideline for legislation.¹⁵ It is also worth highlighting that the separation declaration does not add anything to the non-establishment clause under the Bill of Rights since it is not actually a new provision, as explained by Fr. Bernas —

Another provision in the Constitution says that the separation of [C]hurch and [S]tate shall be inviolable. This became part of our constitutional text in 1973 and it has remained in the 1987 Constitution. *The text, however, embodies a rule which is not new. It is no more than a shorthand expression for 'non[-]establishment.'* It is a textual expression, borrowed from American jurisprudence, which was already in use even before 1973. *It adds nothing to the non[-]establishment text around which Philippine and American jurisprudence have been built since the earliest days of American constitutionalism.*¹⁶

Certainly, the separation declaration is simply an articulation intended to command the government and has nothing to do with churches or private individuals.

The phrase, incidentally, appears under the Declaration of Principles. They are just that — principles that guide [the] government in the conduct of

13. The Author would have wanted to include the presidencies of Corazon Aquino and Fidel Ramos, but copies were not available at the time of writing.

14. PHIL. CONST. art. II, § 6.

15. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 35-38.

16. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 149 (emphases supplied).

affairs. *The principle of separation of [C]hurch and [S]tate commands government about what it may not do about churches. It is not a guide for the conduct of private individuals nor of the Church. The rule of conduct for the Church is in Canon Law.*¹⁷

For this reason, whenever Fr. Bernas was asked if the Church or any religion violates the separation principle by getting involved and being vocal about both public and political issues, his simple answer (which was often met with the most skeptical of smiles) was that “*under our constitutional system, it is legally impossible for the [C]hurch or for churchmen to violate the principle of separation of [C]hurch and [S]tate.*”¹⁸

The disestablishment of the Church from the State, which led to the separation principle, simply means that the Church cannot exercise any civil or political power as an “established” Church,¹⁹ which Fr. Bernas explained as follows —

What we are speaking of is the legal separation of two institutions, the [C]hurch and the [S]tate. *That legal separation was achieved when, upon the advent of American constitutionalism, the Catholic [C]hurch, which was the established church, became ‘disestablished.’ What this means is that the Church and church officials lost the civil powers they enjoyed under Spain. Civil powers became the exclusive prerogative of the [S]tate.*

The separation achieved by the American constitutional system can only be undone if once again the Catholic church or any other church for that matter becomes the

17. JOAQUIN G. BERNAS, S.J., *A LIVING CONSTITUTION: CONSTITUTIONAL ISSUES ARISING DURING THE FIRST THREE YEARS OF PRESIDENT BENIGNO AQUINO III* 126 (2013) [hereinafter BERNAS, *A LIVING CONSTITUTION: AQUINO*] (emphasis supplied).

18. BERNAS, *A LIVING CONSTITUTION: ESTRADA*, *supra* note 7, at 148 (emphasis supplied).

19. *See* BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, *supra* note 12, at 324-25 (citing *United States v. Balcorta*, 25 Phil. 273, 276 (1913)).

One of the immediate effects of the advent of the American constitutional system in the Philippines was the denial to the Catholic Church of the privileged position it occupied under Spanish sovereignty. Justice Trent, speaking for the Court in *U.S. v. Balcorta*, said that the Philippine Bill of 1902 ‘caused the complete separation of [C]hurch and [S]tate, and the abolition of all special privileges and all restrictions therefore conferred or imposed upon any particular religious sect.’

Id.

'established church.' But then the Constitution categorically says that *'no law shall be passed respecting an establishment of religion.'* This means that only a constitutional amendment can undo that separation. The Church cannot violate the separation because it cannot pass laws. The Church has lost its power to perform acts which have the force of law. Much less does it have the power to amend the Constitution. Hence, it cannot undo the separation. But the State, which can pass laws, violates the Constitution when it attempts to pass laws *'respecting an establishment of religion.'*²⁰

Therefore, and rightfully so, churches and their members are not limited to rituals, rites, and celebrations, and can in fact freely and actively participate in political affairs and discourse,²¹ given this constitutional guarantee and protection.

There is thus a very strong guarantee that, separation or non[-]establishment notwithstanding, the Church and churchmen can continue to participate actively in the life of civil and political society. This participation cannot be limited to mere participation in liturgical celebrations or worship. Religion is larger than liturgy or formal worship. It can take the form of preaching or campaigning for what churches perceive to be best for the life of the nation. Such participation, no matter how persuasive or even compelling, does not violate separation of [C]hurch and [S]tate because it does not result in the assumption of civil authority.²²

Despite the clear explanation provided with respect to the constitutional command and to whom it is mandated, Fr. Bernas offered “two possible *but not exclusive* explanations”²³ on why Church and State separation has been the perennial subject of endless debates and controversies,²⁴ which can very well be attributed to Philippine history and culture —

20. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 148-49 (emphases supplied).

21. Batalla & Baring, *supra* note 5, at 4-6. See also Rappler.com, *Understanding Separation of Church and State*, RAPPLER, June 30, 2019, available at <https://www.rappler.com/voices/thought-leaders/233891-understanding-separation-church-state-amado-picardal> (last accessed May 5, 2022) [<https://perma.cc/K3HJ-WBK5>].

22. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 149.

23. *Id.* (emphasis supplied).

24. See Estrada v. Escritor, A.M. No. P-02-1651, 492 SCRA 1, 38 (2006) (citing Estrada v. Escritor, A.M. No. P-02-1651, 408 SCRA 1, 117 & Stephen V. Monsma, *The Neutrality Principle and a Pluralist Concept of Accommodation*, in EQUAL

The first ... [is] 'hangover' and the second [is] 'transference.'

The 'hangover' explanation comes from our history. We do have a history of long church domination. Because of that, every time the [C]hurch or churchmen venture into public matters, the suspicion arises that the [C]hurch is trying to regain lost civil power. It may be that some churchmen would want that, but even within the Church they would meet strong opposition.

Transference comes from the fact that the [C]hurch operates under two legal systems, civil law and Canon Law. In Canon Law[,] clerics are generally not allowed to participate in partisan politics or to hold offices which involve the exercise of civil power. Whenever the activities of clerics appear to be violative of this canon law restriction, it more often than not is interpreted as [a] violation of the Constitution, which it is not. One can be a violator of Canon Law without violating the Constitution.²⁵

Fr. Bernas, however, would avoid using the phrases “separation of Church and State” and “wall of separation” because they can lead to exaggerated notions that suggest the improbability of contact between Church and State,²⁶ which is not realistic considering that both entities live in the same world.²⁷

SEPARATION: UNDERSTANDING THE RELIGION CLAUSES OF THE FIRST AMENDMENT 74-75 (Martin E. Marty ed., 1990)).

[I]n real life, [C]hurch and [S]tate are not and cannot be totally separate. This is all the more true in contemporary times when both the government and religion are growing and expanding their [respective] spheres of involvement and activity, resulting in the intersection of government and religion at many points.

Id.

25. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 149-50 (emphases supplied).
26. *But cf.* 4 RECORD, PHIL. CONST., No. 90, at 970-71. During the proceedings of the Constitutional Commission of 1986, a proposal was made to amend the provision on the separation of Church and State as follows — “THE SEPARATION OF CHURCH AND STATE SHALL BE MAINTAINED. THE STATE, HOWEVER, WELCOMES THE HELP AND COLLABORATION OF CHURCHES AND RELIGIOUS BODIES TO PROMOTE THE WELL-BEING OF ITS CITIZENS.” Fr. Bernas was “afraid that [the] amendment, when it [said] that it [would welcome] the collaboration of churches and religious bodies to promote the total well-being of its citizens, [was] an invitation to entanglement of religion with the State.” 4 RECORD, PHIL. CONST., No. 90, at 970-71.
27. *See generally* Batalla & Baring, *supra* note 5.

That is precisely the reason why Fr. Bernas preferred to use the original language of the Constitution that speaks of “non-establishment of religion.”²⁸

Can and should members of churches and religious organizations lawfully get involved in politics or political matters? Certainly so, for according to Fr. Bernas,

[i]t is sometimes thought by some that separation of Church and State means that church people should not get involved in the hurly-burly of public and political life. In other words, they should confine themselves to the sacristy. But to understand the subject properly, one must begin with what the Constitution says. The constitutional command says[—] ‘No law shall be passed respecting an establishment of religion[.]’ Immediately[,] it can be seen that the command is addressed not to the Church but to the State. It is the State, after all, which passes laws.

The fundamental meaning of the clause is the prohibition imposed on the State not to establish any religion as the official state religion.²⁹

Lest Fr. Bernas be misunderstood, he was not at all saying that clerics should and must participate in partisan politics, but simply that “*if they do, they do not thereby violate the Constitution. But whether they should is a matter for their individual pastoral and prudential judgment. It is also a matter of church discipline.*”³⁰

III. THE NON-ESTABLISHMENT COMMAND

*No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.*³¹

Fr. Bernas could not be any clearer in saying that the non-establishment clause was meant precisely to reverse the Spanish imposition of having an established church that enjoyed official and state protection,³² to wit —

Under the Spanish Constitution of 1876, Catholicism was the [S]tate religion and Catholics alone enjoyed the right of engaging in public ceremonies of worship. While the Spanish Constitution itself was not extended to the Philippines, Catholicism too was the established church in the Islands under the Spanish rule. As the established

28. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 126.

29. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 99–100.

30. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 150 (emphasis supplied).

31. PHIL. CONST. art. III, § 5.

32. See BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 324.

church, or the official church, Catholicism was protected by the Spanish Penal Code of 1884, which was in effect in the Philippines. Thus, of the offenses enumerated in the chapter of the Penal Code entitled ‘Crimes Against Religion and Worship,’ six specifically and solely referred to crimes against the Catholic Church.³³

The established church under Spanish rule would all change when American constitutionalism entered the Philippine scene.³⁴ Fr. Bernas narrated

[O]ne of the immediate effects of the advent of the American constitutional system in the Philippines was the denial to the Catholic church of the privileged position it occupied under Spanish sovereignty. The Philippine Bill of 1902 ‘caused the complete separation of [C]hurch and [S]tate, and the abolition of all special privileges and all restrictions [theretofore] conferred or imposed upon any particular religious sect.’ The separation, in fact, came earlier than the Philippine Bill, which merely repeated the provision relative to religion in President William McKinley’s Instruction, which, in turn, merely implemented Article X of the Treaty of Paris.³⁵

As it currently stands, non-establishment simply means that there can be no official or State religion³⁶ precisely for the purpose of allowing people to freely exercise their faith, or the lack of it, whatever religion or irreligion it may be.³⁷ The underlying belief in all of these is “*the desire to prevent interfaith dissension in a pluralist society such as ours.*”³⁸ Fr. Bernas elaborated on this matter as follows —

33. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 100 (emphasis supplied).

34. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 324-25 (citing *Balcorta*, 25 Phil. at 276).

35. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 100-01 (citing *Balcorta*, 25 Phil. at 276).

36. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 345. The non-establishment clause, in “[i]ts minimal sense[, means] that the [S]tate cannot establish or sponsor an official religion.” *Id.*

37. *Id.* Fr. Bernas explained that one of the values covered by the protection of the non-establishment principle is “voluntarism,” the “personal” aspect of which pertains to “nothing more than the inviolability of the human conscience[,] which is also protected by the free exercise clause.” *Id.*

38. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 114.

In effect, therefore, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions:

- (1) Government must not prefer one religion over another or religion over irreligion because such preference would violate voluntarism and breed dissension;
- (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension;
- (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and]
- (4) Government action must not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension.³⁹

Out of this non-establishment text subsequently came the companion principles of neutrality, non-entanglement, and non-involvement, especially since there is no constitutional or statutory definition of Church or State.⁴⁰ Fr. Bernas astutely observed that

[s]eparatism is textually expressed as ‘non[-]establishment’ or ‘separation,’ and in legal literature it is described as ‘neutrality,’ or ‘noninvolvement,’ or ‘non[-]entanglement.’ Significantly, however, neither [C]hurch nor [S]tate is defined in the Constitution. In fact, the literature on the subject has developed around the phrase ‘non[-]establishment of religion’ and not around ‘separation of [C]hurch and [S]tate.’

But whatever phrase may be used, questions arise. What may not be ‘established?’ What precisely have been separated and how? Or, what is the ‘religion’ which the Constitution says may not be ‘established’ and what does it take to ‘establish’ a religion? And what is ‘[C]hurch’ and what is ‘[S]tate’ whose separation must remain inviolable?⁴¹

Having noted his preference for the use of the “non-establishment clause,” Fr. Bernas emphasized that the “constitutional command[] is more than just the prohibition of a [S]tate religion[, which] is [just] the minimal meaning[;]”⁴²

39. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 346.

40. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 152. *See also* BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 329.

41. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 152.

42. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 101.

he was likewise cognizant that the phrase has been interpreted differently by jurisprudence.

At one end, relevant to American federalism but not to the Philippine unitary system, is the view that the clause merely insulates [S]tate policy on religion from federal interference. At the other end are formulations of how the government may legislate on matters that touch on religion. One reading says that the non-establishment clause prohibits the state from passing ‘laws which aid one religion, aid all religions, or prefer one religion over another.’ Other jurisprudential readings nuance this more carefully to say that:

- (1) [T]he non-establishment clause prohibits only direct support of institutional religion but not benefits incidentally accruing to churches and church agencies through support given to members;
- (2) both direct and indirect aid to religion are prohibited especially if the support involves preference of one religion over another or preference of religion over irreligion; [and]
- (3) [S]tate aid to the secular goals of religious institutions may be given provided it will not involve ‘excessive entanglement with religion.’ In other words, there is no simplistic reading of the non-establishment clause or separation of [C]hurch and [S]tate.⁴³

It bears stressing that the non-establishment clause is not just a constitutional command to the State against the establishment of a particular religion, but also a corresponding guarantee of the individual’s free exercise of religion.⁴⁴ Fr. Bernas explained that

[t]he Constitution commands the [S]tate not to establish any religion (no law shall be passed respecting the establishment of religion) but it guarantees the right of the individual to the free exercise of the religious profession and worship. One of the purposes, in fact, of the invention of ‘non-establishment’ is the protection of individuals from oppressive state religions. Non-establishment, in other words, is in service of free exercise. Hence, when there is conflict between the two, jurisprudence favors free exercise.⁴⁵

43. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 126–27.

44. See BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, *supra* note 12, at 345.

45. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 128.

IV. THE FREE EXERCISE GUARANTEE

*The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.*⁴⁶

Interestingly, the free exercise clause is the only provision in the entire 1987 Constitution that uses the word “forever.” It certainly is a clear indication that religion has been an invariable fixture throughout Philippine history and culture,⁴⁷ a status that will not be changing anytime soon in the future unless, of course, the Constitution itself provides otherwise.⁴⁸

In that connection, Fr. Bernas has been very clear that when it comes to what religion is — it is as much nontheistic as it is theistic,⁴⁹ and as much about nonbelief as it is about belief itself.⁵⁰ According to the esteemed constitutionalist —

In the eyes of the contemporary Church there has been a blurring of the distinction between the temporal and the spiritual. Religion therefore cannot just be a matter of disembodied spirit. Or, as the expression usually has it, religion is not just for the sacristy, even if some politicians want it that way.

*Similarly, the jurisprudential understanding of religion has evolved. Time was when religion in jurisprudence was limited to theistic concepts considered conventional by Western standards. That is not so anymore. Nontheistic religions such as Buddhism, ethical culture[,] and secular humanism are within the ambit of constitutional protection. In fact[,] nonbelief is also a protected right.*⁵¹

Fr. Bernas noted that as a corollary to the practice of religion, “although [Philippine] constitutional law on religion traces its origin to the United States

46. PHIL. CONST. art. III, § 5.

47. See generally PAUL A. RODELL, *CULTURE AND CUSTOMS OF THE PHILIPPINES* 29–47 (2002).

48. See, e.g., Vince F. Nonato, *Tax Exemptions for Religious Groups may Soon End – Alvarez*, PHIL. DAILY INQ., Apr. 10, 2018, available at <https://newsinfo.inquirer.net/981279/tax-exemptions-for-religious-groups-may-soon-end-alvarez> (last accessed May 5, 2022) [<https://perma.cc/7EEJ-MJUU>].

49. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, *supra* note 12, at 330.

50. *Estrada*, 408 SCRA at 92. The constitutional guarantee of free exercise of religion “extends protection to both beliefs and unbelief.” *Id.*

51. BERNAS, *A LIVING CONSTITUTION: ESTRADA*, *supra* note 7, at 152–53 (emphases supplied).

Constitution, [the Philippines'] has developed in a manner that is not hostile to religion."⁵²

Thus, how then can the free exercise guarantee be violated? According to Fr. Bernas, "[a] violation of the free exercise clause by the State can come in the form of either prohibition or compulsion."⁵³ Whenever someone is being compelled by the State to exercise a certain religion, then it is violative of the free exercise clause.⁵⁴ If the compulsion is based on an official imposition of religion, then it becomes violative of the non-establishment clause.⁵⁵ In the same breath, whenever the State interferes or prohibits the exercise of religion,⁵⁶ such as through the imposition of penalties,⁵⁷ there is likewise a violation of free exercise. Fr. Bernas further explained this prohibition as follows —

[T]he free exercise clause[] prohibits the State from interfering with the religious behavior of people either by compelling them to do something or preventing them from acting according to their religious belief. The doctrine is succinctly put in a classic statement from jurisprudence[—] '[t]he constitutional inhibition on legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus[,] the amendment embraces two

52. *Id.* at 152.

53. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 103 (emphasis supplied).

54. *Victoriano v. Elizalde Rope Workers' Union*, G.R. No. L-25246, 59 SCRA 54, 73 (1974) (citing *U.S. v. Ballard*, 322 U.S. 78, 86 (1944) & William A. Carroll, *The Constitution, the Supreme Court, and Religion*, 61 AM. POL. SCI. REV. 657, 663 (1967)).

55. See *Estrada*, 408 SCRA at 150 (citing JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 234 (1987)).

56. See *Ebralinag v. The Division Superintendent of Schools of Cebu*, G.R. No. 95770, 219 SCRA 256, 275 (1993) & *Wisconsin v. Yoder*, 406 U.S. 205, 231-32 (1972).

57. See *e.g.*, *Estrada*, 408 SCRA at 92 (citing ELDER WITT, THE SUPREME COURT AND INDIVIDUAL RIGHTS 79 (1980)). "The Free Exercise Clause accords absolute protection to individual religious convictions and beliefs and *proscribes government from questioning a person's beliefs or imposing penalties or disabilities based solely on those beliefs.*" *Id.* (emphasis supplied).

concepts — freedom to believe and freedom to act. The first is absolute, but in the nature of things[,] the second cannot be.’⁵⁸

After all, the prohibition is part of the guarantee of religious liberty, which was explained by Fr. Bernas in this wise —

This prohibition is a corollary of the guarantee of religious liberty. The purpose of this provision is to render government powerless ‘to restore the historically and constitutionally discredited policy of probing religious beliefs by test oaths or limiting public offices to persons who have, or perhaps more properly, profess to have a belief in some particular kind of religious concept.’⁵⁹

From there arose the jurisprudential concept of benevolent neutrality against a compelling state interest,⁶⁰ where unconditional tolerance is the convention, and not strict separation —

*[The] Constitution ensures and mandates an unconditional tolerance, without regard to whether those who seek to profess their faith belong to the majority or to the minority. It is emphatic in saying that ‘the free exercise and enjoyment of religious profession and worship shall be without discrimination or preference.’ Otherwise, accommodation or tolerance would just be mere lip service.*⁶¹

Philippine jurisprudence, however, would provide that the only recognized exception or allowable instance for the “infringement of religious freedom[]” is when there is an “immediate and grave danger to the security and welfare of the community[,] so long as the State is able to show its immediacy and seriousness.⁶² Thus, “[o]nly the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement

58. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 114 (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940)) (emphasis supplied).

59. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 104.

60. See *e.g.*, *Estrada*, 408 SCRA at 182; *Perfecto v. Esidera*, A.M. No. RTJ-15-2417, 763 SCRA 323, 345 (2015); *Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City*, A.M. No. 10-4-19-SC, 819 SCRA 313, 348 (2017); & *Peralta v. Philippine Postal Corporation (PhilPost)*, G.R. No. 223395, 887 SCRA 714, 753 (2018) (explaining the policy and test of benevolent neutrality).

61. *Re: Letter of Tony Q. Valenciano*, 819 SCRA at 360-61 (emphasis supplied).

62. *Islamic Da’wah Council of the Philippines, Inc. v. Office of the Executive Secretary*, G.R. No. 153888, 405 SCRA 497, 505 (2003) (citing *Victoriano*, 59 SCRA at 72).

of religious freedom. If the government fails to show the seriousness and immediacy of the threat, State intrusion is constitutionally unacceptable.”⁶³

V. ECCLESIASTICAL AFFAIRS IN LABOR CONCERNS

On the entanglement of ecclesiastical matters with labor concerns, Fr. Bernas found the answer simple enough — “*The [S]tate, whose agents labor officials are, has no authority to decide how the sacraments are to be administered. It has no authority to decide who are qualified to be ministers of the Church. It has no authority to decide who may administer parishes.*”⁶⁴

Thus, an exclusion from church membership that resulted in removal as an instruction is an ecclesiastical matter, to wit —

At the outset, the Court finds the need to distinguish a purely ecclesiastical affair from a secular matter. While the State is prohibited from interfering in purely ecclesiastical affairs, the Church is likewise barred from meddling in purely secular matters.

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[s] to matters of faith, religious doctrines, worship[,] and governance of the congregation. To be concrete, examples of these so-called ecclesiastical affairs in which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments[,] and other activities with attached religious significance.’ Secular matters, on the other hand, have no relation whatsoever with the practice of faith, worship[,] or doctrines of the [C]hurch.⁶⁵

Accordingly, if a cleric or nun is removed because of a violation of Canon Law, he or she cannot run to the government, claim illegal dismissal, and demand for reinstatement, as it would be tantamount to asking the

63. *Id.* (emphasis supplied).

64. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 159.

65. Bishop Shinji Amari, et al. v. Ricardo R. Villaflor, Jr., G.R. No. 224521, Feb. 17, 2020, at 5-6, available at <https://sc.judiciary.gov.ph/12422> (last accessed May 5, 2022) (citing *Austria v. National Labor Relations Commission*, G.R. No. 124382, 312 SCRA 410, 421-22 (1999)).

government to interpret religion or Canon Law.⁶⁶ Even if the termination is due to administrative lapses that relate to effectivity as a church minister or leader, then the same is likewise an ecclesiastical matter that is subject to State protection and best left to the choice of the Church.⁶⁷

VI. PUBLIC MONEY AND THE CHURCH

*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.*⁶⁸

On the question of whether the non-establishment principle is violated whenever public money benefits a religious person or organization, Fr. Bernas was of the view that it would depend on the purpose of the expenditure.⁶⁹ Thus,

[o]n the basis of these provisions, the general question has been asked whether the use of public money may be authorized at all in a manner that might benefit religious persons or institutions. It is not a question easily answered by either a Yes or a No.

The example that immediately comes to mind is the early case of *Aglipay vs. Ruiz* where the constitutionality of the use of government funds for the issuance of postage stamps commemorating the 33rd *International Eucharistic Congress of the Catholic Church* was challenged. In upholding the validity of the government action, Justice Laurel wrote that ‘while the issuance and sale of the stamps in question might 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 government.’ He said that whatever benefit might have redounded to the Church was merely incidental to a legitimate government purpose.

Of a similar nature was the more recent expropriation of the birthplace of Felix Y. Manalo, the founder of *Iglesia ni Kristo*, for the purpose of preserving

66. See *Pasay City Alliance Church v. Benito*, G.R. No. 226908, 926 SCRA 555, 565 (2019). The State adheres to a policy of non-interference “in matters that are purely ecclesiastical.” *Id.*

67. *Id.* at 568.

68. PHIL. CONST. art. VI, § 29 (2).

69. BERNAS, *A LIVING CONSTITUTION: AQUINO*, *supra* note 17, at 143.

it as a historical landmark. It was justified by saying that whatever benefit the *Iglesia ni Kristo* might reap from it was merely incidental to the public historical purpose.

In essence, these decisions prescribe a three-part test for determining constitutionality. First, does the grant of aid have a primary ‘secular legislative purpose?’ Second, will the aid have principal effects that neither advance nor inhibit religion? Third, will the aid foster ‘an excessive government entanglement with religion?’⁷⁰

VII. POLITICAL CLERICS

*No religious test shall be required for the exercise of civil or political rights.*⁷¹

It is not uncommon for people to wonder whether the separation principle is violated whenever clerics dive into an ocean of political discourse.⁷² Fr. Bernas was of the opinion that

[w]hen people see bishops or priests venturing into public or political life, [this is] the instinctive question that is often asked[—] Is [there] a violation of the separation of Church and State? The question is understandable because of the frequent use of the phrase ‘separation of Church and State’ and people often equate church with bishops or priests. *But the negative command of the Constitution is addressed not to bishops or priests but to the State and those who exercise State authority. As to bishops and priests, the pertinent part of the constitutional command is the guarantee of the free exercise of religion.*

So insistent, in fact, is the Constitution on this freedom of religion that it goes on to add[.] ‘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 beneficiaries of this freedom include bishops and priests and clerics and minister of religion of every kind. More than that, they are also protected by the freedom of speech and assembly of the Constitution.⁷³

70. *Id.* at 143-45 (emphasis supplied).

71. PHIL. CONST. art. III, § 5.

72. See, e.g., Ferdinand Patinio, *Priests’ Endorsement of Candidates Legal: Poll Lawyer*, PHIL. NEWS AGENCY, Mar. 4, 2022, available at <https://www.pna.gov.ph/articles/1169054#> (last accessed May 5, 2022) [<https://perma.cc/3YRX-KUYN>].

73. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 101-02 (emphasis supplied).

As such, neither the separation nor non-establishment principle is violated whenever clerics find themselves engaged in political homilies, speeches, and debates.⁷⁴ According to Fr. Bernas, the following are the questions that usually arise whenever one analyzes the objections to religious involvement in politics:

- (1) In their sermons and homilies, should religious leaders limit themselves to teaching general moral ideas, or should they draw specific political conclusions?[:]
- (2) Should they oppose or support particular political parties or candidates?[:]
- (3) Should they refrain from running for public office?[:]
- (4) Should they engage in movements that put pressure on political officials, e.g., through lobbying and demonstrations?[:]
- (5) Should they advocate specific policy conclusions or should they limit themselves to general recommendations?[: and]
- (6) When engaging in debate on public issues, should they use religious arguments or only secular arguments?⁷⁵

In response to the foregoing questions posed by Fr. Bernas, certain answers can be deduced.

First, clerics can get involved, as the Church has always been. The claim that religion does not dictate or influence the affairs of the State could not be any more wrong.⁷⁶ Fr. Bernas narrated that

[o]ne person who expressed in very strong language his opposition to religious involvement in politics was Barry Goldwater. The occasion was when the Moral Majority leader Jerry Falwell criticized the nomination of Sandra Day O'Connor to the Supreme Court. Goldwater said[,] 'The great decisions of government cannot be dictated by the concerns of religious factions[... .] We have succeeded for 205 years in keeping the affairs of the State from the uncompromising idealism of religious groups, and we [must not] stop now!'

74. *Cf.* The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728, 747 SCRA 1, 119-23 (2015).

75. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 105.

76. See Aloysius Lopez Cartagenas, *Religion and Politics in the Philippines: The Public Role of the Roman Catholic Church in the Democratization of the Filipino Polity*, 11 POL. THEOLOGY 846, 847 (2010).

Eloquent the words they may be, but the second sentence could not have been more inaccurate historically. Whether you measure it against American history or Philippine history, the statement is false. Churches have influenced American politics from the days of Jefferson down to the prophetic preaching of Martin Luther King and the pastoral letters of the American bishops. Likewise in the Philippines, religion has been involved in politics from the days of Fathers Gomez, Burgos[,] and Zamora down to the pastoral letters on social justice and on the conduct of [the] elections. I do not see this involvement coming to an end. Depending on circumstances, it can even intensify. Thus[,] it is legitimate to ask how religion fits into the Philippine political culture.⁷⁷

Second, clerics may run for public office. Did Fr. Bernas advocate for the participation of clerics in the political arena? Not at all. He was only saying that “there is *nothing constitutionally wrong* when priests or bishops get involved in public affairs or politics[,]”⁷⁸ and that there is no constitutional or legal obstacle should a prelate choose to run for public office;⁷⁹ otherwise, the same would constitute as a religious test on the exercise of a civil or political right.⁸⁰ Fr. Bernas’ legal position was as follows —

A question often asked is whether a cleric may run for public office. There is no constitutional obstacle to that. There was a Supreme Court decision under the 1935 Constitution which said that clerics, much like firemen and policemen, should not run for public office. But the decision was actually a minority decision upholding a statutory provision at the time when the Constitution required two-thirds vote of the Supreme Court to declare a law unconstitutional.

As to the obstacle arising from Canon Law prescription, it is not insurmountable. What remains, therefore, is a question of prudence or propriety. This writer’s view on this is that in principle a cleric must choose

77. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 104-05.

78. *Id.* at 102.

79. *Id.* at 106. See also *Pamil v. Teleron*, G.R. No. No. L-34854, 86 SCRA 413, 428 (1978). Such a prohibition, “certainly insofar as it declares ineligible ecclesiastics to any elective or appointive office, is, on its face, *inconsistent with the religious freedom guaranteed by the Constitution*. To so exclude them is to impose a religious test.” *Pamil*, 86 SCRA at 428 (emphasis supplied).

80. *Pamil*, 86 SCRA at 428.

between being fully a church minister or a public official. Combining the two can be both religiously and politically unhealthy.⁸¹

That explains why from a constitutional and rule of law perspective, Fr. Bernas was quite vocal in stating the view that a prelate could run for public office.

What is amazing, however[,] is the contrary view. The Constitution itself says [—] ‘No religious test shall be required for the exercise of civil or political rights.’ *Prohibiting a priest or cardinal from running for office means imposing on them a religious test for the exercise of their political rights. That is a constitutional no-no.*⁸²

In other words, while it may not be unlawful, a politician-priest is certainly not encouraged by Fr. Bernas to run for public office, given the strong, intertwining implications that can muddle the overlapping duties and force a prelate to ask himself in a situation of conflict, “*What should be followed?*”

Third, clerics must speak, as they have a right to preach. Tricky as it may seem, political sermon is a protected sphere for clerics, and they are constitutionally protected in making use of such right,⁸³ especially if they have the competence to support a sound and persuasive conclusion. Fr. Bernas remarked —

Another important question touches on the substance of the preaching of clergy and religious. Preaching does not simply refer to sermons and homilies in church. Included are public or semi-public pronouncements such as blogs or columns.

Certainly no one will deny the clergy the right to preach about morality. That is their task[,] and they would be remiss in their duties if they habitually avoid moral issues. This is all part of ordinary religious preaching.

...

Why is it that people sometimes do not want their religious leaders to tell them what specific actions they should take or what political conclusions they should make? It is all part and parcel of being a citizen of a democracy. ‘I have my own mind. Do [not] insult me. Let me draw my own conclusion!’

81. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 158. See also BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 106–07.

82. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 127.

83. See *The Diocese of Bacolod*, 747 SCRA at 124.

This is a perfectly legitimate attitude. To avoid alienating people who have such an attitude, a cleric must carefully and respectfully present his conclusions. If the practical conclusions are presented as the product of one's own study and are presented for people to agree or disagree with, then no one should feel insulted or offended. Much less should a cleric threaten hell fire against those who disagree.

Another objection to specific pronouncements by clerics is that their competence and their access to needed facts for drawing conclusions are limited. Rarely is their expertise related to economics, law, sociology, or politics, etc. Specific conclusions about the morality of economic or political decisions can depend very much on the dynamics and nuances of these specialized fields. *If the cleric has competence in these fields, then his conclusion can be more persuasive.*⁸⁴

As a matter of fact, and as an integral part of religious preaching, it is the right of clerics to discuss moral and immoral issues.⁸⁵ If this were not the case, they would be remiss in their priestly duties.⁸⁶ Thus,

*[s]hould the clergy and churches limit themselves to teaching general moral ideas or may they advocate as conclusions specific political actions? Certainly[,] no one will deny the clergy the right to preach about morality. That is their task[,] and they would be remiss in their duties if they habitually avoid moral issues. Thus[,] no one should deny them the right to discuss publicly whether abortion is moral or immoral, or that the rich should or should not help the poor, or that employers should or should not pay workers a living wage, or that homosexual acts are sinful or not, or that wars are or are not morally wrong. This is all part of ordinary religious preaching.*⁸⁷

Fr. Bernas, however, cautioned clerics nonetheless to be prudent and mindful (and to be reckless), but to likewise avoid being pusillanimous and cowardly when making public opinions and statements —

While a cleric, however, should not be reckless in his statements, neither should he be inordinately pusillanimous. There are political and economic decisions that have great moral significance. These should be faced with prudence, yes, but not with cowardly avoidance of conflict. Risks are part of the apostolic mission.

84. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 158-60 (emphases supplied).

85. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 107.

86. *Id.*

87. *Id.*

Clerics do make mistakes, out of carelessness, perhaps, or through excess of zeal, or even for more foolish reasons. But in my own estimate, mistakes and all, the courageous stand of clerics and churches can do much harm. The courage of the churches in the Philippines has made significant contribution to improving economic and political life.⁸⁸

An appropriate illustration of when clerics should be mindful about their public statements is the highly controversial Reproductive Health Law (RH Law), which sparked a “*team patay versus team buhay*” argument.⁸⁹ Fr. Bernas opined that while the same was lawful, it had the potential to push people away.

Because of this, I would defend the legal position of the [D]iocese. *However, let me conclude by saying that, while I would defend the action of the [D]iocese on constitutional grounds, I oppose it for pastoral reasons. The content of the [tarpaulins] are both politically and religiously divisive. Catholics are divided about who to vote for; they are also divided about the morality of the RH Law. To brand as ‘[p]atay’ those who in good faith believe in the morality of the RH Law[,] following the teaching of some moral theologians[,] is not an effective way of fostering church unity. It can drive away people from the Church.*⁹⁰

On that point, Fr. Bernas succinctly explained that “members of the laity and of the voting public are not mindless automatons[]” and are “intelligent beings who, under God, are governed by the primacy of conscience.”⁹¹ Thus, to pressure the voters is not much different from shotgun or money politics, which is essentially what traditional politics is very much about, to wit —

Finally[,] the use of pressure on voters, even for religious reasons, is not much different from shotgun or money politics. *When religious leaders use pressure politics, they serve to perpetuate bad politics. There is now a loud clamor for an end to traditional politics. Pressure politics is traditional politics.*

When the smoke of political battles has cleared, an important task will be unification and cooperation in the promotion of the general welfare. *Those who have aligned themselves with the practitioners of pressure politics will find themselves diminished in their capacity to contribute to the task. It would be*

88. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 160 (emphases supplied). See also BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 106-07.

89. *The Diocese of Bacolod*, 747 SCRA at 27-28.

90. BERNAS, A LIVING CONSTITUTION: AQUINO, *supra* note 17, at 164 (emphasis supplied).

91. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 134.

*unfortunate if bishops who[, having] an important role to play in the progress of our country[,] will find themselves sidelined because, unable or unwilling to debate, they have chosen to dictate instead.*⁹²

But is political speech or a comment made by a cleric with respect to the RH Law justifiable as an exercise of religious freedom and therefore an ecclesiastical matter? The Court ruled in the negative, holding that

[a]s aptly argued by COMELEC, however, the tarpaulin, on its face, ‘does not convey any religious doctrine of the Catholic church.’ That the position of the Catholic church appears to coincide with the message of the tarpaulin regarding the RH Law does not, by itself, bring the expression within the ambit of religious speech. On the contrary, the tarpaulin clearly refers to candidates classified under ‘Team Patay’ and ‘Team Buhay’ according to their respective votes on the RH Law.

The same may be said of petitioners’ reliance on papal encyclicals to support their claim that the expression on the tarpaulin is an ecclesiastical matter. With all due respect to the Catholic faithful, the church doctrines relied upon by petitioners are not binding upon this Court. *The position of the Catholic religion in the Philippines as regards the RH Law does not suffice to qualify the posting by one of its members of a tarpaulin as religious speech solely on such basis.* The enumeration of candidates on the face of the tarpaulin precludes any doubt as to its nature as speech with political consequences and not religious speech.⁹³

While the clerics cannot hide behind the protection of religious freedom,⁹⁴ the Court nonetheless ruled that it does not violate the separation of Church and State principle as it does not offend the non-establishment clause and is nonetheless constitutionally protected as free speech,⁹⁵ albeit highly political, extremely controversial, and divisive.⁹⁶

Without a doubt, the Constitution guarantees the freedom of speech and expression of clerics.⁹⁷ But with all due respect and deference to the Court,

92. *Id.* at 135-36 (emphases supplied).

93. *The Diocese of Bacolod*, 747 SCRA at 122 (emphases supplied).

94. *See id.* at 119-20 (citing *Pamil*, 86 SCRA at 428-30). “Clearly, not all acts done by those who are priests, bishops, *ustadz*, *imams*, or any other religious make such act immune from any secular regulation. The religious also have a secular existence. They exist within a society that is regulated by law.” *The Diocese of Bacolod*, 747 SCRA at 119-20 (citing *Pamil*, 86 SCRA at 428-30).

95. *The Diocese of Bacolod*, 747 SCRA at 123-24.

96. *Id.*

97. *See id.* at 119-20 & 123-24.

the statements made, albeit highlight controversial and political,⁹⁸ transcend the veil of protection afforded by the constitutional safeguard to free speech as an exercise of a moral and religious obligation for clerics.⁹⁹ Fr. Bernas elaborated on such a belief as follows —

First of all, it is not enough to say that the Constitution guarantees the freedom of expression of the clergy. The issue transcends mere constitutionality. Nor is it enough to assert that through the centuries Judaism and Christianity have firmly held that religious duty includes active involvement in politics and that Scripture indicates that God cares about justice and public morality. I too firmly believe that the pursuit of justice and morality is a religious obligation for all believers. Moreover, I also believe that, when it comes to contests for the formation of public policy, individuals cannot effectively deal with the vastness and complexity of issues. There is therefore [the] need for organized action. But whether engaging in individual or organized action, the questions I have enumerated need to be dealt with.¹⁰⁰

Moreover, based on the Church teachings identified by Fr. Bernas, political commentaries by clerics which are meant to instruct the faithful, but not as an exercise of political power, also have ecclesiastical basis —

The Congregation for the Doctrine of the Faith has put it succinctly. It declared that ‘the Church’s Magisterium does not wish to exercise political power or eliminate the freedom of opinion of Catholics regarding ‘contingent questions.’ Instead, it intends — as is its proper function — to instruct and illuminate the consciences of the faithful, particularly those involved in political life, so that their actions may always serve the integral promotion of the human person and the common good.’¹⁰¹

Accordingly, it is submitted that following the pastoral thinking of Fr. Bernas, political speech made by a cleric is an ecclesiastical matter, and, hence, is part of the free exercise of religion if spoken out of a religious obligation for the purpose of “instructing and illuminating the faithful.” If speaking up and getting involved in politics is consistent with the Scripture as an exercise of a religious obligation, then it stands to reason that the same certainly covers the realm of free exercise of religion.

Be that as it may, Fr. Bernas insisted that such is not meant to strip the Constitutional Law doctrine on Church and State of all its meaning, considering that while clerics may not authoritatively formulate State policies,

98. See, e.g., *The Diocese of Bacolod*, 747 SCRA at 123-24.

99. BERNAS, A LIVING CONSTITUTION: ARROYO, *supra* note 1, at 107.

100. *Id.* at 106 (emphases supplied).

101. *Id.* at 135 (emphases supplied).

they may nevertheless participate in a persuasive manner through the marketplace of ideas —

Considering all this, have I therefore stripped the constitutional law doctrine on [C]hurch and [S]tate of all meaning? I have not. The [C]hurch as [C]hurch and hierarchs as hierarchs may not authoritatively dictate [S]tate law or policy. And even if they tried to, they would be run out of court. But they can compete in the marketplace of ideas as vigorously as is compatible with democratic freedom. Conversely, civil government as civil government and government officials as government officials may not dictate church law or policy, but they too may criticize church policy. The bottom line, however, is that neither side may legislate for the other.¹⁰²

VIII. EPILOGUE

Through his balanced but oft-challenged views on Church and State, as well as on politics and religion, Fr. Bernas certainly kept the Constitution and the rule of law alive and well — all in the spirit of building a just and humane society. Whether we agree with Fr. Bernas or not, faith and religion will always play a constructive part in our country's development,¹⁰³ which is why the Church, and her people, should get involved and have a voice on matters that affect or impact the welfare of our people.¹⁰⁴

In many ways, both similar and different, the Church and State each have a vocation to play. The Church has to make sure that the people are able to deepen their faith in order to exercise religion, while the State makes sure that the people are free to exercise their religion as part of deepening their faith. For the Church especially, it is not only necessary as part of her moral and religious obligations, but also inevitable as a civic duty and democratic exercise. Such is the delicate dance and balance that the Church and State have been locked in from centuries past to present, across continents and oceans.

The very mention of church and religion in our Constitution is an undeniable acknowledgement that religion is very much interwoven into and

102. BERNAS, A LIVING CONSTITUTION: ESTRADA, *supra* note 7, at 153-54 (emphasis supplied).

103. See RODELL, *supra* note 47, at 46.

104. See Paterno R. Esmaguél II, *WATCH: 'Church Cannot Be Neutral About Good or Evil' — Archbishop Villegas*, RAPPLER, Mar. 5, 2022, available at <https://www.rappler.com/nation/elections/video-catholic-church-cannot-be-neutral-good-evil-archbishop-soc-villegas> (last accessed May 5, 2022) [<https://perma.cc/L4QY-JRZC>].

intertwined with Philippine culture and democracy. The marketplace of ideas necessarily includes, and will unavoidably involve, religious beliefs to complete that pluralist equation. The religious beliefs that separate us, taken together with the religious opinions or actions that may divide us, also represent the very faith that strengthens the democracy that unites us as a nation — faith that whatever we believe in will be heard, allowed, and respected. After all, our religious liberty and diversity is a testament to our faith in our constitutional democracy.

Under the rule of law, such is the beauty and essence of democracy, that even religion occupies a critical role in contributing to a healthy and robust exchange of thoughts and ideas on how to make people's lives better amidst policy differences, conscientious polarities, and moral objections. As we turn the page of our faith, we likewise turn the corner for our Constitution and democracy, and carry forward the principles of freedom, truth, peace, equality, and love that we must forever believe in and continue to fight for as Fr. Bernas did.

All it takes is a mustard seed.

On the Shoulders of a Legal Giant: Father Bernas and Philippine Environmental Law

Gregorio Rafael P. Bueta*

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I. INTRODUCTION

The world continues to live in unprecedented times due to the ongoing pandemic. Now two years on,¹ challenges and fears remain despite signs of hope and progress. The Philippines is no exception; the worries and concerns over the pandemic persists, alongside the carnival and chorus of the 2022 national and local elections.² Variants, vaccines, and voting have preoccupied

* ’10 J.D., Ateneo de Manila University School of Law. The Author is a member of the IUCN — World Commission on Environmental Law. He lectures on Natural Resources and International Environment and Climate Law at the Ateneo de Manila University School of Law. He is currently an international consultant specializing in environment, climate, and sustainability law and policy. He is also a Legal Consultant of EcoWaste Coalition, a Fellow of Parabukas, Inc., and a Principal Advisor of Climate Smart Ventures. The Author previously wrote *Do the LOCALmotion: Local Government Powers and Climate Change in the Philippines*, 65 ATENEO L.J. 1294 (2021) with Katrina Isabelle G. Pimentel; *The Heat Is On: Prospects for Climate Change Litigation in the Philippines*, 62 ATENEO L.J. 760 (2018); & *Taking Another Green Step Forward: An Analysis of the Rules of Procedure for Environmental Cases*, 56 ATENEO L.J. 522 (2011).

1. Cristina Eloisa Baclig, *COVID as Endemic Disease: Not Weaker but Forever with Us*, PHIL. DAILY INQ., Feb. 1, 2022, available at <https://newsinfo.inquirer.net/1548367/covid-as-endemic-disease-not-weaker-but-forever-with-us> (last accessed May 5, 2022) [<https://perma.cc/JD9M-LVY3>].
2. See Hannah So, *COVID-19 Is Already Negatively Impacting Election Integrity in the Philippines*, available at <https://www.iri.org/news/covid-19-is-already->

the minds of many Filipinos. Yet, amidst all these, the legal community, in particular, that of the Ateneo Law School, has likewise been shocked by the loss of many stalwarts and giants of the profession. One of the several names dearly missed and remembered is Fr. Joaquin G. Bernas, S.J. — Fr. Bernie, or simply, Fr. B to many of his students.

I was perhaps one of the thousands of students whom Fr. B taught in his decades³ of teaching. This Article is just one of many stories, anecdotes, quotes, and musings about the great constitutionalist, the “*Guru of Destabilization*,” as former Justice Secretary Raul Gonzalez once said. Despite this, I can say confidently that Fr. B has had a profound and lasting impact on me, not only as a student, but also as an environmental lawyer for over a decade now from law school.

This Article will share my experience of meeting and learning from one of the legal giants of our generation. It will also discuss how the foremost constitutionalist of the 1987 Constitution has helped shape a broader and more meaningful understanding of Environmental Law through the different provisions in the Constitution.

II. ON MEETING A GENTLE LEGAL GIANT FOR THE FIRST TIME

Before law school, I have to admit that I did not know who Fr. B was. Perhaps, I browsed his name as one of the members of the Constitutional Commission⁴ or as a former president of the Ateneo de Manila University.⁵ Other than these bits of information, I knew little about this giant of the legal profession.

Our first meeting was in early 2006. It was during this time that I decided to pursue further studies in law at the Ateneo, as I was also just about to finish my Political Science degree. As I knew that legal education would be

negatively-impacting-election-integrity-in-the-philippines (last accessed May 5, 2022) [<https://perma.cc/M2HU-LNMG>].

3. Ateneo de Manila University, Four Decades of ‘Magis’, *available at* <https://2012.ateneo.edu/news/features/four-decades-magis> (last accessed May 5, 2022) [<https://perma.cc/677C-PLMG>].

4. Resolution Honoring the Life of Father Joaquin G. Bernas, S. J., J. S. D., for His Immeasurable and Invaluable Contributions to the Legal Profession and Society as a Constitutionalist and a Dedicated Servant of God and Expressing the Profound Sympathy and Sincere Condolences of the Senate on the Untimely Demise of the Best Known Authority on the Constitution and One of the Framers of the 1987 Constitution, P. S. Res. Nos. 674 & 675, whereas cl. para. 3, 18th Cong., 2d Reg. Sess. (2021).

5. *Id.*

financially challenging for my family, I had asked one of my professors, Fr. Jose Cecilio “Jojo” Magadia, S.J.⁶ for some advice. He then told me that he spoke to Fr. B and that I should give Fr. B a call. When I called Fr. B, he asked me simply to meet him at the Jesuit Residence at the Loyola Campus the following day.

It was a short first meeting (less than five minutes perhaps), but one which I still remember vividly. I said a Hail Mary as I waited patiently at the lobby of the Jesuit Residence. Fr. B came and sat down immediately. I thanked him for his time, then he asked me first what my QPI was. After I answered, Fr. B said simply in his deep low voice, “Hmm, that is not enough.” For a few seconds, my heart sank, and I saw my law school plans out the Jesuit Residence window. Then Fr. B said, “But I will help you. See me at the law school during enrollment.”

The rest is history. For my first two years in law school, Fr. B helped in supporting my studies at the Ateneo Law School, with the remaining years as a partial scholar of the school. While it was a brief first encounter, it was one that has impacted profoundly both my legal studies and legal career in the years to come.

III. FOR THE LOVE OF LAW AND LEARNING

Studying Law is not an easy feat, as those who have walked the halls of law schools would know. The rigors of legal education are not only meant to prepare students for the Bar, but to likewise ensure that those who become lawyers are morally and intellectually competent. It behooves law professors to meet these high expectations. As any of his students would attest to, Fr. B was one of the teachers who expected no less and challenged all his students in his years of teaching.

Fr. B exemplified not only the importance of learning the Law, but also of loving and appreciating the act of learning itself. His books on the 1987

6. Fr. Jose Cecilio Magadia, S.J., called fondly as “Fr. Jojo” by his students and colleagues, was a Lecturer at the Political Science Department at the Ateneo de Manila University for five years prior to his appointment as the Provincial Superior of the Philippine Jesuits in 2008. Jules Jurado, ‘*Man of Many Hats’ Is New Jesuit Provincial*, GUIDON, July 27, 2008, available at <https://theguidon.com/1112/main/2008/07/%E2%80%98man-of-many-hats%E2%80%99-is-new-jesuit-provincial> (last accessed May 5, 2022) [<https://perma.cc/96GT-RBNL>] & Ateneo de Davao University, History, Seal and Song, available at <https://newgs.addu.edu.ph/history-seal-blue-knight-song> (last accessed May 5, 2022) [<https://perma.cc/44JF-GDZM>].

Constitution⁷ and Public International Law⁸ — basic and mandatory reading materials for any law student — are testaments to his passion for legal education. Justice Adolfo S. Azcuna once shared to me that Fr. B was taking down notes rigorously during the 1986 Constitutional Convention — apparently so he can quickly turn those notes into books only a few months after the effectivity of the then new 1987 Constitution.

A reading of his books shows that Fr. B goes beyond merely quoting the law or jurisprudence. He looks at the history of the provision, often providing the contextual background, so that both students and teachers alike can better appreciate its purpose. Thus, his discussions go beyond the words in the Constitution or Law — explaining further the reason and rationale for every provision. This makes for a more comprehensive understanding and appreciation of the Constitution. It helps give life and meaning to the text and letters, and in a way, contributes to the continued study and discourse of the Law and the Constitution.

IV. A LEGAL GIANT FOR PHILIPPINE ENVIRONMENTAL LAW

Fr. B is, of course, best known as a Constitutional, Political, and Public International Law expert.⁹ His thorough and deep analysis of the Philippine Constitution has also helped shaped the development of Philippine Environmental Law. His teachings, which have given life to the entire Constitution, allow for a broader understanding of the relevance of different provisions to Environmental Law. As this Part of the Article will note, provisions related to nature and its conservation are abound in the Constitution.

7. See, e.g., JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2009) [hereinafter BERNAS, 1987 CONSTITUTION]; JOAQUIN G. BERNAS, S.J., *THE INTENT OF THE 1986 CONSTITUTION WRITERS* (1995); JOAQUIN G. BERNAS, S.J., *PHILIPPINE CONSTITUTIONAL LAW* (1984); & JOAQUIN G. BERNAS, S.J., *A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS* (1971).

8. JOAQUIN G. BERNAS, S.J., *INTRODUCTION TO PUBLIC INTERNATIONAL LAW* (2009).

9. Eugene T. Kaw, Blog Post, *Fr. Joaquin Bernas, SJ: The Man for All Seasons and Once in a Generation*, *THEDIARIST.PH*, Mar. 9, 2021, available at <https://www.thediarist.ph/fr-joaquin-bernas-sj-the-man-for-all-seasons-and-once-in-a-generation> (last accessed May 5, 2022) [<https://perma.cc/652X-VGGV>].

Environmental rights in the Constitution are enshrined in Section 16 of Article II.¹⁰ Fr. B's book¹¹ devotes his discussion on the aforementioned provision¹² in the celebrated case of *Oposa v. Factoran, Jr.*¹³ As noted in the decision of the Court, Section 16¹⁴ is a self-executing provision (despite being in the Article on Declaration of State Policies) and calls on the government to protect and preserve the environment for current and future generations.¹⁵ The case espoused the principle of intergenerational equity — recognizing the right of generations yet unborn to a clean, healthy, and safe environment.¹⁶ Rights to a balanced and healthful ecology are basic rights which “predate all governments and constitutions”¹⁷ and “need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”¹⁸

The *Oposa* case has been cited and referred to in a long line of Supreme Court decisions.¹⁹ As the first case which discussed the principle of intergenerational equity and responsibility, it has inspired foreign courts and jurisprudence to issue similar rulings.²⁰ One article even noted and cited several international environmental lawyers picking up on the ruling.²¹

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10. PHIL. CONST. art. II, § 16. The Constitution provides, “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” PHIL. CONST. art. II, § 16.
 11. BERNAS, 1987 CONSTITUTION, *supra* note 7, at 20.
 12. PHIL. CONST. art. II, § 16.
 13. *Oposa v. Factoran, Jr.*, G.R. No. 101083, 224 SCRA 792 (1993).
 14. PHIL. CONST. art. II, § 16.
 15. *Oposa*, 224 SCRA at 817.
 16. *Id.* at 802-03.
 17. *Id.* at 805.
 18. *Id.*
 19. *See, e.g.*, Tano v. Socrates, G.R. No. 110249, 278 SCRA 154, 179 (1997); Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. No. 171947, 574 SCRA 661, 692 (2008); Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes, 758 Phil. 724 (2012); & Bangus Fry Fisherfolk v. Lanzanas, G.R. No. 131442, 405 SCRA 530, 547 (2003).
 20. Ma. Socorro Z. Manguiat & Vicente Paolo B. Yu III, *Maximizing the Value of Oposa v. Factoran*, 15 GEO. INT'L ENVTL. L. REV. 487, 494-95 (2003).
 21. *See* Emily Newburger, Visionary of the Visayan Sea, *available at* <https://today.law.harvard.edu/feature/visionary-of-the-visayan-sea> (last accessed May 5, 2022) [<https://perma.cc/MJE3-9G9U>].

Intergenerational equity is now also recognized as an emerging principle of International Environmental Law.²²

Environment-related provisions of the 1987 Constitution do not stop with Section 16, Article II.²³ As reflected in the various decisions of the Supreme Court and upon careful analysis of the provisions guided by the work and teachings of Fr. B, one will find that the Constitution is replete with text for the environment.

Article I on the National Territory encapsulates that Philippine territories (and its natural resources) must be protected by the State.²⁴ Section 2, Article II adopts the “generally accepted principles” as part of the law of the land,²⁵ including International Environmental Law principles such as the polluter pays,²⁶ sustainable development,²⁷ precautionary principle,²⁸ and sovereignty over natural resources,²⁹ among others. Section 15, Article II on the right to health becomes more relevant during this time of the pandemic since it cannot

22. See LAL KUKRUKULASURIYA & NICHOLAS A. ROBINSON, *UNEP TRAINING MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW* 26 & 310 (2006).

23. PHIL. CONST. art. II, § 16.

24. PHIL. CONST. art. I. Article 1 provides —

Article I. National Territory. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

PHIL. CONST. art. I.

25. PHIL. CONST. art. II, § 2. (“Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land[,] and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”).

26. See *generally* PHILIPPE SANDS, ET AL., *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 240 (4th ed. 2018).

27. *Id.* at 217.

28. *Id.* at 229.

29. *Id.* at 201.

be understated that the health of the people and the health of the planet are inextricably linked.³⁰

Article X on Local Governments³¹ also has significance for environmental protection and conservation. Local Government Units (LGUs) play a critical role in Environmental Law being the frontliners of the government because several environment-related functions and duties have been devolved to local governments (e.g., waste management).³² The following rights and powers of local governments in relation to the national government have likewise been outlined:³³ the right to create its own sources of revenues³⁴ and the right to

30. PHIL. CONST. art. II, § 15. (“Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.”).

31. PHIL. CONST. art. X.

32. Gregorio Rafael P. Bueta & Katrina Isabelle G. Pimentel, *Do the LOCALmotion: Local Government Powers and Climate Change in the Philippines*, 65 ATENEO L.J. 1294, 1315 (2021).

33. PHIL. CONST. art. X, § 4. (“Section 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.”).

See League of Provinces of the Philippines v. Department of Environment and Natural Resources, G.R. No. 175368, 696 SCRA 190 (2013), wherein the Court ruled that

[i]ndeed, Section 4, Article X (Local Government) of the Constitution states that ‘[t]he President of the Philippines shall exercise general supervision over local governments,’ and Section 25 of the Local Government Code reiterates the same. General supervision by the President means no more than seeing to it that laws are faithfully executed or that subordinate officers act within the law.

Id. at 211 (citing BERNAS, 1987 CONSTITUTION, *supra* note 7, at 379).

34. PHIL. CONST. art. X, § 5. Section 5 provides —

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees[,] and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

PHIL. CONST. art. X, § 5. This provision can be the basis for local ordinances which impose fines for littering, or for the use of certain products of the conduct of activities which may cause harm or damage to the environment.

an equitable share in the utilization and development of natural resources within their jurisdiction.³⁵

The provisions of Article XII on the National Economy and Patrimony³⁶ also bear importance for the environment and natural resources law in the Philippines. Section 2, Article XII embodies the *Regalian Doctrine*, wherein lands of the public domain and all natural resources are owned by the State.³⁷

35. PHIL. CONST. art. X, § 7. (“Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.”).

36. PHIL. CONST. art. XII.

37. PHIL. CONST. art. XII, § 2. The Constitution provides —

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least [60%] of whose capital is owned by such citizens. Such agreements may be for a period not exceeding [25] years, renewable for not more than [25] years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall

Section 3, Article XII on land classification calls for Congress to take into account the “requirements of conservation, ecology, and development.”³⁸ Other provisions include the determination of the limits of forest lands and national parks,³⁹ and rights of indigenous peoples and cultural communities.⁴⁰

promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within [30] days from its execution.

PHIL. CONST. art. XII, § 2.

38. PHIL. CONST. art. XII, § 3. Section 3 provides —

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding [25] years, renewable for not more than [25] years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than [500] hectares, or acquire not more than [12] hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine[] by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

PHIL. CONST. art. XII, § 3.

39. PHIL. CONST. art. XII, § 4. Section 4 provides —

Section 4. The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

PHIL. CONST. art. XII, § 4.

40. PHIL. CONST. art. XII, § 5. Section 5 provides —

Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The discussion above shows that the 1987 Constitution is replete with provisions that are important for Environment and Natural Resources Law. As elaborated, Environmental Law in the Constitution goes beyond Section 16,⁴¹ and various provisions in the fundamental charter can be read and interpreted as forming the constitutional legal framework for the environment. That is why understanding and learning the Constitution is foundational for one's legal arsenal for the people and the planet.

This is where Fr. B's works and teachings on the Philippine Constitution become important for Environmental Law. It is true that he was not considered an Environmental Law expert, and his book⁴² devotes fewer pages on Section 16, Article II as compared to, for example, the Bill of Rights provisions.⁴³ The depth of his analysis, his teaching, and his giving life and light to the entire Constitution, however, allow for a broader and deeper understanding of the various provisions' relevance to Environmental Law and the protection of nature and natural resources.

V. STRENGTHENING ENVIRONMENTAL CONSTITUTIONALISM IN THE PHILIPPINES

A thorough and detailed analysis of the Constitution is important for the development and advancement of the concept of environmental constitutionalism. As early as almost a decade ago, leading experts have recognized that “[m]ore and more constitutions around the world [—] from Bangladesh to Bolivia, and from the Philippines to the countries of the EU [—] are explicitly protecting environmental rights and the values of a clean and healthy environment.”⁴⁴ This has led to an increase in the recognition of environmental rights based on constitutional provisions. As another study notes —

Approximately 150 of the world's 193 UN members have constitutions from about 90 nations that expressly or implicitly recognize some kind of fundamental right to a quality environment, while a similar number imposes

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

PHIL. CONST. art. XII, § 5.

41. PHIL. CONST. art. II, § 16.

42. See BERNAS, 1987 CONSTITUTION, *supra* note 7, at 90-91.

43. PHIL. CONST. art. II, § 16.

44. Erin Daly, *Constitutional Protection for Environmental Rights: The Benefits of Environmental Process*, 17 INT'L J. PEACE STUD. 71, 71 (2012).

corresponding duties on individuals or the [S]tate to protect the environment, and about three dozen establish procedural rights in environmental matters. Constitutions also identify environmental protection as a matter of national policy, and some recognize specific rights concerning water, sustainability, nature, public trust[,] and climate change. [] About two-thirds (126) of the constitutions in force address natural resources in some fashion, including water (63), land (62), fauna (59), minerals and mining (45), flora (42), biodiversity or ecosystem services (35), soil/sub-soil (34), air (28), nature (27), energy (22), and other (17).⁴⁵

Over the past few decades, environmental constitutionalism has grown in both use and recognition. One expert notes that over three decades ago, constitutional issues rarely arose in Environmental Law.⁴⁶ As environmental issues increased along with global economic development, its impacts are felt by more and more people, especially the already vulnerable members of society.⁴⁷ This in turn impacted people's basic and fundamental rights, such as the right to life.⁴⁸ Thus, early environmental cases using constitutional proscriptions used provisions on the right to life or the right to a dignified life. Environmental constitutionalism examines the development, implementation, and effectiveness of incorporating environmental rights, procedures, and policies into constitutions around the globe.⁴⁹ As a concept, it is best described to be

a relatively recent phenomenon at the confluence of [C]onstitutional [L]aw, [I]nternational [L]aw, [H]uman [R]ights, and [E]nvironmental [L]aw. It embodies the recognition that the environment is a proper subject for protection in constitutional texts and for vindication by constitutional courts worldwide. Environmental constitutionalism offers one way to engage environmental challenges that fall beyond the grasp of other legal constructs. It can be coalescent, merging governmental structures and individual rights

45. JAMES R. MAY & ERIN DALY, GLOBAL JUDICIAL HANDBOOK ON ENVIRONMENTAL CONSTITUTIONALISM 19 (3d ed. 2019).

46. Jim May, Constitutional Environmental Law, *available at* <https://blogs.law.widener.edu/envirolawcenter/environmental-law/constitutional-environmental-law> (last accessed May 5, 2022) [<https://perma.cc/ZE7E-SYWL>].

47. Paritosh Kasotia, UN Chronicle, The Health Effects of Global Warming: Developing Countries Are the Most Vulnerable, *available at* <https://www.un.org/en/chronicle/article/health-effects-global-warming-developing-countries-are-most-vulnerable> (last accessed May 5, 2022) [<https://perma.cc/AU2C-NKN9>].

48. *Id.* at 18.

49. MAY & DALY, *supra* note 45, at 10.

approaches to further individual and collective norms and policies. It can be used to protect local concerns [—] such as access to fresh food, water[,] or air [—] or global concerns like biodiversity and climate change that share elements of both human rights and environmental protection.⁵⁰

The Philippines, with its provision on the right to a clean and healthy environment enshrined in Section 16, Article II,⁵¹ along with the landmark and groundbreaking *Oposa* case, is well-placed among the leaders in environmental constitutionalism. *Oposa* contributed intergenerational equity and responsibility to the roster of international jurisprudence.⁵² Over the years, this constitutional right has been strengthened and reinforced by the Supreme Court in a long line of cases. The continuous study of the Constitution will ensure the growth and development of environmental constitutionalism in the country.

VI. PROSPECTS FOR ENVIRONMENTAL CONSTITUTIONALISM: TESTING BOUNDARIES, EXPANDING RIGHTS

Though on firm footing because of Section 16, Article II⁵³ and the long line of jurisprudence to support it, still, environmental constitutionalism must not rest on its laurels but rather expand the development of Philippine Environmental Law. Environmental issues are complex, often evolving and changing due to many factors.⁵⁴ Its inherent unpredictability, coupled with humans' ever-increasing impact on nature creates a dangerous situation where laws and policies are unable to cope and keep up with the times.⁵⁵ As

50. *Id.* at 7.

51. PHIL. CONST. art. II, § 16.

52. Silver Donald Cameron, *The Sword of Reason and the Power of the Law: The Constitutional Right to a Healthy Environment*, at 1, available at <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Child/SilverDonald.pdf> (last accessed May 5, 2022) [<https://perma.cc/H4RX-EN3L>].

53. PHIL. CONST. art. II, § 16.

54. See Rosina M. Bierbaum & Annette Cowie, *Integration: To Solve Complex Environmental Problems* (Scientific and Technical Advisory Panel Technical Report June 2018), at 3, available at <https://www.thegef.org/sites/default/files/publications/STAP%20Report%20on%20integration.PDF> (last accessed May 5, 2022) [<https://perma.cc/5EJZ-C78R>].

55. See Nikolaos Voulvoulis & Mark A. Burgman, *The Contrasting Roles of Science and Technology in Environmental Challenges*, 49 *CRITICAL REV. ENVTL. SCI. & TECH.* 1079, 1081 (2019).

environmental challenges increase and new crises and issues emerge, the need to improve environmental rights and laws becomes imperative.⁵⁶

Climate change is one issue that can benefit from environmental constitutionalism.⁵⁷ Many will argue that climate change is the defining challenge of this generation⁵⁸ — with its current and future impacts on human life far surpassing those of the COVID-19 pandemic. As of this writing, the Philippines still does not have any jurisprudence on climate change nor has Section 16, Article II been interpreted to expand its scope to climate rights and climate justice.⁵⁹ Given the inextricable link between environmental degradation and climate impacts, including climate rights as part of the rights under the Constitution, this may lead to better and more concrete action on climate change. Those already vulnerable to environmental harm are the same ones most at risk to rising sea levels, warmer temperatures, and frequent extreme weather events;⁶⁰ thus, needing the same constitutional protection afforded by Section 16.⁶¹

Another area of environmental constitutionalism worth exploring is giving rights to nature itself explicitly in our Constitution. As worded and interpreted, the Constitution takes an anthropocentric approach, protecting the rights of people to the environment.⁶² A reinterpretation has been done

56. See PAULA CORDERO, ET AL., TRADE AND ENVIRONMENTAL ISSUES 7 (2008).

57. “One of Asia’s most prominent climate change cases builds on environmental constitutionalism and the right to life.” ASIAN DEVELOPMENT BANK, CLIMATE CHANGE, COMING SOON TO A COURT NEAR YOU: CLIMATE LITIGATION IN ASIA AND THE PACIFIC AND BEYOND 36 (2020).

58. Jian Liu, Chief Scientist, United Nations Environment Programme, Address at Opening Ceremony of the IPCC 48 (Oct. 1, 2018) (transcript available at <https://www.ipcc.ch/site/assets/uploads/sites/2/2019/03/Address-by-Mr-Jian-Liu-Acting-Director-Chief-Scientist-United-Nations-Environment-Programme-UN-Environment.pdf> (last accessed May 5, 2022) [<https://perma.cc/W2AV-RMBC>]).

59. PHIL. CONST. art. II, § 16.

60. Press Release by United Nations Security Council, *Climate Change ‘Biggest Threat Modern Humans Have Ever Faced’, World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation* (Feb. 23, 2021) (on file with the United Nations Security Council).

61. PHIL. CONST. art. II, § 16.

62. See Reynato S. Puno, Associate Justice, Supreme Court, *Philippine Environmental Law Practice and the Role of the Courts*, Address at the Judges’ Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts (Aug. 14, 2003) (transcript available at

in some jurisdictions to recognize the legal rights and legal personhood of nature, including wildlife, rivers, and other natural features.⁶³ This gives nature better legal protection, and a corresponding obligation on the part of the State to accord them the same protection of rights as humans might have. This does not seem like a far-fetched idea because Section 16 itself refers to the “rhythm and harmony of nature,”⁶⁴ implying that all parts of nature, humans, wildlife, and other alike, need to be protected.

VII. FR. B’S LEGACY FOR ENVIRONMENTAL LAW

Fr. B’s deep study and understanding of the Constitution continues to shape and mold future lawyers today, and surely for many years to come. In the same vein, his analysis of the different provisions of the fundamental law leads to a broader understanding of environmental constitutionalism. This becomes more relevant and crucial as the Philippines continues to face other crises such as climate change, loss of biodiversity, and plastic waste, among many others. Though many such as myself will surely miss the guru of the Philippine Constitution, his legacy will live on across the many fields and disciplines of law — a testament to him being a legal giant second to none.

https://philja.judiciary.gov.ph/files/learning_materials/Phil_Envi_Law_Puno.pdf (last accessed May 5, 2022) [<https://perma.cc/5ZAG-2GA3>].

63. See, e.g., Rina Chandran, *Fears of Evictions as Bangladesh Gives Rivers Legal Rights*, REUTERS, July 5, 2019, available at <https://www.reuters.com/article/us-bangladesh-landrights-rivers/fears-of-evictions-as-bangladesh-gives-rivers-legal-rights-idUSKCN1TZ1ZR> (last accessed May 5, 2022) [<https://perma.cc/Y77C-LTBF>].

64. PHIL. CONST. art. II, § 16.

The Law, the Church, & Informed Conscience: A Personal Appreciation of Fr. Bernas, Priest & Lawyer

*Ismael Jose III V. Chan-Gonzaga, S.J.**

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I. INTRODUCTION

Fr. Joaquin G. Bernas, S.J. was always regarded as a brilliant lawyer, legal maverick, and visionary — truly a legal luminary. Personally, I had the chance to experience his sharpness firsthand in 2012, during the public debates on the controversial Reproductive Health Bill (RH Bill),¹ now Republic Act No. 10354.² It was during those public exchanges where I saw and admired how he used his legal expertise in furthering a fundamental tenet in our Catholic Christian faith. It was amazing to witness the “guru” at work. His interventions during that public debate, allowing something that seemed so

* '16, J.D., Ateneo de Manila University School of Law. The Author is a member of the Society of Jesus and is the Rector for the Jesuits in Cagayan de Oro City. He is currently the Director of the Xavier University College Campus Ministries as well as a professor at Xavier University College of Law where he teaches Agrarian Reform, Administrative Law, Labor Law, Criminal Law, Legal Ethics, and Human Rights Law. He also teaches Legal Ethics at the Ateneo de Zamboanga University College of Law, and Theology & the Law and Legal Ethics at the Ateneo de Manila University School of Law. He previously wrote *Outsourcing State Obligations Under the 1951 Refugee Convention to a Third Country: Acceptable Solution or Inhumane Deflection*, 1 COGITANT LEGALIS 121 (2021).

1. An Act Establishing a Reproductive Health Care Act, Strengthening Its Implementing Structures, Appropriating Funds Therefor and for Other Purposes, H.B. No. 4110, 12th Cong., 1st Reg. Sess. (2001).
2. An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [The Responsible Parenthood and Reproductive Health Act of 2012], Republic Act No. 10354 (2012).

secular to be an instrument of deeper appreciation for the role of freedom in a Catholic faithful's formation of conscience, astounds me to this day.

I saw a priest-lawyer, with deep understanding of the Catholic Faith, fighting for the very Spirit of what that Faith is all about. A true son of the Church who used his mastery of the law to bring about a fuller understanding of the fundamental Church doctrine of primacy of conscience even when the hierarchy first thought otherwise.

An exchange that drew out the best of Fr. Bernas' acuity, and which I wish to use as a "jump off point" in this Article, was on a particular point during the RH Bill controversy, where the Catholic Bishops' Conference of the Philippines (CBCP), through Bishop Emeritus Gabriel V. Reyes, D.D., took exception to Fr. Bernas' published stand.³ It was on the free distribution of condoms by government health facilities.⁴ The CBCP felt that this was too much, insisting that condoms are already readily available on the free market.⁵ Fr. Bernas countered with the most straightforward and candid answer on the matter, noting "a 'clear implication' of [Bp.] Reyes' claim that people can easily buy contraceptives in drugstores [is] that 'the world is *free* and anyone can buy these.' [Fr. Bernas] said[,] '*This is simply not true. Only those who have the money can buy them.*'"⁶

It was on this point, so seemingly trivial to some (especially for non-Catholic Christians) yet particularly "alarming" to others (for devout Catholics), that Fr. Bernas showed best his being pastor, priest, and Filipino lawyer. For those who may not understand the intricacy of the matter, Fr. Bernas' comment could have simply come across as a "smart aleck remark." But for Catholic Christians, Fr. Bernas' answer cuts through to the very core of the faith life. If seriously reconsidered, for the Catholic faithful, and more so for me, as priest and pastor (and lawyer), this statement hints at an important doctrine of the Catholic Faith — *the teaching on the primacy of informed moral conscience.*

3. Paterno Esmaguél II, *Bernas Refutes Bishop's RH Claims*, RAPPLER, Sept. 10, 2012, available at <https://r3.rappler.com/nation/12130-bernas-refutes-bishop-s-rh-claims> (last accessed May 5, 2022) [<https://perma.cc/QC5C-LJDZ>].

4. *Id.* (citing Fr. Joaquin Bernas, S.J., *Conversing with a Bishop*, PHIL. DAILY. INQ., Sept. 10, 2012, available at <https://opinion.inquirer.net/36410/conversing-with-a-bishop> (last accessed May 5, 2022) [<https://perma.cc/PAX5-HTG3>]).

5. *Id.*

6. *Id.* (emphases supplied).

II. CHURCH TEACHING ON INFORMED CONSCIENCE AND FREEDOM AND FR. BERNAS' PASTORAL CONTRIBUTION

Catechism of the Catholic Church (CCC) 1777 states that “[m]oral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil.”⁷

CCC 1778 further explains that

[c]onscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescriptions of the divine law[.]⁸

A priest’s role then in the Church, in his pastoral obligations to the faithful, is to make sure that his flock is able to reach such maturity of conscience. Priests and religious leaders are not to dictate upon people how or in what way they should act, but rather to journey with them and to make sure that they are informed and capacitated in all aspects of living so they may come to a maturity of faith and morals to choose (freely) what is proper and to avoid what is wrong, because “[o]nly in freedom can man direct himself toward goodness.”⁹

God created man in His very image and likeness, granting him (in love) to hopefully respond to Him, in love. Love is not imposed, it is never forced. The role of priests is to walk with the flock in their own discovery of this love affair (unique to each one) with their God and Creator, and in discovering, come to be able to freely respond in love. Only then, in this free responding, can love be true. This love is the foundation and bedrock of a fully formed and mature conscience. *Gaudium et Spes*, paragraph 17 states, “[f]or God has willed that man remain ‘under the control of his own decisions,’ so that he

7. CATHOLIC CHURCH, CATECHISM OF THE CATHOLIC CHURCH 438, ¶ 1777 (2d ed. 2019) (citing *Romans* 2:14-16 & 1:32 (New International) (explaining that “moral conscience” is doing acts required by law, without having such law)).

8. *Id.* ¶ 1778.

9. Second Vatican Council, Pastoral Constitution on the Church in the Modern World: *Gaudium Et Spes* (Promulgated by His Holiness, Pope Paul VI on Dec. 7, 1965), ¶ 17, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat_ii_const_19651207_gaudium-et-spes_en.html (last accessed May 5, 2022) [<https://perma.cc/9JKS-E2TD>].

can seek his Creator spontaneously, and come freely to utter and blissful perfection through loyalty to Him.”¹⁰ This means that “man’s dignity demands that he act according to a knowing and *free* choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure.”¹¹

Again, CCC 1782 clearly states, “[m]an has the right to act in conscience and in freedom so as personally to make moral decisions. ‘He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.’”¹²

For Fr. Bernas, Mother Church’s teachings are clear, and it was his duty, as priest and pastor, to make sure that this very teaching is appreciated in its proper nuance and context. It is clear — authentic freedom is an important element in the maturity of conscience. Authentic freedom is not practiced or exercised in a vacuum; it is exercised in secular day-to-day life. And living it out in secular life would mean an opportunity for civil law to aid in achieving this end. Proper legislation can be key to achieving a level of equality that allows for a citizen (and a Catholic Christian faithful) to find in his or her very context the necessary tools for forming that free, mature, and informed conscience. After all, “[c]onsciences are formed primarily by living and being socialized into a particular type of social context. Folks learn how to exercise their consciences on the basis of the day-to-day experiences, personal relationships, cultural norms, institutional policies, and the relative amount of social power they have.”¹³

10. *Id.* (citing *Sirach* 15:14 (explaining that God’s will for man to remain “under the control of his own decisions” recalls Him creating humankind and leaving them with the power of their own free choice)).

11. *Id.* (emphasis supplied).

12. CATHOLIC CHURCH, *supra* note 7, at 439, ¶ 1782 (citing Second Vatican Council, Declaration on Religious Freedom: *Dignitatis Humanae* on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious (Promulgated by His Holiness Pope Paul VI on December 7, 1965), ¶ 3, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (last accessed May 5, 2022) [<https://perma.cc/4BMC-DH8F>] (The following statement is quoted — “It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.” *Id.*)).

13. Michael P. Jaycox, Theology and Religious Studies Professor at Seattle University, *ICTC Talk on the Primary of Conscience*, Speech at the Seattle

Fr. Bernas' stance on the entire RH Bill controversy was fundamentally anchored on freedom of religion and the fact that this country is not a country only of Catholic Christians.¹⁴ A good number of provisions in the RH Bill addressed basic human conditions and physiological plights that cut across different religious precepts,¹⁵ some acceptable to other religions even if not for the Catholic Faith. Fr. Bernas insisted that though the Catholic Faith holds to certain moral doctrines, in the interest of purely human conditions, the RH Bill served to promote life and health, not death and suffering¹⁶ — important considerations for a national leadership whose people were of different religious denominations.

From the beginning of the RH Bill controversy, Fr. Bernas was already carefully studying the proposed law and making public some of his thoughts and interpretations. In a commentary in his Philippine Daily Inquirer column, entitled “Sounding Board,” back in August 2012, he wrote “[you] [d]on’t burn [a] house [down] to roast a pig.”¹⁷ He studied the RH Bill not only from a purely religious or institutional Catholic Church’s perspective nor exclusively from an objectively secular legal frame, but also through a humanitarian paradigm that encompassed greater societal benefits still very much faithful to basic Catholic teachings.

As mentioned earlier, the goal of faith teaching is to form a faithful’s conscience, that he or she may be able to function according to the proper tenets of his or her faith in his or her day-to-day living. This calls for the Church to find means in order for the individual to grow in maturity of faith.

University (Mar. 5, 2020) (transcript available at <https://www.seattleu.edu/media/institute-for-catholic-thought-and-culture/files/images/resources/Jaycox---Primacy-of-Conscience.pdf> (last accessed May 5, 2022) [<https://perma.cc/4CBT-MHCP>]).

14. See Fr. Joaquin G. Bernas, S.J., *My Stand on the RH Bill*, PHIL. DAILY. INQ., May 23, 2011, available at <https://opinion.inquirer.net/5340/my-stand-on-the-rh-bill> (last accessed May 5, 2022) [<https://perma.cc/6VWP-QR3H>].
15. See H.B. No. 4110, § 2 & The Responsible Parenthood and Reproductive Health Act of 2012, § 2.
16. See Bernas, *supra* note 14.
17. Fr. Joaquin G. Bernas, S.J., RH Bill: *Don't Burn the House to Roast a Pig*, PHIL. DAILY INQ., Aug. 6, 2012, available at <https://opinion.inquirer.net/34153/rh-bill-dont-burn-the-house-to-roast-a-pig> (last accessed May 5, 2022) [<https://perma.cc/27VL-WNES>].

The Church hierarchy (magisterium)¹⁸ is called upon to set up or chart the proper standards and moral principles that should govern and be considered, be the primary movers in assisting the faithful in the formation of their consciences by granting all the possible tools and information available, and then grant the space (in trust) for each faithful to be able to choose and follow his or her conscience healthily and freely.¹⁹ This means fullness of the freedom allowed in order to come up with that conscious, deliberate, and free choice. Anything else is not an exercise of true freedom because then there is a hindrance to the fullness of the expression of faith.²⁰

According to CCC 1743 and 1744, “God willed that man should be left in the hand of his own counsel ... , so that he might of his own accord seek his creator and freely attain his full and blessed perfection by cleaving to him”²¹ and “[f]reedom is the power to act or not to act, and so to perform deliberate acts of one’s own. Freedom attains perfection in its acts when directed toward God, the sovereign Good.”²² It is that freedom that allows for man to be able to choose, in the most perfect of manners, that which is good and right and loving. After all, a person who is not free cannot respond or choose properly²³ (from a Catholic moral paradigm).

For Fr. Bernas then, being a lawyer, it was his duty as well to make sure that the law he considered himself a student of can be an instrument that can make this accessibility (and freedom) possible. As a scholar of the law and pastor of his flock, he was to find those “opportunities” to make sure a person

18. Merriam-Webster, Definition of Magisterium, *available at* <https://www.merriam-webster.com/dictionary/magisterium> (last accessed May 5, 2022) [<https://perma.cc/HSG8-TAAZ>].

19. Peter Ikechukwu Osuji, “*Who Am I to Judge?*” *A Revival of the Primacy of Conscience and the Impact of Culture in the Formation of Conscience*, 10 *ASIAN HORIZONS* 723, 727 (2016).

20. *See id.* at 729. *See also* Congregation for the Doctrine of the Faith, Instruction on Christian Freedom and Liberation, ¶ 32, *available at* https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19860322_freedom-liberation_en.html (last accessed May 5, 2022) [<https://perma.cc/NY28-D7CN>].

21. CATHOLIC CHURCH, *supra* note 7, at 433, ¶ 1743 (citing *Sirach* 15:14 (explaining that God’s will for man to remain “under the control of his own decisions” recalls Him creating humankind and leaving them with the power of their own free choice) & Second Vatican Council, *supra* note 9, ¶ 17).

22. *Id.* ¶ 1744.

23. *See* Second Vatican Council *supra* note 9, ¶ 17. “Only in freedom can man direct himself toward goodness.” *Id.*

is able to fully exercise his conscience according to the tenets of his or her faith, tradition, or teaching. For Fr. Bernas, the law can always be used in service of the very faith he loved and bore witness to. And to harness the law to be able to express the most real Spirit behind it, what the law is for, is but the responsibility of one who has the capacity to understand and bridge the two. After all, both civil and church law ultimately are for the betterment of the human person. The law is made for man (may it be biblical or otherwise) so he may be able to achieve the best he can be. For this is what our faith tradition pushes for — the betterment of the human so as to be able to give glory to the Divine.

CCC 1776 continues —

[d]eep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment. ... For man has in his heart a law inscribed by God.²⁴

For Catholic Christians, conscience is something that is gifted to us by God Himself. It is grace, not arbitrary or fleeting or temporary. It is given, in love, by God to us, His children that we may know what is right and wrong and live freely in His love.²⁵ Love is the bedrock of authentic conscience formation, and this can only come to fruition if man is able to also develop, in free disposition, to ultimately find his way to God too.

Truly, sharp and significant was that response of Fr. Bernas after being addressed about the free distribution of condoms as part of the government roll out of the RH Law. Fr. Bernas continued that without resources (monetary and more), the poor are prevented from fully exercising their freedom to choose.²⁶ If the government will not fund the contraceptives, in a way, then truly only those who have resources can find these accessible, but not those who might, in good conscience, need them most.²⁷ “The exercise of freedom is only possible if one has the capacity to choose[.]” concluded Fr. Bernas.²⁸

24. CATHOLIC CHURCH, *supra* note 7, at 438, ¶ 1776 (citing Second Vatican Council, *supra* note 9, ¶ 16).

25. Elizabeth Bigelow, Freedom in Our Conscience, *available at* <https://www.catholicapostolatecenter.org/blog/freedom-in-our-conscience> (last accessed May 5, 2022) [<https://perma.cc/XV9X-BSH7>].

26. Bernas, *supra* note 4.

27. See Esmaguél, *supra* note 3.

28. Bernas, *supra* note 4.

The Church teaches of the primary importance to form our conscience. That it is the primacy of conscience — a mature, educated conscience that is inviolable. However, one has to understand that conscience, as Catholic Christians understand it, is not all about reading Church documents. Conscience is formed through living and being socialized into a particular context and history. One develops a mature conscience taking into account daily experiences, relationships, norms, institutional policies, and situations.²⁹ Part of these existential conditions are governmental actions and programs that, when taken into personal and communal reflection and discernment, can also become tools to allow for that chance at a more informed conscience to choose what is right according to one's belief. The Church is there precisely to guide its faithful in the ways of proper discernment and maturity, to come up with responsible decision making. Then, the deciding becomes freer and proper.

III. CONCLUSION

The Church is meant to teach dogma and priests are to make sure that they have accompanied the faithful to a state healthy and free enough to apply such dogma. As influencer and *amicus curiae*, Fr. Bernas made full use of his expertise to allow for that chance when the government can also become an opportunity of equity for everyone. The pluralism that the constitutional framers fought hard for in the Bill of Rights encompasses all religions including those not of the Catholic Christian tradition. But this does not mean that the law needs to be detached from our Church teachings. If there is a chance to further the development of our moral faith, then these opportunities must be taken, no matter how seemingly secular it first comes out to be.

Here, I have come to appreciate the depth of the spirituality of Fr. Bernas and the love he had as Mother Church's faithful son. Taking her teachings in its purity and fighting (even risking possible misappreciation by present hierarchy) to make sure that, as ministers of faith, priests can make use of their giftedness to allow for that teaching to find proper meaning and development rooted in the actual, lived experience of their flock.

It was always clear, for Fr. Bernas, that the only way (as taught by the faith) a mature, informed conscience can grow more is the chance to have access to "teachable moments" that will bring out the best in each one. His expertise of the law also granted him that stature to be able to make sure that people, of whatever faith tradition, can benefit from a very fundamental principle of the Catholic faith in inclusivity and in love.

29. Jaycox, *supra* note 13.

As beautifully articulated in the CCC, God wanted human freedom so that man “might of his own accord seek his Creator and freely attain his full and blessed perfection by cleaving to him.”³⁰ Further —

Man’s dignity [] requires him to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by blind impulses in himself or by mere external constraint. Man gains such dignity when, ridding himself of all slavery to the passions, he presses forward to[wards] his goal by freely choosing what is good[,] and, by his diligence and skill, effectively secures for himself the means suited to this end.³¹

Fr. Bernas insisted on the State’s primary duty to allow for equal opportunity and access for all while being true to his pastoral duty of assisting the Church’s continuing mission of forming consciences equipped for proper discernment. Going back to the original issue of free distribution of condoms, Fr. Bernas’ sharp insistence that the State makes sure that access to these is not only for the (buying) few is well-grounded in the State responsibility of granting equal access for all regardless of religious affiliation or social status for health benefit. However, he was also actively engaged, as teacher and priest, with the duty of the Church and her pastors to accompany the flock in the proper appreciation of the choices they have before them. He worked hard to teach and explain faithfully the different teachings of the Catholic Faith in this matter so the faithful can come to a freer and more mature choice in the use of these contraceptives. After all, only then can the faithful’s choice, acted upon in good and informed conscience, become most free and true.

As Pope Francis exhorted in his encyclical, *Fratelli Tutti* —

Every commitment inspired by the Church’s social doctrine is ‘derived from charity, which according to the teaching of Jesus is the synthesis of the entire []aw ... This means acknowledging that ‘love, overflowing with small gestures of mutual care, is also civic and political, and it makes itself felt in every action that seeks to build a better world.’³²

30. CATHOLIC CHURCH, *supra* note 7, at 430, ¶ 1730 (citing Second Vatican Council *supra* note 9, ¶ 17 & *Sirach* 15:14).

31. *Id.* at 562, ¶ 2339 (citing Second Vatican Council, *supra* note 9, ¶ 17).

32. Pope Francis, Encyclical Letter: *Fratelli Tutti* of the Holy Father Francis on Fraternity and Social Friendship, ¶ 181, available at https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html (last accessed May 5, 2022) [<https://perma.cc/785V-BGMQ>] (citing *Matthew* 22:36-40 (explaining that the Church’s social doctrine being derived from charity is analogous to the commandment to “[]ove your neighbor as yourself”); Benedict XVI, Encyclical Letter: *Caritas in Veritate*, ¶ 2, available at

Truly, what is the law for if not to seek to build a better world? Is it a cold, distant object that is blanketly imposed to form people into a certain mold no matter how sharp it cuts? Or is its objective truly to create that atmosphere of peace and mutual care that allows for opportunities for society to grow in love and care, each according to its members' abilities and capabilities? I strongly believe in the later and am certain that this is also the same belief that Fr. Bernas fought so hard for all his life. He did not look at the law as the savior, but rather as simply a medium by which we can aid (or further) salvation.

https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html (last accessed May 5, 2022) [<https://perma.cc/T7NV-7APP>]; & Pope Francis, *Laudato Si'*, ¶ 231, available at https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (last accessed May 5, 2022) [<https://perma.cc/U83K-LRCH>]).

MESSAGES

Hilario G. Davide, Jr.

Retired Chief Justice

Supreme Court of the Philippines

Fr. Bernas: The Immortal

Mine was the great honor and privilege to have worked with Fr. Joaquin G. Bernas, S.J. as his colleague in the 1986 Constitutional Commission. He was, by all measure, a truly distinguished, highly respected, and wisdom-filled Commissioner of the Commission. He was the only one among the 48 Commissioners who was an outstanding infallible authority on Constitutional Law and Jurisprudence; the brilliant Jesuit, who I thought could outlive the only Jesuit Pope in the history of Christianity — Pope Francis. He was the only Commissioner who possessed extraordinary heart, mind, eyes, ears, and hands. A heart of true love for his Creator, his country, and people. A mind filled with wisdom, knowledge, and discernment. *Ears* which even listened to the un-uttered thoughts of his colleagues. *Eyes* which served as brilliant light for his colleagues in their search for what is best for our country and people. *Hands* that never stopped encoding on his desk computer the substantive highlights in the debates during the plenary sessions of the Commission. These served him best when he wrote the first-ever book that perpetuates the intents of the Commissioners — framers of what is now known as the 1987 Constitution of the Republic of the Philippines. This is the only Philippine Constitution that has remained untouched for almost 35 years despite the various attempts of four Presidents to have it amended for their own purposes. This is the only Constitution in the world that is at once pro-God, pro-Life, pro-Filipino, pro-People, pro-Poor, pro-Labor, pro-Social Justice and Human Rights, pro-Family, pro-Youth, pro-Women and pro-Environment. His book remains the most authoritative commentary on the 1987 Constitution.

His passing away at a ripe age of 88 was not an end. It was his birth to Immortality.

Adolfo S. Azcuna

Former Justice

Supreme Court of the Philippines

Fr. Bernas as Ateneo Law Classmate and as Constitutional Commission Colleague

I was fortunate to have shared classes in law school with then Jesuit Scholastic Joaquin G. Bernas, S.J.

In our Criminal Law class under Judge Arsenio G. Solidum, the professor shot this question —

In the game of *jueteng*, who is the banker?

Then he shuffled his cards and shouted “Bernas!”

Fr. Bernas first tried parrying the question —

- It does not matter, Sir.

- *What?* Of course, it matters, because for the banker the penalty is *higher!*

So, Fr. Bernas tried the next weapon in a student’s arsenal — guessing.

- The banker is the one who holds the chits, Sir.

- Ah, *no*. That’s just the collector.

Then he turned to the entire class — *anybody?*

None dared venture to better Fr. Bernas.

So Judge Solidum said — the banker is the one against whom all bets are placed.

At least it proved that none of us, least of all Fr. Bernas, were familiar with the game of *jueteng*.

Years later, Fr. Bernas and I were together again this time as members of the Constitutional Commission of 1986, the 48-member body appointed by revolutionary President Corazon C. Aquino to draft a new Constitution.

Fr. Bernas battled for the abolition of the death penalty. He proposed that the Bill of Rights state, *inter alia*, that “the death penalty shall never be imposed.” Voting followed and his proposal was carried. So, he and his supporters proceeded to have coffee in our dining room.

At this juncture, Commissioner Hilario G. Davide, Jr. stood up and was recognized. He said addressing the Chair, Commissioner Cecilia Muñoz Palma —

- Madam President, I propose an amendment.
- What is the gentleman’s proposed amendment?
- Madam President, I propose that we change the period to a comma and add “unless Congress otherwise provides for it in cases of heinous offenses.”

I seconded the motion.

Voting on the amendment, the same was approved.

These are rare episodes of Fr. Bernas not succeeding in his efforts.

He was a brilliant Constitutionalist who successfully guided the Commission through the difficult choices between Presidential and Parliamentary systems.

Not known to us, he was already writing his book on the new Constitution even as we were drafting it!

But my lasting remembrance of Fr. Bernas is that of a priest and spiritual minister. Especially in his last years he more and more turned to the priesthood side of his person as against his lawyer side, even as these two aspects of Fr. Bernas were a unified field of love, service, and devotion. He would keep reminding us, his classmates, of our spiritual lives and often brought us together in spiritual retreats.

Priest and lawyer par excellence. That is Fr. Joaquin G. Bernas, S.J.

Roberto C. Yap, S.J.

President

Ateneo de Manila University

Mission

If there is one word which could encapsulate the life of Fr. Joaquin G. Bernas, S.J., it would be *mission*.

Much has been said and written about his brilliance as a constitutional lawyer, his incisive thinking, the depth yet simplicity of his homilies, lectures, and writings, and how beloved he was by his students, even though they were also terrified of him. The only thing that I would like to add is how all of Fr. Bernas' words and actions, his many roles as a Jesuit priest, lawyer, and teacher, and everything that he accomplished in the fulfillment of these roles were deeply rooted in his mission of service to God and the Filipino people.

His contributions to the 1987 Constitution and subsequent interpretation and defense of it, especially as an *amicus curiae* of the Supreme Court, consistently showed his concern for safeguarding the fundamental human rights of Filipinos. His firm yet fair manner towards his students displayed his genuine care for their proper formation as the future advocates of social justice for our people. And all his commentary about the law, government, business, religion, and everything else that caught his attention — whether in his lectures, homilies, writings, or casual discussion with friends — were directed towards educating and enlightening his readers and listeners in the hope that they would become better citizens and more compassionate persons.

True to the precepts of Saint Ignatius of Loyola, Fr. Bernas remained a contemplative in action throughout his life, engaging the critical issues of our society and using his extraordinary gifts and intellect in the service of others to make the Philippines a more just and humane nation.

It is during troubled times for our country and the world, such as today, that I miss Fr. Bernas the most. For the sake of the future of the Philippines, I can only hope that his torch for justice and human rights continue to be carried high by others imbued with the same sense of mission which permeated his life.

Giovanni F. Vallente

Associate Dean for Student Affairs

Ateneo de Manila University School of Law

B is for Beacon (A Message to Commemorate the Life of Fr. Bernas)

I would like to congratulate the *Ateneo Law Journal* on its 70th founding anniversary. More importantly, I would like to commend the *Ateneo Law Journal* for dedicating this Special Issue to commemorate the legacy of Fr. Joaquin G. Bernas, S.J., who has not only influenced the course of Philippine history, but also impacted the lives of a lot of Filipinos.

As I look back on my life, I realize that Fr. Bernas was personally present in very key junctures of my life and influenced the direction it took.

When I was a clueless, naive, carefree 15-year-old fourth year high school student of Xavier University, Fr. Bernas, as Jesuit Provincial, spoke to my class to convince members of my class to pursue our college in the Ateneo de Manila University. At that time, I was undecided to take the big leap of studying in the Ateneo. But looking back at my eventual decision, it is clear to me that the talk of Fr. Bernas was a big part of why I decided to move from the comforts of my life in Cagayan de Oro and study in the Ateneo.

Little did I know that Fr. Bernas would soon follow me to Ateneo when he was appointed as University President in my third year. Later on, as I was about to graduate from the Ateneo, the EDSA People Power Revolution happened. When the late Cardinal Jamie L. Sin called on to people to go to EDSA during the first day of the Revolution, I was one of a group of dormers from Cervini Hall to rush to EDSA. When our group arrived at the gate of Camp Crame along EDSA, Fr. Bernas was already there. It was so encouraging to see Fr. Bernas as one of the first ones to respond to the call of Cardinal Sin. He told us that he was happy and proud that we answered the call of Cardinal Sin.

I lost track of Fr. Bernas after I graduated from college. What I did not know, however, was that our paths would cross again in the Ateneo Law School. I was already a member of the Ateneo Law faculty when Fr. Bernas had his second stint as Dean. By then, he was no longer Fr. Bernas to us but

Fr. B. One day, he summoned me to his office. I thought that he was only going to consult me on some legal issue. Not being a litigation lawyer, Fr. B would consult me from time to time on legal matters that involved impending or actual cases in court. At that time, I was only teaching an elective course. I was surprised when out of the blue he asked me if I was willing to teach Criminal Law 1 and 2. I reminded him that I did not have any experience whatsoever teaching Criminal Law. He told me that he was aware of that, but just wanted somebody to be consistently there to teach both Criminal Law 1 and 2. In response, I told him that I am willing to do it if he thinks I should. I have been teaching Criminal Law 1 and 2 for the past 20 years.

As you can see, in very important moments of my life, Fr. B was there to serve as a beacon to point me to the right direction. Without Fr. B's gamble, I would have been content to teach an elective course. I would not have even dared to volunteer to teach Criminal Law. Thus, in my life, B is for beacon.

Teodoro B. Cruz, Jr.

Chairman

Ateneo Law Alumni Association, Inc.

I have known him for more than two-thirds of my lifetime.

He was a much-dreaded professor of Constitutional Law in our first year of law in the Ateneo Law School along Padre Faura Street in the late 60s. Our class shrunk to 20 students due to deferments or transfers to the third section whose professor was more “liberal” in grades. Hence, on a given day, you are called two to three times during recitations.

There was a lady classmate who was called for recitation, but with tears in her eyes, answered with sounds of silence. Fr. Quining, (this was how he was called originally by his family and intimate friends), turned to us and muttered: “*You cannot squeeze blood out of stone.*” For a moment, our class was extremely quiet, as if parsing every word he uttered and etching them indelibly in our hearts.

Fr. Quining exudes a brilliant mind and is impervious of character or mood in the classroom. You need to be prepared, put in the effort, and be focused on your primary responsibility as a student.

When the late Fr. Raul J. Bonoan, S.J. was appointed president of Ateneo de Naga College in 1988, with the task of rehabilitating a financially troubled school, I was privileged to work with Fr. Quining as a fellow member of the Board of Trustees. His sharp insights and expertise as an educator contributed much to Fr. Bonoan’s historic 10-year development program with the objective of converting the college to a university. To date, our alma mater is now a full-blown university, with a college of law at that, and with a dean who is an alumna of our law school. Fr. Quining ensured that law students from his province could acquire the same quality legal education he envisioned, possibly from teachers he has mentored.

As our spiritual adviser in the Ateneo de Manila Law Alumni Association (ALAAI), his retreats were short and compact but meaningful. He was always direct to the point, but he always got his message across.

To honor him as an icon in legal education and to thank him for handholding the alumni community, ALAAI initiated the Fr. Joaquin G. Bernas, S.J. E-Lecture Series, which, for the last two years, has provided online

lectures on recent developments in law and jurisprudence to lawyers and non-lawyers alike.

From my personal interaction with him, I have observed that he demands and draws the best from us, students and alumni alike. He decrees that we transcend ourselves, in the concept of Ateneo's *magis*, and be the ideal *Atenean lawyer*, grounded in law and social justice.

This is Fr. Quining's legacy to us.

Anna Liza L. Su

Professor of Law

University of Toronto

There are many ways to describe Fr. Joaquin G. Bernas, S.J. He was a kind and witty Jesuit priest and confessor, brilliant legal scholar, and inspiring teacher. Indeed, he was all those to generations of students who passed through the halls of Ateneo, including myself. To say that he inspired most of us would be an understatement of his influence on many Filipino lawyers today. In my case, he nurtured my interest and passion in Constitutional Law and international law with the way he taught. He believed in me during times when few others did and even recommended me for graduate studies. That I also happen to teach those same courses in my current profession must be, in some way, connected to him.

What I am most grateful for nonetheless is that not just with respect to nurturing my scholarly interests but showing me and embodying a kind of intellectual life that is also a form of public service. He showed that being an intellectual is not separate from being a kind and decent human being, and a man of ideas is not incompatible with being a man of action. People will always credit him for being one of the main authors of the 1987 Constitution. I prefer to remember his efforts to keep the democratic spirit of the 1987 Constitution alive in his many public submissions and appearances before the Supreme Court in the many years since its drafting. His enormous legacy includes the building blocks of a more just Filipino society, that is, efforts to mold smart and decent lawyers through his teaching and educational leadership, and through his public writings, a kind of legal and political sensibility towards the Constitution that brings to life its promises. But we all know that the law is not the beginning or end of any good society, however important. At bottom, it is about the people. Fr. Bernas was a person for others in more ways than one. And we honor his memory by being not just good lawyers but good people that look out for one another.

Eugene T. Kaw*

Professor

Ateneo de Manila University School of Law

The Legend of Fr. Joaquin G. Bernas, S.J. (1932-2021) and the Transcendental Importance of His Legacy of Infinities

THE VOCATION

If there is one word that would best describe the extraordinary life of unprecedented service of the great and legendary Fr. Joaquin G. Bernas, S.J., it would be this: Vocation. Every milestone in his life has been about the preparation and fulfillment of that vocation. He dedicated his entire life in the service of others — a path that he always recognized as having been chosen by God. In one of his succinct homilies, Fr. Bernas shared: “Vocation is a word which we sometimes reserve for a call to convent life or priestly life. It is not that way at all. Vocation is for all, yes, even for rascals. God singles out each one of us for a task.”

Accordingly, and after committing himself to the Jesuits, who directed him to become both priest and lawyer, Fr. Bernas happily found himself in the service of his religious vocation as a Jesuit priest, in the service of his patriotic and civic duty as a constitutional lawyer and scholar, and in the service of his academic passion as a law professor and educator — ubiquitous roles which he lovingly fulfilled up to the very last beat of his beautiful heart.

In omnibus amare et servire domino. In everything, Fr. Bernas loved and served the Lord through the fulfillment of his vocation. His life was generosity personified.

* Eugene T. Kaw was one of the feeble-minded students of Fr. Joaquin G. Bernas, S.J. in Constitutional Law 1 and 2, as well as in Public International Law. He named his son Joaquin after the legendary Fr. B.

The Message is a modified version of the Author’s original publication in *Rappler*, *The Diarist*, and *The GUIDON*.

GOD'S GOOD SERVANT

Fr. Bernas was first and foremost God's good servant. In everything he did, Fr. Bernas always placed God at the front and center. For every role he performed, for every constitutional provision he framed, for every social advocacy he supported, Ignatian principles were always present: (1) Finding God in all things; (2) *Cura personalis*; (3) Courage, reflection, and action; (4) Magis; (5) Jesus Christ.

That certainly explains the consensus why one of the best parts about Fr. Bernas was how he deepened everyone's faith with his spiritual nuggets through his crisp and provocative homilies in three to five sentences, in no more than five minutes.

CONSTITUTIONAL DEMOCRACY

When Fr. Bernas helped frame the 1987 Constitution, he ensured the protection of the Filipino people's fundamental liberties against government abuses through the Bill of Rights and the system of checks and balances. That was his own way of saying "never again" to the abuses during the Marcos dictatorship. Thus, during the constitutional deliberations, Fr. Bernas eloquently said: "The protection of fundamental liberties is the essence of constitutional democracy. Protection against whom? Protection against the State."

Another important constitutional contribution of Fr. Bernas are the concepts of social justice and human rights, which for him was the State's obligation of caring for the people through no less than constitutional guarantees. He never stopped supporting social justice programs and human rights initiatives dedicated to help the marginalized, disadvantaged, and exploited sectors in the country.

THE CONSTITUTIONAL GURU

Being the gold standard in Constitutional Law, Fr. Bernas was the Supreme Court's perennial *amicus curiae*, who served as the towering beacon of light whenever challenging constitutional issues puzzled the Court. He continues to serve as that North Star for the Court as evidenced by the countless citations of his books and references to his constitutional deliberations in the Court's decisions.

Fr. Bernas was also a gifted writer. Not only did he write authoritative commentaries in Constitutional Law, he also did not mince words whenever

he made critical comments about a sitting president and the burning political issues of the day.

In all his words, Fr. Bernas never failed to show the elegant simplicity of his thoughts and the sophisticated clarity of his insights, which reduced complex constitutional issues into a single-minded truth that everyone could understand and accept.

THE BELOVED LAW PROFESSOR

Short of worshipping him, people respect and adore him, and are in awe of his brilliance and excellence. People love him, especially the students. That despite terrified students trembling in fear whenever he would start calling them for recitations that were made even more memorable with his wry wit and charming smile.

Ateneo Law School Associate Dean Maita Chan-Gonzaga best described the recitations with Fr. Bernas: “He was also terrifying in the sense that you don’t want to disappoint *the* Fr. Bernas, so it made you try harder in his class.”

But beyond the classroom, one of the greatest gifts of Fr. Bernas was how well he personally connected with the students. He genuinely cared about them. He treated everyone fairly. It didn’t matter if you were the top student in his class or the batch or someone who was just struggling to get through law school. He would give anyone the time of day.

Cura personalis is the Ignatian principle of “care for the entire person.” Fr. Bernas never had to preach *cura personalis*. He practiced it to perfection.

MAN FOR ALL SEASONS

Underneath the accolades and accomplishments, Fr. Bernas was still human. This Bicolano also knew how to enjoy the worldly things that life had to offer. He loved his whiskey (Blue Label). He enjoyed traveling abroad with his colleagues. He also loved music (MP3 collections) and movies (romantic comedies, among others, and once highly recommended “Something’s Gotta Give”). He especially loved hanging out with students over meals or drinks.

Be it Fr. B to his students and colleagues or Bernie to his Jesuit brothers or Quining to his family, he was truly once in a generation and a man for all seasons. As it stands now, he is the GOAT (Greatest of All Time) in the annals of Ateneo history and in Constitutional Law — his accomplishments unrivaled, his legacy unequalled, and his legend unparalleled.

TRANSCENDENTAL IMPORTANCE

Aside from his scholarly writings, the legacy of Fr. Bernas equally lies with the very people whose lives he touched. We absorbed the best of what he had to give — his light above all — as a Jesuit priest, Filipino, constitutional scholar, law professor, colleague, friend, sibling and uncle to his family, and as an Ignatian brethren to his Jesuit brothers. Bits and pieces of Fr. Bernas are in all of us. And there is so much love in that. He cared so much that he gave one of his best gifts during his lifetime: Hope.

That seed of hope is exactly what makes the legacy of Fr. Bernas transcendently important — for us to carry his light forward to countless generations beyond by sharing everything he stood and fought for, everything and everyone he cared about — all of which are now inside us as the echoes of those infinities that Fr. Bernas generously imprinted in all of us.

We are the legacy of Fr. Bernas. And with all our feeble minds, let us always find hope and strength in that — one tomorrow at a time.

Jacinto D. Jimenez (c/o Carlos Charlie
Jimenez)

Partner

Romulo Mabanta Buenaventura Sayoc & de Los Angeles

Fr. Bernas and Atty. Jimenez had a very close professional relationship.

Fr. Bernas had a significant impact on his life — both spiritually and professionally.

Fr. Bernas' priority was helping his students, not only in professional development but also financially.

Fr. Bernas was very generous with charity works.

Francis Tom F. Temprosa

Professor

Ateneo de Manila University School of Law

Fr. Bernas or Fr. B is the mentor that I will never forget.

We frequently crossed paths and shared a short nod to recognize one another because my small corner and his room were next door. This was back when I was still a law student at Ateneo. Near his towering room was the tiniest nook where I would study for hours on end.

As time passed, our initial greetings evolved into brief interactions, then discussions, and finally, mentorship. He was a mentor to me and his other students. We also read him through his books and listened to him through his homilies — for Fr. B was a man of the law and a servant of the Word.

Fr. B has indeed made an unparalleled contribution to the legal system of our country and to the legal profession. Thanks to him and his fellow framers of the 1987 Constitution, we have a fundamental law which meticulously calibrates state power and individual liberties with social justice and human rights considerations. Because of him and his colleagues, we have a Constitution which specifies the responsibilities and accountabilities of public servants — a fundamental law which we pledge to preserve and defend, and swear to protect. In his own words, we have a “living Constitution.”

Fr. B, God’s first servant, was a devoted and serious man. Despite his jovial, relaxed, and confident demeanor, matters of spirituality were no laughing matter to him. His homilies were also short and sweet, but more importantly, thought-provoking and reflective.

To us, his students, he was that someone who would not only teach in class and take us to introspection through his homilies. He was that person who would cheer, counsel, and bring one back to remind oneself of ethics and the values and ideals that matter more than money, honor, and fame. I will be eternally grateful to him for his sound advice and for helping me see things differently in the bizarre world of our legal system. Because of this, Fr. B’s legacy lives on through me and his other students. We are all his legacy, and his legacy lives on.

I thank Fr. B for his life — for always dropping by my tiny nook — and for being a constant source of inspiration to all of us. Even in the tiniest of spaces — no matter how small our space is — I will always be reminded of

the need to follow his footsteps: Educating others and evolving the law for the noblest of pursuits.

REMEMBERING
FR. JOAQUIN G.
BERNAS S.J.
(1932-2021)

Eulogy: 15 March 2021 Funeral Mass for Fr. Joaquin G. Bernas, S.J.

Luigi Bernas

“A perfect wife and mother — who can find her? She is far beyond the price of pearls.”

So began the First Reading from the Book of Proverbs during the funeral mass for my Lola Amparo 37 years ago. Some of you, his Jesuit brethren (including our homilist today, Fr. Ben Nebres), were there to celebrate that mass with Tito Quining.

Outside of their own idiosyncrasies, no topic provides more fertile ground for comics than the subject of their own mothers. So you can imagine that Tito Quining had quite a field day writing the homily for his mother’s mass. For example, Tito Quining shared how completely clueless he was about the struggles that Lola went through. Having been widowed at 44, Lola had to raise 12 children singlehandedly, including Tita Ampy, who was born two weeks after Lolo Jose died.

Unfortunately for Lola, Tito Quining entered the novitiate just six months before Lolo died. He was 17 then, and he was second eldest in the family so theoretically, he would have been old enough to pitch in by getting a job somewhere. In his homily, he shared that during that period, he kept secret from his mother the fact that he had asked permission to leave the Society from his Novitiate Master so that he could help his beleaguered mother make ends meet. The wise Novitiate Master apparently replied by telling to him to forget the idea and stay put where he was, because he would only be a burden to his mother and family.

In the same homily, he also recalled the lessons in humility from Lola as he spoke about Lola’s reactions to the milestones in his career. He recalled that when he proudly shared with her that he was just appointed Dean of the Law School, she asked, “Isn’t that supposed to be for respectable people?” Later yet, when he announced to her that he had been appointed Provincial of the Society, Lola asked him, “Is that because they couldn’t find anybody else?”

Today, nearly five decades later, I am somewhat embarrassed to report to you (in yet another family funeral), that most of his many achievements and accolades remain just as unimpressive in the eyes of the heirs to my Lola’s character. I am referring of course to the women who have hounded him all

his life and who, unfortunately, for him, have managed to survive him long enough to have the last say on the matter. His sisters — my Tita Micoy, Tita Chat, and Tita Ampy — are here with us this morning, while my Tita Grace, who of course being the professional counselor that she is, continues to monitor the progress of his career despite being all the way across the Pacific Ocean.

To his siblings and to the rest of his family, none of what has been said or written about him matter more than what would have probably mattered most to his mother.

The first of these gifts we have received in his life is his devotion to his family — he was (on most days) an obedient son to his mother, a caring Manoy Quining to his siblings, a doting Tito Pare to the 23 nephews and nieces, and a mischievous Lolo Pare to the 27 grandnephews and nieces, for whom he always had a trick up his sleeve.

When he was younger and still able to drive, you may have noticed that he was always away from the JR on Sundays and major holidays. He probably told you that he needed to visit my Titas because he felt that he needed to look after them. That is all baloney. My Titas want you to know that on the contrary, it was he that needed looking after from them. On these regular visits to them, they would give him the same dose of humble pie that Lola used to dish out in crisp Bicolano tones, while feeding him all the Bicolano comfort food that he missed from his boyhood. This therapy seems to have worked, because he kept coming back for more. In return, he would humor them and lovingly tease them in a way that only he knew how. His love for his mother showed in the way he treated his sisters and later his nieces and grandnieces, and remains a good example for all of us in the family.

He had this uncanny knack for making each member of the family, young or old, male or female, feel that they had a unique personal relationship with him. This he did very well, by not preaching, nor imposing the high standards of scholarliness (or professionalism as the case may be), that he demanded of himself in his daily work. He always tried to look for a soft spot first, a point of engagement, and after doing so, he always allowed the engaged relative to steer the direction of the relationship in their own pace and time. So tolerant was he, that for a couple of my male cousins, if that meant that the only basis of their relationship with him was a shared love of his favorite beverage, that would do just as well for him — it was a good start.

Indeed, it is already a very old family joke that all of my cousins get a kick out of shocking people, most especially nuns, by telling them that Tito Quining was their father. For my cousins King, Chino, and Paolo, that surely

wasn't far from the truth. When their Dad, Tito Luis, passed away in his mid 40s, Tito Quining did his very best to step into the paternal shoes of Tito Luis.

Even my son Javo — who is fully 80 years his junior — appears to have carved his own terms of engagement with his Lolo Pare. In late January this year, we called him by phone to check on his hospital stay, whereupon my son began telling him that we were calling from Jordan. Lolo Pare replied to him, “What are you doing there?” So Javo promptly replied, “Lolo Pare, we're visiting the place where Jesus was baptized, it's right by the Jordan River.” And then remembering Lolo Pare's occasional forgetfulness, he asked, “Lolo Pare, do you remember who Jesus is?”

The second and probably the more enduring gift of Tito Quining's life to us is his being a man of faith. It is a wonderful grace to be born to a family with men (and for the Bernases of Baao), women of the cloth. It meant an early introduction into religious vocation, and the chance to be up close, and perhaps fascinated by the varied colors of a religious vocation in the family—the sobriety, the pageantry, along with the struggles, and the constant humility required of a religious vocation. To us, his enduring memory will most importantly be about the beautiful love story he had with God, and with the bride that he chose to en flesh that love with, the Society of Jesus.

And what a love story it has been. He was only 17 years old when he chose to join the Society after graduating from Ateneo de Naga High School. By today's standards, he must have been totally clueless, at least compared to the much older, and more mature novices entering the Society in more recent years. I can only imagine that Lola must have thought that what with everything, he was really such a hopeless romantic; but the prospect of one less mouth to feed probably gave her some consolation and let her give in on her resistance.

In any case, that love story with the Society even had a third party as part of the plot. When Lola was still alive, my father would deposit me and my brothers Bong and Aljim at the PNR station in Paco and ship us to Baao in Camarines Sur to spend our summers with her. I recall my Lola asking to speak to us about a serious matter during one of those summers. She then proceeded to take out two big boxes from her cupboards marked with a Bishop's Coat of Arms. From inside the two boxes, she pulled out a Bishop's miter, an enormous ring, a crozier, and a pectoral cross, all made of gold whose sheen was starting to dull from lack of use.

It turns out that this bishop's regalia that had belonged to a great granduncle had been entrusted to her by her family for the potential use of future progeny. Then she proceeded to tell us the story of how she tried hard,

but failed, to convince Tito Quining to become a Diocesan priest instead of being a Jesuit, so that the family jewels, so to speak, would remain in the family. Whoever was his recruiter among the Jesuits must have done such a great sales pitch on him that he defied not just gold, but also his own mother, in choosing to join the Society. That was why Lola then took it upon herself to plant the seeds early enough in all her grandsons the idea that all of this was for the taking, if we would only be wiser, and avoid the fate of our Tito Quining.

If my Lola were here today to address you, his brother Jesuits, for this specific occasion, she would probably remain essentially unimpressed with the more publicly known of Tito Quining's many achievements after 51 years of marriage to the Society.

But I am certain even she will agree with my banker's assessment, that all told, the family has reaped more than what it has sowed from his defiant decision to join the Society.

It's really not too difficult to work out the math. Just think, what did the family give up then?

A clueless romantic 17-year-old belonging to a family that looked more likely to require financial help from the Jesuits and most importantly, who had been judged to be a probable burden to his widowed mother by his Superior.

In return, as a family, what we have reaped back from this marriage constitutes quite a litany, of which I only have time to mention a few notable ones.

The Society had managed to somehow mold this hopeless romantic of a 17-year-old into a scholar, a teacher — indeed a respectable lawyer who had actually done some good for this country, at least by most accounts.

We have a family priest! Think about how much we have saved in fees for baptisms, house blessings, weddings, confirmations, wake and funeral masses. Not to mention the lead time it takes to book a priest for such occasions, and gasoline and parking expenses because all our Christmas and major Eucharistic celebrations were delivered to our homes long before the pandemic started.

The three nephews who have become decent lawyers in their own right, don't have to think twice about what name plate to hang outside their offices. Just think what an advantage this must have meant and will continue to mean for male relatives contemplating dating female lawyers.

It is easy enough to joke about it, but whether you intended it or not, your bond of brotherhood with Tito Quining has been good to our family in so many ways. So good that most of us willingly mimic Jesuit values in one form or another. As you can see, five of his six sisters had even taken it upon themselves to live out Tito Quining's vow of chastity.

Lola would probably say to you today that our family has basked in the sunshine of his marriage to the Society for 51 years now, and we continue to count our blessings. In these last handful of years, as we watched him deal with what Fr. Joey Cruz called the mischief that God plays upon us during the sunset of our lives, there has been absolutely no doubt in our family's mind that his marriage to the Society has been the gift that continues to keep on giving. Along with my Tito Ben and all of my Titas, we are convinced that you have showered him with so much love and care that it would have been difficult for them and the rest of our family to match the love you have given him.

For this, our family is deeply and sincerely grateful to the Society. You have made him the many good things that he was to his many constituencies. More than this, we are grateful to the Society for allowing us to share in this brotherhood with you. As great love stories go, this is certainly a case of love begetting more love.

Deep in our hearts, we know that it is the great joy of his community with you that has allowed him to be both priest and the best son, loving brother, doting Tito, and playful Lolo.

I am sure that when Lola Amparo welcomes him back to her arms in heaven, she will be forced to eat her words, and will say to her dear Quining that he chose well.

From the bottom of our hearts, we thank the Society for being truly a bride beyond the price of pearls.



















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