

"But after all, it is the spirit that gives life to the rules: ALL THE RULES IN THE WORLD WILL NOT GET US SUBSTANTIAL JUSTICE IF THE JUDGES AND THE LAWYERS HAVE NOT THE CORRECT LIVING MORAL ATTITUDE TOWARDS SUBSTANTIAL JUSTICE."

ON TAXING THE INCOME OF RELIGIOUS EDUCATIONAL INSTITUTIONS

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THE power to tax is a power inherent in every sovereign state. It is a power that is not conferred, but one that exists from the very birth of a sovereign state and subsists as long as that state exists. The existence of such a power proceeds from the theory that since individuals and properties within a state enjoy protection from such state, they must support the state in order not to lose the protection which the latter affords to them. In the Philippines, as in the United States, this otherwise unlimited power, which has been said to "involve the power to destroy", is checked by Constitutional provisions which regulate, limit, and sometimes even deny the exercise of such power. An unbridled power to tax would destroy the very objects sought to be protected, and eventually the very existence of a state. Obviously, either too little or too much of such power would produce the same disastrous effect.

It is in times of stress and abnormalcy that this power to tax and the deterrent provisions of the Constitution are put to a test. The conditions in the Philippines today are admittedly abnormal and distressing. A young independent Republic, she is faced with the gigantic task of rebuilding a country laid waste by war and whose populace has become either destitute or disgruntled. She is faced with the task of rehabilitation to be financed from empty coffers sucked clean by an enemy whose four years of occupation have all but drained the natural re-

* Ll. B., Ateneo, '51

²⁰ Cardozo, *Nature of Judicial Process*, p. 156.

sources of the country. In her desperation, she has become a beggar. She even went to the extent of selling her birthright by granting parity rights to Americans. When this failed to produce the much-needed and much-wanted influx of American capital, she decided to tap her own resources.

Out of this desperate and chaotic condition of the country came Republic Act. No. 82, amending subsection (e), section 27, of Commonwealth Act. No. 466. This Act, as interpreted by administrative officers, seeks to tax, among other things, income of religious educational institutions derived from tuition fees. For a period of three years after its enactment, the Act was not sought to be enforced against such institutions. Then, in 1950, the Bureau of Internal Revenue assessed the incomes of private educational institutions from the year 1946 for purposes of taxation. For the first time in Philippine history, the government sought to tax the incomes of private educational institutions derived from tuition fees paid by their students.

This work is an attempt to analyze the law and to interpret the same according to its spirit and the intent of the legislators. The author has not lost sight of the financial needs of the country, but questions the means adopted to attain the end of stabilizing its economy. Can the government sacrifice future lasting stability for present temporary gains? Will the enforcement of Republic Act No. 82, as interpreted by administrative officers of the government, unwittingly destroy an indispensable ally of the State? Has the government no other lucrative source of income? These are the questions which the author hopes to answer in the exposition and the answers will determine the advisability or inadvisability of enforcing Republic Act. No. 82.

ROLE OF EDUCATION IN THE PHILIPPINES

"The theory of books is noble. The scholar of the first age received into him the world around; brooded thereon; gave it the new arrangement of his own mind, and uttered it again. It came into him life; it went out from him immortal thoughts. It came to him business; it went from

*him poetry. It was dead fact; now it is quick thought. It can stand, and it can go. It now endures, it now flies, it now inspires. Precisely in proportion to the depth of mind from which it issued so high does it soar, so long does it sing."*¹

*"Did you too, O friend, suppose democracy was only for elections, for politics, and for a party name? I say democracy is only of use there that it may pass on and come to its flower and fruits in manners, in the highest forms of interaction between men, and their beliefs—in religion, literature, colleges and schools—democracy in all public and private life, and in the army and navy."*²

The Philippines, by choosing the democratic form of government, has imposed upon itself the indispensable obligation of providing for the education of its citizenry and to maintain the standard of such education at a degree which will insure the production of an alert and intelligent populace. Without education and an educated people, democracy in the Philippines becomes a farce and the Filipino people would be no better off than those who inhabit countries governed by despotic rulers—mere automatons and dead to the life that should have been theirs to live. In a democratic country, sovereignty resides in the people. In the exercise of the powers of sovereignty, the people choose the representatives through whom they would wield such powers. Whoever is elected to an official position occupies that position because it is the will of the people despite all the graft and corruption attendant in an election. Whatever legislation is passed is an obligation willed by the people upon themselves. Whatever foreign commitments the government might make is a commitment of the people.

For the people to preserve this sovereign power, they must possess that degree of education that would enable them to select their representatives after due deliberation devoid of any sentimentalism; education that would enable them to check those whom they have elected in case these try to bolt their reins; education that would enable them to distinguish between "temporary inconveniences" and "transgressions of their Constitutional

¹ From Ralph Waldo Emerson's *The American Scholar*.

² From Walt Whitman's *Democratic Vistas*.

rights"—to be able to sacrifice for the former but to fight, by Constitutional means, against the latter. For the people to remain in blissful ignorance of their rights and duties would make them mere putty at the hands of selfish and unprincipled leaders who can mold the people's actions into any pattern which would suit their every whim. On the other hand, an educated and alert populace would make the leaders of the country realize and fear the power wielded by people who know how to use power; that their position is stable so long as they are not recreant in their obligations. To have an ignorant and uneducated citizenry would jeopardize any effort to establish permanent peace in this country. Such a condition of things would be merely an invitation for unscrupulous men in power to capitalize on the credulity of such people for their own personal aggrandizement. It is merely a postponement of that inevitable day when the people, unable to withstand any more punishment, will, with one great heave, overthrow their oppressors. To the uneducated, newspaper items and speeches by their more fortunate brethren, denouncing maladministration are mere literary trash and "*palabas*". The uneducated do not understand that they have, in the freedom of speech and of the press, the most powerful, economical, and unbloody means of obtaining a redress of their grievances, so that when the tail-end of calamity hits them, they are the least prepared for the disaster that follows ceaseless graft and corruption. To them there will be no such thing as a "remedy in the ballot box". The injury has been immediate, the redress must be equally swift. To them the sword affords the surest and quickest remedy and, eventually, the mob rules.

ROLE OF THE STATE IN EDUCATION

*"The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the government."*³

"All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at

least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science and letters for specially gifted citizens."⁴

The above-quoted Constitutional provisions clearly show the role to be assumed by the State in the education of its citizens. It is a supporting role in view of the fact that the right of parents to educate their children is a natural right and not one which is merely granted by the State. The State, however, being interested in its own preservation, has the right of supervision over the exercise of this right of parents but such supervisory powers must be limited and must not unduly interfere with the right of parents to choose the schools to be attended by their children, the teachers who are to instruct them, and the subjects they are to take. The nature of such supervision is summed up in the following decision of the United States Supreme Court:

"No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."⁵

The State has no right whatsoever, either directly or indirectly, to compel its citizens to attend a particular school or to receive instruction from only a particular set of teachers. The family which is the nucleus of society has, within Constitutional limits, the final say in the matter of education. The State has the right and duty merely to see to it that these Constitutional limitations are not transgressed. Thus, the United States Sup-

³ Article II, section 4, Constitution of the Philippines.

⁴ Article XIV, section 5, Constitution of the Philippines.

⁵ *Pierce vs. Society of Sisters of Holy Name*, 268 U.S. 510, 534.

reme Court, in a case where the State unduly attempted to interfere with this natural right of parents stated:

"The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty, to recognize and prepare him for additional obligations."⁶

Whatever act of the State, therefore, which may tend to deprive the parents of such natural right or even to diminish such right beyond the limitations already imposed by the Constitution would be a violation of that Constitutional provision guaranteeing such right.

ROLE OF PRIVATE RELIGIOUS SCHOOLS IN EDUCATION

The most important aspect of the role played by religious private schools in education in the Philippines is the development of morality amongst its citizens in order to secure a firm foundation upon which the continued existence of a democratic country must wholly depend. History teaches us that nations of the past had ceased to exist as such because of moral decadence. The Roman Empire, the mightiest of them all, sinned itself to oblivion. Immorality breeds selfishness, greed, and contempt—vices which are incompatible with the idea of a united, free, and democratic state. The public schools in the Philippines are, admittedly, not sufficiently equipped to handle this particular phase of education. The necessity for the continued existence and subsequent expansion of these religious educational institutions, who alone can weave the moral fibers of the nation into a herculean pattern, cannot be overemphasized. People who would consider religion and morality as being incompatible with politics and as obstruction to freedom of action are those who serve no interest but their own and whose idea of freedom is license.

⁶ *Pierce vs. Society of Sisters of Holy Name, supra.*

The moral development of the nation, although sufficient reason in itself, is not the only argument in support of the contention that religious educational institutions in the Philippines should not, in any way, be hampered in their operation. Religious educational institutions, together with other private schools, have relieved the government, in no small way, of the task of educating the citizens of this country and, furthermore, elevated the standards of education. A statistical study of the enrollment and finances of public and private schools in the Philippines will show the importance of the role played by these private schools and how they have become indispensable allies of the State in the matter of education.

As of April, 1950, there were 20,967 public schools in operation all over the Philippines. Of these, 20,625 were devoted to the instruction of elementary students alone; 328 were open to secondary students; and only 14 were available to collegiate students. All these are filled to capacity. A comparative table showing the respective enrollments in both public and private schools will reveal how private schools have alleviated the burden of the government in educating its populace.⁷

COURSES	ENROLLMENT IN PUBLIC SCHOOLS	ENROLLMENT IN PRIVATE SCHOOLS
1. Elementary	3,959,389	126,300
2. Secondary	205,067	244,608
3. Collegiate	6,682	135,574
4. Vocational	937	28,867
TOTAL	4,172,075	535,349

From the above tabulation it can be seen that as the educational course attains a higher level, there is a decrease in the enrollment in public schools and an increase in private schools. This serves to indicate the indispensability of private schools.

⁷ Data secured from the Annual Enrollment Tables prepared by the Bureau of Public Schools and the Bureau of Private Schools for the School Year 1949-1950. This tabulation does not include the enrollment in the University of the Philippines.

EFFECT OF REPUBLIC ACT NO. 82 ON EDUCATION

The importance of education for the establishment and preservation of unity and peace in the Philippines has already been shown. The roles played by the State and private educational institutions and the degree of participation of each in the education of the citizens of the Philippines have, likewise, been shown. It is not possible for one to function without the other. There must be a collaboration and harmonization of their actions in order to insure the attainment of the common purpose sought by them. No one can deny this conclusion, least of all the State which, more than anyone else, realizes the advantage of having private educational institutions take over a part of its burden of government. Should Republic Act. No. 82, as interpreted by the administrative officers of the government, be enforced, it would have the effect of destroying this harmonious relationship—a relationship born of necessity and convenience—and perhaps leave to the government the entire burden of educating the Filipino people.

Republic Act No. 82 provides:

"Section 5.—Section twenty-seven of Commonwealth Act Numbered Four Hundred and Sixty Six is hereby amended to read as follows:

"Section 27.—Exemption from tax on corporation—The following organizations shall not be taxed under this Title in respect to income received by them as such:

"(e) Corporation or association organized and operated exclusively for religious, charitable, scientific, cultural, or educational purposes, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual: Provided, however, that the income of whatever kind and character from any of its properties, real or personal, or from any activity conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under this Code."

The enforcement of this Act in accordance with the

interpretation laid down by the Secretary of Justice and the officers of the Bureau of Internal Revenue would subject to taxation the income of religious educational institutions derived not only from their real and personal properties but also that derived from the tuition fees paid by the students of such institutions. The enforcement of this Act according to such an interpretation can be productive of nothing but disastrous effects for the pursued objective of the State—the education of the Filipino people.

Most, if not all, of these religious educational institutions depend, to a large extent, on whatever income they can receive from lands and buildings owned by them outside of the school premises for the fulfillment of their mission—lands which they themselves cultivate or, together with the buildings thereon, rent out or sell to either the government or private persons. They depend largely upon such income for the reconstruction of their schools, the improvement of what they already have, and to carry out their aim of spreading out to other points in the Philippines in order to help the State in the education of the masses. Religious educational institutions of today are in a very great financial disadvantage as compared to their predecessors of the Early and Middle Ages. Religious educational institutions of long ago were not only exempted from taxation, but were, moreover, given the power to collect taxes, known as "tithes" from the people. These taxes they collected regularly for their support.⁸ Today no such power exists in their favor. To supplement the income they derive from their properties and the tuition fees paid by the students they can only beg for contributions from the people and, in this regard, the Filipinos have not been very generous. Religious educational institutions in the Philippines today likewise do not and cannot receive any direct or indirect financial aid from the government by virtue of Article VI, section 23, clause (3) of the Constitution of the Philippines, which states:

"(3). No public money or property shall ever be ap-

⁸ *The Laws of England*, by the Earl of Halsbury, Vol. 11, p.742.

propriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support 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, orphanage or leprosarium."⁹

The members of the Constitutional Convention, however, in prohibiting the giving of any direct or indirect financial aid to any sect, church, denomination, sectarian institution, or system of religion on the principle of separation of Church and State, fully realized the indispensable role which religious educational institutions would assume in the function of educating the Filipino people. To enable the religious educational institutions to take part in this important function of government to the great advantage of all, the members of the Constitutional Convention deemed it necessary to constitutionally exempt them from the hampering effects of taxation. Republic Act No. 82, as interpreted by the Secretary of Justice and the officers of the Bureau of Internal Revenue, would, if enforced, infringe upon this exemption.

This infringement would not at first be apparent, but once the wall is breached, then it will become merely a question of time before the entire wall crumbles. Republic Act No. 82, if enforced in accordance with the interpretation laid down by the administrative officers of the government, would constitute the first breach in the wall of constitutional limitations. This would establish a precedent for future minor encroachments—encroachments that are seemingly constitutional on their face but are unconstitutional in fact. Thus, Tuller, in his work, "*The Taxing Power*", warns:

"By a gradual process, like the constant dropping of water upon a stone, the limitations upon the Constitution with respect to powers of taxation, and the liberties of the citizens sought to be insured thereby, have been worn away until they are almost beyond recognition.

"The process has been something like this: First, a slight infringement of constitutional limitations is held valid

⁹ Article VI, section 23, (3), Constitution of the Philippines.

by the court. That case becomes a precedent on the strength of which a somewhat more serious violation of the limitations is sustained as valid. The two cases then become precedents to sustain a still more serious violation; and so the vicious circle ever widens."¹⁰

* * *

"The primary purpose of a written constitution is to impose limitations upon the power of the government.

* * *

"Nowhere is the strict observance of this principle more essential than in the field of taxation. It is a truism to say that the power to tax is the power to destroy. Had the people not imposed definite limitations upon the power of their government with respect to taxation, their liberties, which they sought to insure by means of a written constitution, would have been subject to destruction at the whim and caprice of any group that might gain control of the government. Give me the power to tax the people without constitutional limitations and I care little what other limitations the Constitution may impose. I will be the ruler and at will the dictator of that people. I will be able truthfully to say with Louis the Fourteenth 'L'Etat, c'est moi'—The State, it is I."¹¹

These imperceptible encroachments would gradually undermine the constitutional supports upon which religious educational institutions greatly depend for the continuance of the indispensable service they are rendering to the State.

The enforcement of Republic Act No. 82, as interpreted by the administrative officers, far from perpetuating the objective of the government of having an educated citizenry, places a serious obstacle to such objective, to the ultimate prejudice of the Filipino people and the Philippines. It is a fact that most of the religious educational institutions in the Philippines have not escaped the ravages of the last Pacific war. Some have been wholly destroyed and others partially. Their reconstruction has been slow and, in those cases where the schools have to depend only on tuition fees for their income, reconstruction has been virtually at a standstill. To tax the income of these

¹⁰ Tuller, *The Taxing Power*, pp. 9, 10.

¹¹ Tuller, *The Taxing Power*, pp. 1, 3.

religious educational institutions would mean a further delay in their work of reconstruction, which delay would inevitably result in greatly retarding any projected expansion of these institutions to other parts of the Philippines, if not rendering them impossible of fulfillment. The Philippines can ill afford such a delay. There are many parts of the Philippines where education is unheard of, and the people in those parts cannot afford to travel to other parts where schools have been established. The government is not in a condition financially, and will not be for a long time to come, to embark on an extensive program of establishing schools and other facilities for education all over the Philippines. The objective of the government should be to make facilities for education accessible to the greatest number in the shortest time possible, but the carrying out of this objective by the government alone would be a herculean task. Religious educational institutions, on the other hand, unburdened by the multifarious tasks which go to make up government, can more easily expand to these remote and isolated places and carry out that objective which the government finds itself powerless to accomplish. In this undertaking, therefore, these institutions should receive every aid possible from the government. The constitutional provision for the exemption from taxation of these religious educational institutions gives the minimum of aid to such institutions, which the enforcement of Republic Act No. 82, as interpreted by the Secretary of Justice and the officers of the Bureau of Internal Revenue, would even further diminish and render them as helpless as the government to attain the declared objective of the State.

The enforcement of this Act would not only retard the projected expansion of these religious educational institutions but would also forestall any attempt on their part to raise the standard of education in the Philippines. It is unquestioned that the world has progressed by leaps and bounds in the fields of science, culture, and the humanities. In order to keep up with this indefatigable race for knowledge, additional new and expensive equipment is needed as well as men and women specially trained in the various fields to instruct the students. This cannot be possible if the incomes of such religious educational

institutions are taxed. The present tuition fees are charged in accordance with a budget which enables the institution to sustain itself during the school year and allows a small margin of profit to be laid aside as a reserve fund for future use. To tax their income, therefore, would compel them to increase the tuition fees in order to maintain their present efficiency. The result would be that the students will be paying more for exactly the same standard of education that they are now receiving. Income from the real and personal properties of religious educational institutions likewise cannot be depended upon to defray the expenses of improving such institutions inasmuch as such an income is also subject to tax under this Act as interpreted, and, whatever remains after taxes would merely be sufficient to cover the expenses of replacing whatever deteriorations may have been and will be suffered by such institutions.

A remote, but not improbable, effect of the enforcement of Republic Act No. 82 is that these religious educational institutions, heavily burdened by taxation and unable to withstand unforeseen reverses, would be forced to close. To tax them would be to deprive them of the meager reserve fund and leave them exposed to the mercy of any major calamity. In such an event, they would be floundering helplessly, unable to help themselves and not expecting any contribution from the State by way of money or property either directly or indirectly. Should this come to pass, the government will be left all alone to handle the task of educating the people. A comparative study of the expenses incurred in the functioning of public and private schools will give further proof why the government is incapable of handling this work alone.¹²

BUREAU OF PUBLIC SCHOOLS			BUREAU OF PRIVATE SCHOOLS		
F.Y. 1951	F.Y. 1950	F.Y. 1949	F.Y. 1951	F.Y. 1950	F.Y. 1949
<i>Requested</i>	<i>Authorized</i>	<i>Actual</i>	<i>Requested</i>	<i>Authorized</i>	<i>Actual</i>
₱7,254,050	₱7,286,570	₱5,648,317	₱80,470	₱81,110	₱70,476.30

The above amounts represent the appropriations for

¹²Data secured from the Annual Budget for the Fiscal Year 1951.

such items as salaries and wages; travelling expenses of personnel; freight, express and delivery service; postal, telegraph, telephone, cable, and radio service; furniture and equipment; and other sundry expenses. None of these appropriations for the Bureau of Private Schools, however, goes to any religious educational institution but only to the government employees of such Bureau. The income derived by the government from private schools at present is more than sufficient to cover the expenses of the Bureau of Private Schools as the following table will show.¹³

DEPARTMENT OF EDUCATION
Private Schools Special Fund
Republic Act. No. 74

Details	F.Y. 1951 Estimated	F.Y. 1950 Estimated	F.Y. 1949 Actual
<i>Income:</i>			
Fines and forfeitures	---	---	P 1.88
Service income (1% assessment of gross income of private schools)	P460,000.00	P458,000.00	P203,070.60
Prior year credits	---	---	P 38.39
TOTAL INCOME	P460,000.00	P458,000.00	P203,110.87
<i>Expenditures:</i>			
(Including those not appearing in the previous tabulation).			
TOTAL EXPENDITURES	P130,000.00	P130,000.00	P134,367.34
<i>Excess of income over expenditures:</i>			
(To be reverted to the General Unappropriated Surplus)	P330,000.00	P328,000.00	P 68,743.53

Should religious educational institutions be forced to close, the government stands to lose a substantial amount from such a lucrative source of income. The government will likewise have violated in an indirect manner, the Constitutional provision acknowledging the natural right of parents to educate their children.

Aside from these the government will have to more

¹³ Data secured from the Annual Budget for the Fiscal Year 1951.

than double its present appropriations for the maintenance of education. It has been shown that the present facilities of public schools are dedicated mostly to the instruction of elementary students. The government will have the problem of taking over the education of some 400,000 students of secondary and collegiate standing. These will require additional and more expensive equipment and professors. We have but to take one look at the nation's present budget in order to conclude that this would be impossible of accomplishment and this condition will prevail for many years to come.

The possible prejudicial effects of the enforcement of Republic Act No. 82 as so interpreted having been analyzed, there remains but to consider whether this interpretation could have been the intention of the members of Congress in enacting such a law.

REPUBLIC ACT NO. 82

ITS INTERPRETATION AND CONSTRUCTION

"Section 5. Section twenty-seven of Commonwealth Act Numbered Four Hundred and Sixty-six is hereby amended to read as follows:

"Section 27. Exemption from tax on corporation.— The following organizations shall not be taxed under this Title in respect to income received by them as such:

"* * *

"(e) Corporation or association organized and operated exclusively for religious, charitable, scientific, cultural, or educational purposes, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual: Provided, however, that the income of whatever kind and character from any of its properties, real or personal, or from any activity conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under this Code." (Section 5, Republic Act. No. 82).

There is no dispute about the fact that income accruing to religious educational institutions, from whatever source, does not inure to the benefit of any private stockholder or individual. The whole controversy concerns the interpretation given by the Secretary of Justice and the officers

of the Bureau of Internal Revenue to the phrase "or from any activity conducted for profit", which interpretation considers tuition fees as income derived from an activity conducted for profit, and, therefore, taxable under said Act. It is not denied that religious educational institutions, in charging tuition fees, derive some profit but this is only natural. No institution would survive very long if it is to constantly be in the red or just breaking even. These institutions have to make themselves reasonably secure against future and unforeseen calamities. It could not have been and is not the intention of the legislature to tax the income of these religious educational institutions merely because it yields some margin of profit to such institutions, and to this contention the Secretary of Justice and the officers of the Bureau of Internal Revenue agree. An analysis of the contentions of the Secretary of Justice and the officers of the Bureau of Internal Revenue will reveal wherein the difference in opinion lies.

1

The Secretary of Justice admits that these religious educational institutions can be allowed a certain margin of profit and still be exempt from taxation, but contends that the moment such institutions reap substantial profits they fall out of the exemption. The Secretary of Justice states:

"...when under the circumstances surrounding each case, it becomes apparent that, along with its educational objectives, an educational institution also pursues the objective of getting substantial pecuniary return or profit, such institution ceases to be operated exclusively for educational purposes, and, consequently, is subject to the payment of taxes imposed by the National Internal Revenue Code."¹⁴

This interpretation of the proviso of Republic Act No. 82 by the Secretary of Justice makes such proviso one of doubtful constitutionality. It, in effect, gives to the officers of the Bureau of Internal Revenue the arbitrary power to determine what is and what is not a "substantial pecuniary return or profit". The proviso itself does not set a standard to be followed by the officers of the Bureau

of Internal Revenue for the determination of what would constitute a substantial profit in every case. The proviso merely speaks of "profits" and not "substantial profits", so that if the income of religious educational institutions is to be held taxable at all then it would be immaterial to consider whether such profits are substantial or not.

Furthermore, this interpretation by the Secretary of Justice would mean the reading into the law of something which was never intended by the legislature—an act which is contrary to the fundamental principles of statutory construction: The Supreme Court of the Philippines, in deciding an analogous case, held:

"The intent of the Legislature to be ascertained and enforced is the intent expressed in the words of the statute. If legislative intent is not expressed in some appropriate manner, the courts cannot by interpretation speculate as to an intent and supply a meaning not found in the phraseology of the law. In other words, the courts cannot assume some purpose in no way expressed and then construe the statute to accomplish this supposed intention."¹⁵

From the above-quoted decision it can be seen that the Secretary of Justice had no power to read the words "substantial profit" into the law. If the legislature had intended to tax only that income which yields substantial profits it would have expressed its intent by clear and unmistakable terms. Since the legislature did not so provide it is clear that it did not intend to make any distinctions.

2

There is no doubt that tuition fees received by religious educational institutions from their students are income received by them "as such" religious educational institutions and should be exempt from taxation. During the controversy between the University of Santo Tomas and the Bureau of Internal Revenue, the counsel for the University advanced the argument that it is only when these educational institutions engage in any activity other

¹⁴ Memorandum for the Cabinet by the Secretary of Justice, July 14, 1950.
¹⁵ Regalado vs. Yulo, 61 Phil. 173, 179.

than education that their income derived from such other activity should be taxed. The Secretary of Justice, however, in his Memorandum of July 14, 1950, states:

"It has been contended that the proviso refers only, and should be limited, to income received by the educational institution from activities undertaken by them not *as such* educational institution, merely because the term "as such" was used in the first part of the section. This position is untenable. This proviso in said section limits and qualifies the general exemption mentioned in the first part of the sentence. For 'it is the function of the proviso to restrict the general operation of the enacting part of the Act'. (2 Sutherland 469). Consequently, since the exemption refers to income received by the educational institutions "as such", the proviso, being a limitation thereof, should be deemed to refer to "such" and other income as are received from activities conducted for profit whether in their educational capacities or not."

This contention might possibly be of some merit if the Act seeks to tax only income yielding a substantial profit as claimed by the Secretary of Justice because then there would be some incomes which could still be exempted under the Act. It has already been shown that such an intent on the part of the legislature to make a qualification can nowhere be deduced from the wordings of the proviso, and the Secretary of Justice himself admits that it was not the intention of the legislature to tax just any income received by the educational institutions *as such*. To hold otherwise would be to render the first part of the Act nugatory and amount to nothing but a useless recital of words.

As far back as 1940, the Department of Justice, in an opinion, had held that these exemptions should be liberally construed in favor of the educational institutions. The opinion stated:

"It is recognized that the exemption of educational and charitable institutions from the income tax *should be liberally construed since it is not a matter of grace but an act of public justice: such an exemption is made in recognition of the benefits which the public derives from the corporate activities of such institutions.*"¹⁶

¹⁶ Opinion No. 1782, Series of 1940, Department of Justice. Author's italics.

This view is supported and strengthened by Cooley's statements that such an exemption is a contract between the government and the exempted party—a contract protected by the Constitution. Cooley says:

"So far as the power of taxation is concerned it has been so often decided by the Supreme Court of the United States, though not without remonstrance on the part of the State courts, *that an agreement by a State, for a consideration received, that certain property, rights, or franchises shall be exempt from taxation, or to be taxed only at a certain agreed rate, is a contract protected by the Constitution, that the question can no longer be an open one. In any case, however, there must be a consideration, so that the State can be supposed to have received a beneficial equivalent; for it is conceded on all sides that, if the exemption is made as a privilege only, it may be revoked at any time. And it is but reasonable that the exemption be construed with strictness.*"¹⁷

It is inconceivable that our Congress, while recognizing the exemption of schools as an act of public justice, would pass an amendment which in effect would completely eliminate such exemptions from the law.

It is true that a proviso restricts the general operation of the enacting part of the Act but when this restriction amounts to a prevention of the operation of such enacting part said proviso should not be given any effect at all. In this respect, the Supreme Court of the Philippines has held:

"... The office of a proviso is to *limit* the application of the law. It is contrary to the nature of a proviso to enlarge the operation of the law. *It should not be construed so as to repeal or destroy the main provisions of the statute. A proviso which is directly repugnant to the purview or body of an Act is inoperative and void.*"¹⁸

From the above quoted decision it can be seen that if it had been the intention of the legislature to tax even the income of religious educational institutions received by them *as such* irrespective of the amount of profit, then, the proviso would be inoperative and void be-

¹⁷ Cooley's *Constitutional Limitations*, 8th ed., Vol. I, pp. 571-572.

¹⁸ *Borromeo vs. Mariano*, 41 Phil., 322, 326. Author's italics.

cause its enforcement would result in absurdities. The more reasonable and more logical interpretation of the proviso is that which was adopted by the counsel for the University of Santo Tomas—that only income earned by educational institutions not *as such* should be subject to taxation. This interpretation is borne out by the statements made to the press by Congressmen Floro Crisologo and Tomas Clemente who were members of the Congress which approved Republic Act No. 82. The following is the newspaper account:

"They stated that the explanatory note accompanying House Bill No. 29 which became Republic Act No. 82, stated that the purpose of the amendment to the revenue code was to 'make it clear that the income of whatever kind and character of said organization from any of their properties, real or personal, will be subject to income tax *when such properties are used for profit*'.

"Crisologo and Clemente stressed that the purpose of such amendment was to tax more specifically income from properties of the Church which are used for business purposes like the lands or buildings which are rented to business establishments.

"To sustain this view, the solons said that the explanatory note of the bill said further: '*It is obvious that an organization which derived income from rentals or investments of its properties should be made to pay for the income tax in the same manner as other corporations or individuals.*'

"The University of Santo Tomas was established for both religious and educational purposes', the solons said. '*Nobody can doubt the fact that the U.S.T. was not organized for profit. If it realizes profits, such profits are merely incidental and do not make it liable to the payment of income tax. The profits so derived are invested to improve the culture and educational facilities—not to the benefit of the institution alone but to the thousands of students.*'"¹⁹

These declarations seem to be in consonance with the letter and the spirit of Republic Act No. 82. It could certainly not have been the intention of the legislature to tax the income of educational institutions derived from tuition fees—an income upon which these institutions depend for their maintenance and improvement. It was definitely not the intention of the legislature to unduly

¹⁹ *The Manila Times*, July, 1950. Author's italics.

hamper these institutions in the performance of a function so important to the state.

Aside from these statements by Congressmen Crisologo and Clemente there is not lacking authority which sustains the interpretation laid down by the counsel for the University of Santo Tomas. Decisions of United States' courts, interpreting similar statutes as Republic Act No. 82, have consistently held that the mere charging of tuition fees does not convert an educational institution into an organization conducting an activity for profit. The following are a few of those decisions.

"The fact that an educational institution charges tuition fees does not necessarily deprive it of a public or charitable character warranting exemption." (61 C.J. 467, citing *Linton vs. Lucy Cobb Inst.*, 45 S.E. 53, 117 Ga. 678; *Borough of Princeton vs. State Board of Taxes and Assessments*, 115 A. 342, 96 N.J. Law 34; *Mary Immaculate School of Eagle Park vs. Board of Assessors of Town of Ossining*, 175 N.Y.S. 701, 188 App. Div. 5.)

"An educational institution is none the less exempt because the students are charged fees for tuition and for the use of the dormitories and other equipment, *provided the institution is not conducted for profit.*"²⁰

The second authority above-cited, aside from confirming the principle that the charging of tuition and other fees does not deprive an educational institution of its exempting character, clearly shows *that such charging is not to be held as an activity conducted for profit but that it is the manner in which the institution is conducted which may or may not be considered an activity conducted for profit.* A decision resolving a case in favor of a Roman Catholic Institution in New Jersey is even more explicit on this point. The decision states:

"Princeton University and Rutgers College, like all our

²⁰ 26 R.C.L. par. 281, p. 320, citing *American Asylum vs. Phoenix Bank*, 4 Conn. 172, 10 Am. Dec. 112; *Yale University vs. New Haven*, 71 Conn. 316, 42 Atl. 87, 43 L.R.A. 490; *Saint Clara Female Academy vs. Sullivan*, 116 Ill. 375, 56 Am. Rep. 776; *Kentucky Female Orphan School vs. Louisville*, 100 Ky. 470, 35 S.W. 921, 40 L.R.A. 119; *Detroit Home, etc., School vs. Detroit*, 76 Mich. 521, 43 N.W. 595, 6 L.R.A. 97; *St. James Military Academy vs. Eduardo*, 143 Wis. 551, 128 N.W. 113, 139 A.S.R. 1123; *Maxeys vs. Oskosh*, 144 Wis. 238, 128 N.W. 899, 1136, 31 L.R.A. (NS) 787.

endowed institutions of learning, make a charge, *sometimes not an inconsiderable charge*, for tuition; and it is quite probable that in individual cases the tuition fee may exceed the cost of instruction. *Yet no one would suggest that either institution is conducted for profit.* The reason is that such institutions, upon the whole, give more than they get, and make up the deficiency of the tuition fees to pay for the actual cost of the instruction in part by the bounty of past generations. Such appears to be the aim of the present prosecutor. The school is conducted by a religious sisterhood. The teaching sisters receive no salary."²¹

The decision just quoted serves to show the extensive help received by religious educational institutions in the United States. Aside from the fact that the educational institutions in the United States receive endowments from private parties for their continued operation and improvement the income they receive from tuition fees are exempted from taxation. As has been pointed out before, religious educational institutions in the Philippines are not this fortunate. On the contrary, in a country which boasts that 80% of its population is Catholic the people have developed a feeling of apathy towards religion and everything religious and these religious educational institutions have to depend on the income derived by them from tuition fees and from the rental or sale of their real and personal properties. They should, therefore, be allowed to keep the little that they have.

CONCLUSION

Never, perhaps, in the whole history of the Philippines, has there been a financial crisis like the present. The national debt has run up to billions of pesos; the buying power of the peso has been reduced by, at least, 60% of its pre-war value. The Philippines is in need—very badly in need—of revenues. To save the State from its predicaments, the taxing power, the most powerful and effective means of raising revenues, has been liberally exercised, so much so that there is always the

²¹ *Institute of Holy Angels vs. Sender*, 74 A. 251, 79 N.J. Law 34. Author's italics.

danger that the constitutional limitations to the exercise of this power may be infringed upon or that a hasty exercise of such power would prove more detrimental than its non-exercise. It will be to the lasting credit of the leaders of this country if they can extricate it from its present woeful condition without transgressing these constitutional limitations and without losing their proper sense of values.

Aside from the legal arguments advanced showing that it was not the intention of the legislature under Republic Act No. 82 to tax the income of religious educational institutions derived from tuition fees, sufficient reasons exist why such a tax could never have been intended to be, and should never be, imposed upon these institutions.

FIRSTLY, the reason for the exemption of the income of these religious educational institutions from taxation is the benefit derived by the State from the existence of these institutions. These institutions have become indispensable allies of the State in the matter of the education of the Filipino people. They are saving the government more in the expenses of education than what the government would ever get from them by taxing their income derived from tuition fees. Should the government ever lose sight of the innumerable benefits it derives from the continued existence of these religious educational institutions and commit the folly of sacrificing these benefits for a paltry sum, then it would lose not only a source of income but an essential part of its functioning arm as well.

SECONDLY, there is no need for the government to tax the income of these religious educational institutions in order to assure itself that such income is being put to good use. It would be to the benefit of all if the legislature were to enact a law providing that private educational institutions shall be exempt from taxation as to their income as long as these institutions invest a minimum of, say, 75% of its net profit for a given year in maintenance, free scholarship, research, equipment, and any other purpose connected with the pursuit of their

educational activity. In this way, the fear that educational institutions will become mere business propositions looking to the private gains of only a privileged few would be allayed. Such a law would tend towards an improved educational system in the Philippines to the lasting benefit of the Filipino people.

THIRDLY, the burden of taxation is, at present, making itself felt on the Filipino people. To tax the income of religious educational institutions would be to increase this burden. The solution to the problem of bankruptcy of the nation lies not in looking for more objects to tax but in exercising more diligence in collecting the taxes already imposed. This laxity of the government in collecting taxes and the wanton expenditure of public funds by public officials in thoughtless extravagance are the main causes for the continued financial crisis in the Philippines. The rigid enforcement of the present income tax laws; the proper imposition and collection of the penalties imposed upon public utilities; the collection of license fees, and others, would be more than sufficient to cover the present deficiency.

From all these it can be readily seen that it was never the intention of the legislature to tax the income derived by religious educational institutions from charging tuition fees. The benefits derived from them have been shown to be too valuable to be sacrificed for present temporary gains. Education and morality are the remaining and only bulwarks against the advances of Communism. The "hammer" and "sickle" threaten to engulf the entire world. The "hammer" has relentlessly pounded the doctrine of Communism into the minds of millions while the "sickle" has reaped a wild harvest of willing and unwilling slaves. Wherever there is misery, discontent, and ignorance, there Communism thrives. Misery and discontent have already segregated the allegiance of a part of the Filipino people and compelled them to throw their lot with the Communists. To suppress intellectual growth and keep the people ignorant is national suicide.

For the Philippines to successfully combat Communism, the minds of Filipinos must be armed against it. Communism cannot be successfully combatted by military

means alone. It operates from within as well as from without. Every means, therefore, for the education of the masses must be preserved in its full developing power. The State cannot take the allegiance of her citizens for granted. She must constantly guard the minds of her citizens from the infiltrations of contrary and pernicious doctrines; take the initiative and plant and nurture the seeds of democracy instead of, later on, having to uproot the evils of Communism. To wait for the evil to befall may be too late and, like Cassius, we would then have only this to say:

*"The fault, dear Brutus, is not in our stars,
But in ourselves; that we are underlings."²²*

²² Shakespeare, *Julius Caesar*.