

# Walking the Line: The Philippine Approach to Church-State Conflict

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## I. INTRODUCTION

The Philippines is a country steeped in religious history. The very first encounters with the Western world involved baptisms and conversions, and Catholicism's spread did not stop with Chieftain Rajah Humabon and his wife, Humahay. For 300 years, the Spanish government had an equal when it came to the influence exerted on the Filipino — the Catholic Church. So deeply rooted was its influence, that when someone dared to speak out against it, even in the form of fiction, such person was put to death.

While the power of religion over the normal Filipino is not as pervasive as it was in the Spanish era, matters of faith are never far from the national consciousness. The Catholic Bishops' Conference of the Philippines (CBCP) is never shy when it comes to expressing its opinion about everything from boy bands,<sup>1</sup> to movies,<sup>2</sup> and to issues as controversial and widespread as contraception and reproductive health.<sup>3</sup>

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We also see manifestations of religious power in the construction of monumental, record breaking structures,<sup>4</sup> and in the traffic gridlocks caused by religious missions.<sup>5</sup>

This fact is not something to be alarmed about, but is something that is seemingly inherent and characteristic of Filipino people. Our government, through the years, “has allowed [ ] various religious, cultural, social[,] and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all[.]”<sup>6</sup> In fact, no less than the Constitution invokes the aid of a deity in its Preamble — a manifestation of the “spirituality innate in [Filipino] nature and consciousness as a people, shaped by tradition and historical influence.”<sup>7</sup> The Constitution also provides “benevolent and accommodating provisions towards religions.”<sup>8</sup>

This level of religious entanglement may be looked at from a legal lens — specifically, from the point of view, as expressed in the Constitution, that Church and State must remain separate. While the law does recognize the Church’s influence and power, the State must not allow any encroachment into its affairs by the Church.<sup>9</sup> This means that the State may not “meddle in the internal affairs of the Church, much less question its faith and dogmas or

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1. CBCP wants One Direction to be banned from the Philippines, *available at* <http://www.pep.ph/guide/music/13912/cbc-p-wants-one-direction-to-be-banned-from-the-philippines> (last accessed May 3, 2014).
  2. Fight ‘Da Vinci’ movie ‘lies’ with truth, CBCP urges faithful, *available at* <http://www.gmanetwork.com/news/story/6289/news/nation/fight-da-vinci-movie-lies-with-truth-cbc-p-urges-faithful> (last accessed May 3, 2014).
  3. Socrates B. Villegas, D.D., Contraception is Corruption!, (A Catholic Bishops’ Conference of the Philippines Pastoral Letter on the Latest Decision on the Reproductive Health Bill) *available at* <http://www.cbcnews.com/cbcnews/?p=9989> (last accessed May 3, 2014); Brian Caulfield, A Bill to resist Let not the RH Bill pass, *available at* <http://www.cbcnews.com/cbcnews/?p=291> (last accessed May 3, 2014); & Nereo P. Odchimar, D.D., CHOOSING LIFE, REJECTING THE RH BILL, (A Pastoral Letter of the Catholic Bishops’ Conference of the Philippines) *available at* <http://cbcponline.net/v2/?p=1151> (last accessed May 3, 2014).
  4. Donna Cueto-Ybañez, *Iglesia opens world’s largest indoor arena for centennial rites*, PHIL. DAILY INQ., July 20, 2014, *available at* <http://globalnation.inquirer.net/108171/iglesia-opens-worlds-largest-indoor-arena-for-centennial-rites/> (last accessed May 3, 2014).
  5. Janvic Mateo, QC: *Expect traffic gridlocks during INC mission*, PHIL. STAR, May 2, 2014 (last accessed May 3, 2014).
  6. *Imbong, et al. v. Ochoa, Jr., et al.*, G.R. No. 204819, Apr. 8, 2014.
  7. *Id.*
  8. *Id.*
  9. *Id.*

dictate upon it. It cannot favor one religion and discriminate against another.”<sup>10</sup> Conversely, “the Church cannot impose its beliefs and convictions on the State and the rest of the citizenry. It cannot demand that the nation follow its beliefs[.]”<sup>11</sup>

In a country such as the Philippines where faith still holds considerable sway over its people, encounters between the State and the Church are inevitable. This article seeks to examine, explain, and establish the history of the Supreme Court’s treatment of Religion, both to serve as a retrospective view and as a possible guidepost or springboard from where to view both present and future controversies.

With the overall goal of providing a guide for, or at least having a basis from which to predict the future decisions of the Supreme Court regarding the intersection of religion and the law, it would be helpful to examine and trace the development of the Philippines’ general attitude on the subject, as shown by the different changes expressed in our Constitutions. Further, it would be helpful to see how the Supreme Court itself has ruled on several cases touching on this issue, in order to develop an understanding of the Court’s appreciation of the subject.

## II. CONSTITUTIONAL BACKGROUND

### *A. Church and State in the Philippines*

Before the 1935 Constitution, religion was closely intertwined with the law. Under the Spanish Constitution, “Catholicism was the state religion and Catholics alone enjoyed the right of engaging in public ceremonies of worship.”<sup>12</sup> Thus, the Catholic Church was the established religion in the Philippine Islands, a fact that placed the Church under the protection of the Spanish Penal Code, which punished crimes against the state religion.<sup>13</sup>

The primacy of religion (particularly, the high standing of the Catholic Church), was one of the first things that changed when the Philippines shook free from Spanish rule. Both the Treaty of Paris and the Malolos Constitution, early manifestations of Philippine law, provided that there would no longer be a prescribed state law for the Philippines.<sup>14</sup> When the Philippines passed to American rule, the Philippine Commission, under

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10. *Id.*

11. *Id.*

12. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 324 (2009 ed.).

13. *Id.*

14. JORGE R. COQUIA, *CHURCH AND STATE LAW IN THE PHILIPPINES* 45 (1959 ed.).

instructions from President McKinley, imposed the rule that survives to this day, with practically the same wording as it is currently found in the 1987 Constitution.<sup>15</sup> The various organic acts leading towards the Philippine Independence Law (the Tydings-McDuffie Law) all included the same protection of religious freedom.<sup>16</sup>

The 1973 Constitution contained a declarative statement that “the separation of the church and the state [would be] inviolable.”<sup>17</sup> This provision was not included in the 1935 Constitution, which provided for this separation by means of non-establishment and free exercises clauses. Even though there was no explicit provision then, the 1935 Constitution did not deviate from the principle.<sup>18</sup>

### *B. The Bill of Rights*

It is with this background, along with the recognition that the exercise of religion is a fundamental freedom for every person,<sup>19</sup> the Philippine Constitution has consistently provided for “non-establishment” and “free exercise” clauses. The wording has not changed from the 1935 Constitution until the present. Section 5 of Article III of the 1987 Constitution provides that “[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. 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.”<sup>20</sup>

There are two parts to this provision. The first enjoins the government from passing laws which promote or inhibit any religion. The policy has consistently been one of *government neutrality*.<sup>21</sup> The values sought to be protected by the Constitution are the values of “voluntarism and insulation

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15. *Id.* at 45-46. See PHIL. CONST. art. III, § 5.

16. CHURCH AND STATE LAW IN THE PHILIPPINES, *supra* note 14, at 46-47.

17. 1973 PHIL. CONST. art. XV, § 15 (superseded 1987).

18. During the deliberations, the discussion did not call the basic provisions of free exercise and non-establishment into question. It was accepted without any issue. A COMMENTARY, *supra* note 12, at 327-28.

19. Universal Declaration of Human Rights, art. 18, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

20. PHIL. CONST. art. III, § 5.

21. There are four requirements of propositions of government neutrality: Government must not prefer one religion over another, or religion over irreligion; Government funds must not be used for religious purposes; Government action must not aid religion; and Government action must not result in excessive entanglement with religion. A COMMENTARY, *supra* note 12, at 346.

of the political process from interfaith dissension.”<sup>22</sup> Not all government aid to religion, however, is disallowed. If the action in question has a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and, again, does not result in excessive entanglement, then such aid is allowed.<sup>23</sup>

The free exercise clause simply means that religious worship or profession of one’s religion is guaranteed to be free from any form of governmental interference.<sup>24</sup> There are two aspects to this right — the freedom to believe, and the freedom to act.<sup>25</sup> The freedom to believe is something that may not be regulated, but the freedom to act may properly be the subject of regulation and police power.<sup>26</sup> Judges must therefore perform a “balancing act,”<sup>27</sup> holding on one hand the religious freedom of the actor, and on the other, the secular interest of the State.<sup>28</sup>

### C. *The Legislative Department*

The Constitutional provisions regarding religion that appear in the articles regarding the legislative department are further expressions of the separation of Church and State. Similar to the free exercise and non-establishment clauses, these provisions have generally remained unchanged since their introduction in the 1935 Constitution.

The first provision regards the tax exemption afforded to religious organizations and the structures they use. Section 28 (3) of Article VI of the 1987 Constitution provides that “[c]haritable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.”<sup>29</sup>

This provision has changed slightly from the earlier iteration in the 1935 Constitution. Significantly, the newer Constitutions have added *mosques* to the list of tax-exempt properties. This speaks to the capacity of the

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22. *Id.* at 346.

23. *See* *Abington School District v. Schempp* 374 U.S. 263 (1963); *Board of Education v. Allen*, 392 U.S. 236 (1968); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); & *Tilton v. Richardson*, 403 U.S. 672 (1971).

24. JORGE R. COQUIA, *CHURCH AND STATE LAW AND RELATIONS* 114 (2007 ed.).

25. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

26. *Id.* *See also* *Reynolds v. US*, 98 U.S. 145 (1878).

27. A COMMENTARY, *supra* note 12, at 331.

28. *Id.*

29. PHIL. CONST. art. VI, § 28 (3).

government to recognize and extend protection to more than one religion, even if the country is predominantly Catholic. This exemption is another expression of the protection of religious freedom.<sup>30</sup>

The second prohibition found in this Article deals with the prohibition against spending public funds for religious purposes. Taken from the Jones Law,<sup>31</sup> this provision complements the non-establishment clause.<sup>32</sup> This provision has also remained unchanged from its first appearance in the 1935 Constitution. Article VI, Section 29(2) of the 1987 Constitution provides —

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, 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.<sup>33</sup>

Again, while the prohibition seems to be strict, such does not constitute “an absolute bar to all [s]tate aid to any religious institution.”<sup>34</sup> The prohibition does not apply where the appropriation was “not inspired by any sectarian feeling to favor a particular church or religious denomination,”<sup>35</sup> even if there was incidental benefit to the Catholic Church.

Another prohibition present in this article is the exclusion of the religious sector from the required seats for party-list representatives.<sup>36</sup> The logic here is clear — while the government wishes to provide adequate representation for all sectors of society, giving such power to religious institutions would be violative of the Constitutional mandate of separating Church and State. It is worthy to note, however, that “a member of the religious sector may become a sectoral representative, but not as representing the religious sector.”<sup>37</sup>

#### *D. General Provisions*

The presence of religion in educational institutions cannot be denied. A person generally gains his or her religious background during the childhood years, and much of this instruction occurs in school. The attitude of the

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30. A COMMENTARY, *supra* note 12, at 808.

31. CHURCH AND STATE LAW AND RELATIONS, *supra* note 24, at 162.

32. *Id.*

33. PHIL. CONST. art. VI, § 29.

34. CHURCH AND STATE LAW AND RELATIONS, *supra* note 24, at 162.

35. *Id.* at 164–65 (citing *Aglipay v. Ruiz*, 64 Phil. 201 (1937)).

36. PHIL. CONST. art. VI, § 5 (2).

37. A COMMENTARY, *supra* note 12, at 707.

Constitution to religious education has evolved from the first simple and rather general expression in the 1935 Constitution's general provisions.<sup>38</sup>

Originally, such education was meant to be compulsory,<sup>39</sup> but the general attitude of the 1935 Constitutional Commission, as well as American sensibilities, would not allow such. Hence, the qualification of "optional" is present in the 1935 Constitution. The law which authorized the optional instruction was Sec. 928 of the Revised Administrative Code, which provided —

It shall be lawful, however, for the priest or minister of any church established in the town where a public school is situated, either in person or by a designated teacher of religion, to teach religion for one-half hour three times a week, in the school building, to those public-school pupils whose parents or guardians desire it and express their desire therefor in writing filed with the principal of the school[.]<sup>40</sup>

The provision further provided that the school superintendent would fix the hours and venue for such optional instruction.<sup>41</sup> However, this aspect caused the provision to draw fire from certain religious groups, who claimed that the superintendents would abuse this discretion to defeat the purpose of the Constitutional provision.<sup>42</sup>

It was this controversy which led to the added specificity and precision present in the current provision,<sup>43</sup> which provides —

At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.<sup>44</sup>

This law is "more in consonance with the principle of cooperation [and] not separation of the Church and the State."<sup>45</sup> In its current form,<sup>46</sup> the provision lists religious education as one of three "desired educational

38. 1935 PHIL. CONST. art. XIII, § 5 (superseded 1973). Optional religious instruction shall be maintained in the public schools as now authorized by law

39. A COMMENTARY, *supra* note 12, at 363.

40. See Conchita Gonzalez-Virata, *Does Religious Instruction Need A Constitutional Amendment?*, II PHIL. STUDIES 253, 254-55 (1954).

41. *Id.*

42. CHURCH AND STATE LAW AND RELATIONS, *supra* note 24, at 280-81.

43. *Id.* 283.

44. PHIL. CONST. art. XIV, § 3 (3).

45. CHURCH AND STATE LAW AND RELATIONS, *supra* note 24, at 283.

46. PHIL. CONST. art. XIV, § 3 (3).



values,”<sup>47</sup> and represents another “balancing act” between religious freedom and the desire to inculcate religion into education. Religious freedom is still respected by the requirement that the option of the parents or guardians be expressed in writing,<sup>48</sup> and it also provides a “uniform rule for school administrators” by giving to the religious authorities the responsibility of choosing the religious teachers.<sup>49</sup>

*E. The Constitutional Commissions*

The prohibitions found in Article IX of the 1987 Constitution are, again, logically in consonance with the principle of separation. Similar to the prohibition on the religious sector being allocated a party-list seat, this provision prohibits religious sects and denominations from registering as political parties.<sup>50</sup> These new provisions were necessary given the evolution of the legislative department and the prominence of political parties.<sup>51</sup>

The fact that religious organizations are bunched together with the other prohibited organizations — those who seek to achieve their goals through violence, those who refuse to uphold the Constitution, and to foreign-backed organizations — shows that the government is concerned with the type of institution that may be elected or voted for. Giving the Commission on Elections (COMELEC) the power to decide who to allow to register<sup>52</sup> is a safeguard against potentially dangerous or subversive elements winning seats in government.

Found below is a comparative table of constitutional provisions from the 1935, the 1973, and the 1987 Constitutions relating to Religion:

	1935 CONSTITUTION	1973 CONSTITUTION	1987 CONSTITUTION
Separation of Church and State	-	ARTICLE XV GENERAL PROVISIONS  Section 15. The separation of the	ARTICLE II DECLARATION OF PRINCIPLES  Section 6. The separation of

47. A COMMENTARY, *supra* note 12, at 1282.

48. *Id.* at 365.

49. *Id.* at 366.

50. PHIL. CONST. art. IX (C), § 2 (5).

51. Registration is required such that people are informed of the organizations' existence and ideals, as well as identifying the officers for purpose of recognition by the COMELEC. A COMMENTARY, *supra* note 12, at 1090.

52. Registration is not ministerial. *Id.* at 1091.

		church and the State shall be inviolable.	Church and State shall be inviolable.
Non-Establishment and Free Exercise Clauses	<p>ARTICLE III BILL OF RIGHTS</p> <p>Section 1. 7. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.</p>	<p>ARTICLE IV BILL OF RIGHTS</p> <p>Section 8. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. 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.</p>	<p>ARTICLE III BILL OF RIGHTS</p> <p>Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. 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.</p>
Tax exemption for religious purposes	<p>ARTICLE VI LEGISLATIVE DEPARTMENT</p> <p>Section 22. 3. Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements</p>	<p>ARTICLE VIII THE NATIONAL ASSEMBLY</p> <p>Section 17. 3. Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques</p>	<p>ARTICLE VI THE LEGISLATIVE DEPARTMENT</p> <p>Section 28. 3. Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques,</p>

	used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.	and non-profit cemeteries, and all lands, buildings and improvements actually, directly, and exclusively used for religious or charitable purposes shall be exempt from taxation.	non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.
Non-appropriation of public money for religious purposes	<p>ARTICLE VI LEGISLATIVE DEPARTMENT</p> <p>Section 23. 3. No public money, or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or system of religion, for the use, benefit, or support of any priest, preacher, ministers, 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</p>	<p>ARTICLE VIII THE NATIONAL ASSEMBLY</p> <p>Section 18. 2. No public money or property shall ever be appropriated, applied, paid, 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</p>	<p>ARTICLE VI THE LEGISLATIVE DEPARTMENT</p> <p>Section 29. 2. 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, 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</p>

	institution, orphanage or leprosarium.	assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.	orphanage or leprosarium.
	<p>ARTICLE XIV GENERAL PROVISIONS</p> <p>Section 5. ... Optional religious instruction shall be maintained in the public schools as now authorized by law. ...</p>	<p>ARTICLE XV GENERAL PROVISIONS</p> <p>8. At the option expressed in writing by the parents or guardians, and without cost to them and the government, religion shall be taught to their children or wards in public elementary and high schools as may be provided by law.</p>	<p>ARTICLE XIV EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE AND SPORTS</p> <p>EDUCATION</p> <p>Section 3. 3. At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.</p>
Non-registration of religious denominations as	-	ARTICLE XII THE CONSTITUTIONAL COMMISSIONS	ARTICLE IX CONSTITUTIONAL COMMISSIONS

<p>political parties</p>		<p>Section 8. ... No religious sect shall be registered as a political party and no political party which seeks to achieve its goals through violence or subversion shall be entitled to accreditation.</p>	<p>C. THE COMMISSION ON ELECTIONS</p> <p>Section 2. The Commission on Elections shall exercise the following powers and functions:</p> <p>5. ... Religious denominations and sects shall not be registered.</p>
	<p>-</p>	<p>-</p>	<p>ARTICLE VI THE LEGISLATIVE DEPARTMENT</p> <p>Section 5. 2. ... For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, <u>except the religious sector.</u></p>

### III. JURISPRUDENTIAL BACKGROUND

The evolution that these provisions have undergone is highlighted by the various cases and doctrines that have shaped our understanding of the concepts enshrined in the Constitution. These cases have provided examples by which the various tests, requisites, and requirements of the Constitutional provisions may be better understood.

#### A. *The Non-Establishment Clause*

The first concept to be tackled is the non-establishment clause. This clause essentially “prohibits the establishment of a state religion and the use of public resources for the support or prohibition of a religion.”<sup>53</sup> In order for government action aiding religion to be valid, Bernas cites three requisites. First, the law must have a “secular legislative purpose”; second, it must have “a primary effect that neither advances nor inhibits religion”; and third, it “must not result in excessive entanglement with the recipient of the aid.”<sup>54</sup>

The U.S. Supreme Court has given several examples to further define this test. In *Abington School District v. Schempp*, a Pennsylvania law required that children would listen to and read several passages from the Bible as part of their public school education.<sup>55</sup> The court, holding that such law was unconstitutional, stated that such requirement was “in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.”<sup>56</sup> The case of *Lemon v. Kurtzman* is where the three-pronged test mentioned above was first introduced.<sup>57</sup> In *Lemon*, another Pennsylvania law authorized the reimbursement of salaries, costs for textbooks, and other fees in courses where purely secular subjects were being taught.<sup>58</sup> This law was held unconstitutional, for the “substantial religious character of the school[]”<sup>59</sup> would result in excessive entanglement.

*Lemon* was heard concurrently with *Earley v. DiCenso* and *Robinson v. DiCenso*. In this case, a Rhode Island law supplemented the salary of teachers in non-public schools.<sup>60</sup> The primary beneficiaries of this law were about 250 teachers who taught at Catholic schools.<sup>61</sup> Again, this law was

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53. *Imbong*, G.R. No. 204819.

54. A COMMENTARY, *supra* note 12, at 84.

55. *Abington School District*, 373 U.S. at 205.

56. *Id.* at 225.

57. *Lemon*, 403 U.S. at 615.

58. *Id.*

59. A COMMENTARY, *supra* note 12, at 84.

60. *Lemon*, 403 U.S. at 607.

61. *Id.*

held unconstitutional because of the excessive entanglement that would insue, given the nature of the school and the “comprehensive measures of surveillance” which the laws required.<sup>62</sup>

However, in *Tilton v. Richardson*, the court upheld the validity of a law which provided construction grants for colleges and universities, with the exception of facilities used for “sectarian instruction or as [ ] place[s] for religious worship.”<sup>63</sup> This law was held to be free from the excessive entanglement which invalidated the statutes in *Lemon* and *DiCenso*, except for the provision for unlimited use after 20 years — this was held to be a contribution to a religious body.<sup>64</sup>

The first case on this subject in the Philippines is *Aglipay v. Ruiz*. This case saw the Philippine Independent Church attacking the “constitutionality of the issuance and sale of postage stamps commemorative of the Thirty-Third International Eucharistic Congress of the Catholic Church.”<sup>65</sup> In this case, the Court held that any benefit that the Catholic Church received was not the main purpose of the government.<sup>66</sup>

Philippine cases have further elucidated this test. In *Manosco v. Court of Appeals*,<sup>67</sup> a piece of land was expropriated in order to preserve it as a historical landmark commemorating the birthplace of Felix Y. Manalo, founder of Iglesia ni Cristo.<sup>68</sup> Such was upheld using the same argument as *Aglipay*, that any benefit gained by the Iglesia would only be incidental to the primary purpose, which was historical.<sup>69</sup>

*Garces v. Estenzo*<sup>70</sup> held that an allocation of funds in connection with a fiesta honoring the town’s patron saint was not violative of the prohibition against favoring any religion.<sup>71</sup> The fiesta, the Court held, was a socio-religious affair, which is tradition in rural communities.<sup>72</sup> Thus, “any

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62. A COMMENTARY, *supra* note 12, at 354.

63. *Tilton*, 403 U.S. at 683.

64. *Id.*

65. A COMMENTARY, *supra* note 12, at 346. *See also Aglipay*, 64 Phil. at 206.

66. *Aglipay*, 64 Phil. at 209.

67. *Manosca v. Court of Appeals*, 252 SCRA 412 (1996).

68. *Id.* at 415.

69. *Id.* *See also* JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 84 (2011 ed.)

70. *Garces v. Estenzo*, 104 SCRA 510 (1981).

71. *Id.* at 516-18.

72. *Id.* at 517.

activity intended to facilitate the worship of the patron saint (such as the acquisition and display of his image) cannot be branded as illegal.”<sup>73</sup>

In *Austria v. National Labor Relations Commission*,<sup>74</sup> Pastor Austria of the Seventh Day Adventist Church challenged the jurisdiction of the National Labor Relations Commission (NLRC) over a case filed against him for inconsistencies in the handling of funds.<sup>75</sup> He claimed that the matter was outside the NLRC’s jurisdiction, it being an ecclesiastical affair.<sup>76</sup> The Court disagreed, saying that 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. [W]hat is involved here [in this case] is the relationship of the church as an employer and the minister as an employee. It is purely secular and has no relation whatsoever with the practice of faith, worship[,] or dotrines of the church.<sup>77</sup>

Thus, the NLRC could properly take cognizance of the case against Austria, without being in violation of the non-establishment clause.

The prohibition against aiding religion also extends to a ban on governmental performance of certain religious tasks. In *Islamic Da’wah Council of the Philippines, Inc. v. Executive Secretary*,<sup>78</sup> at issue was the nature of certification of food as *halal*.<sup>79</sup> The Court held that it was, according to the Islamic faith, a religious exercise, which could not be performed by a government agency.<sup>80</sup>

*Taruc v. Dela Cruz*<sup>81</sup> held that the courts had no jurisdiction to “entertain a complaint about an expulsion or excommunication from a church.”<sup>82</sup> Such “is a matter best left to the discretion of the officials, and the laws and canons, of said institution/organization.”<sup>83</sup> The Court further

73. *Id.*

74. *Austria v. National Labor Relations Commission*, 312 SCRA 410 (1999).

75. *Id.* at 416.

76. *Id.* at 419.

77. *Id.* at 421.

78. *Islamic Da’wah Council of the Philippines, Inc. v. Office of the Executive Secretary*, 405 SCRA 497 (2003).

79. *Id.* at 499.

80. *Id.* at 505.

81. *Taruc v. Dela Cruz*, 453 SCRA 123 (2005).

82. A COMPREHENSIVE REVIEWER, *supra* note 69, at 86.

83. *Taruc*, 453 SCRA at 128.



held that “[i]t is not for the courts to exercise control over church authorities in the performance of their discretionary and official functions. Rather, it is for the members of religious institutions/organizations to conform to just church regulations.”<sup>84</sup> Thus, the prevailing doctrine is that internal matters of church or faith will generally be left alone and kept free from governmental intrusion or interference.

*B. The Free Exercise Clause*

The free exercise clause is based upon “the respect for the inviolability of the human conscience ... [thus prohibiting the State] from unduly interfering with the outside manifestations of one’s belief and faith.”<sup>85</sup> The meaning of the free exercise clause is best explained by the U.S. Supreme Court in the case of *Cantwell v. Connecticut*. In discussing the rule, *Cantwell* held that such prohibition has a double aspect, thus —

The 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 concepts, — the freedom to believe and the freedom to act. The first is absolute, but in the nature of things, the second cannot be.<sup>86</sup>

The Philippine Court has had occasion to rule upon questions regarding this clause. In *Iglesia ni Kristo v. Gironella*,<sup>87</sup> at issue was a public officer’s derogatory statements regarding a religious group.<sup>88</sup> *Gironella* held that such was a violation of the free exercise clause, saying that “freedom of religion implies respect for every creed[,] [thus] no one, much less a public official, is privileged to characterize the actuation of its adherence in a derogatory sense.”<sup>89</sup>

*American Bible v. City of Manila*<sup>90</sup> held that the City could not require a license for the dissemination of religious literature, if such dissemination was not done for profit or as a business operation.<sup>91</sup> The Court held that “[t]he

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84. *Id.*

85. *Imbong*, G.R. No. 204819.

86. *Cantwell*, 310 U.S. at 303.

87. *Iglesia ni Cristo v. Gironella*, 106 SCRA 1 (1981).

88. *Id.* at 4.

89. *Id.*

90. *American Bible Society v. City of Manila*, 101 Phil 386 (1957).

91. *Id.* at 388.

constitutional guarantee ... carries with it the right to disseminate religious information. Any restraint of such right can only be justified like other restraints of freedom of expression[.]”<sup>92</sup>

*Ebralinag v. The Division Superintendent of Schools of Cebu*<sup>93</sup> overturned a previous case which upheld the validity of the Flag Salute Law.<sup>94</sup> At issue here was the refusal, on religious grounds, of several school children belonging to the Jehovah’s Witnesses to take part in the flag ceremony as mandated by the Flag Salute Law.<sup>95</sup> The Court held that freedom of religion extended to the right to such refusal to comply with the requirements of the law.<sup>96</sup>

However, *Employment Division v. Smith*<sup>97</sup> held that the free exercise clause

does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) *if the law is not specifically directed to religious practice* and is otherwise constitutional as applied to those who engage in the specific act for religious reasons.<sup>98</sup>

In this case, Smith’s employment was terminated by a drug rehabilitation organization because he ingested peyote, a hallucinogenic drug, for “sacramental purposes at a ceremony for their Native American Church.”<sup>99</sup> This was illegal according to the State law, thus the conflict.

The matter of religion has also influenced the Court’s decision making, even in matters or cases where the same was not the main issue or the *lis mota* of the case. Thus, religion has affected jurisprudence involving several sectors even if they were only tangentially related.

### C. LGBT Rights

In *Ang Ladlad LGBT Party v. Commission on Elections*,<sup>100</sup> the COMELEC refused to accredit Ang Ladlad, an “organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or trans-

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92. *Id.* at 398.

93. *Ebralinag v. The Division Superintendent of Schools of Cebu*, 219 SCRA 256 (1993).

94. *Gerona v. Secretary of Education*

95. *Ebralinag*, 219 SCRA at 260.

96. *Id.* at 273.

97. *Employment Division v. Smith*, 494 U.S. 872 (1990).

98. *Id.* at 876–90.

99. A COMPREHENSIVE REVIEWER, *supra* note 69, at 90.

100. *Ang Ladlad LGBT Party v. Commission on Elections*, 618 SCRA 32 (2010).

gendered individuals (LGBTS)”<sup>101</sup> as a party list organization.<sup>102</sup> It was argued that the composition of the party as well as the sector of the community represented was marginalized and underrepresented.<sup>103</sup>

The COMELEC, however, denied the petition for registration, citing moral grounds.<sup>104</sup> The decision was predicated on the fact that the definition by the party of the sector it wished to represent meant that they “tolerate[d] immorality.”<sup>105</sup> In order to justify this broad statement, the COMELEC actually quoted from scripture, invoking passages from both the Muslim Koran and the Catholic Bible.<sup>106</sup>

What follows in the COMELEC decision is a discussion on applicable laws which disallow immoral practices from having any effect in contracts.<sup>107</sup> Notably, the COMELEC decision merely states, categorically and based on religious texts, that the morals espoused by the party are immoral. The conclusion, based on religious grounds, is one taken for granted, and as a given. In fact, after all the discussion regarding the laws, the COMELEC returned to the matter of religion, stating that “should [the COMELEC] grant the petition, [they would] be exposing [the] youth to an environment that does not conform to the teachings of our faith.”<sup>108</sup> Such teachings, they said, had “already seeped into society,”<sup>109</sup> and that the country’s religious history could not be ignored. They further ratiocinated that pursuant to the Constitutional mandate to protect the youth from spiritual and moral degradation, the denial of the registration was proper.

The Court was unimpressed by the COMELEC’s reasoning. Citing the Constitutional provision regarding the non-establishment and free-exercise clauses, the Court said that governmental reliance on religious justification is inconsistent with [the] policy of neutrality.”<sup>110</sup> The Court held that the use of Biblical passages and the teachings of the Koran to justify excluding the party to be flagrant violations of the non-establishment clause.<sup>111</sup> The Court said that “[r]ather than relying on religious belief, the legitimacy of the [COMELEC Resolution] should depend, instead, on whether the

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101. *Id.* at 46.

102. *Id.*

103. *Id.*

104. *Id.* at 47.

105. *Id.* at 48.

106. *Ang Ladlad LGBT Party*, 618 SCRA at 48.

107. *Id.* at 48-49.

108. *Id.* at 50.

109. *Id.* at 52.

110. *Id.* at 58.

111. *Id.* at 58.

COMELEC is able to advance some justification for its rulings *beyond mere conformity to religious doctrine.*<sup>112</sup> Citing the 2003 *Escritor* case, the Court held that “the morality referred to in the law is public and necessarily secular[.]”<sup>113</sup>

#### *D. Free Speech — Carlos Celdran*

Religion has also found its way into the discussion regarding free speech. The case of Carlos Celdran, for example, found the two concepts inextricably intertwined. Celdran, a well-known tour guide and activist, disrupted a religious service in the name of protesting the Catholic Church’s stand against the Reproductive Health Bill.<sup>114</sup> He was arrested and charged with violation of Article 133 of the Revised Penal Code, which punished the crime of offending religious feelings.<sup>115</sup>

The Celdran case raised much controversy due to the crime of which he was accused. The sentiment of some people was that the law was an archaic and anachronistic one, with advocates of free speech claiming that religious sentiments should not be prioritized over fundamental freedoms such as free speech.<sup>116</sup> On the other hand, people agreeing with the decision argued for reasonable limitations on free speech, among them being the propriety of Celdran’s chosen time and place for his protest.

While the trial court in this case was constrained to apply the law and convict Celdran of the crime of offending religious felings, the discussion it generated — whether or not blasphemy statutes still have a place in modern Philippine society — reflects an aspect of the sentiment of the public towards religion. There now seems to be a de-emphasizing of religion as a

112. *Ang Ladlad LGBT Party*, 618 SCRA at 59 (emphasis supplied).

113. *Id.* at 59.

114. Mark D. Merueñas, Manila court affirms Carlos Celdran conviction in ‘Damaso’ case, *available at* <http://www.gmanetwork.com/news/story/325135/news/nation/manila-court-affirms-carlos-celdran-conviction-in-damaso-case> (last accessed May 3, 2014).

115. Article 133 of the Revised Penal Code provides –

The penalty of *arresto mayor* in its maximum period to prison *correccional* in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.

An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 133 (1932).

116. *See generally* Patricia Ann O. Escalona & Leon Ma. Angel P. Caguioa, *The Crime of Offending Religious Feelings and Carlos Celdran*, 57 *Ateneo LJ.* 400, 400 (2013).

barometer for the propriety of actions, and more focus being laid on fundamental individual freedoms regardless of religious institutions.

### *E. Divorce*

In 2011, Malta, the last remaining country in the European Union without a divorce law, passed a referendum to legalize such proceeding.<sup>117</sup> With this development, the Philippines was left to be one out of only two countries which banned divorce, the other being the Vatican City.<sup>118</sup> While the 1987 Constitution does not explicitly prohibit divorce, any legislative attempt to legalize such has been met with stiff resistance.

The current structure in place in Philippine law is “relative divorce, which only suspends marital relations[.]”<sup>119</sup> While there are ways to validly terminate marriages,<sup>120</sup> the inherent limitations of these provisions — for example, that the grounds be existent at the time of marriage, or of the prescriptive periods for bringing actions for annulment or nullity — make them impractical and ill-suited as remedies for parties in dysfunctional marriages.

#### I. History of Divorce in the Philippines

Before the Spanish colonization of the Philippines, divorce was practiced by the native Filipinos, with rules regarding just causes for divorce, the payment of dowry, and the custody of children.<sup>121</sup>

Colonization brought the concept of marriage into the realm of Church jurisdiction, and “the [ ] Church espoused the doctrine that marriage, once validly contracted, [was] indissoluble, except by death.”<sup>122</sup> Similarly to current Philippine law, however, the *Siete Partidas* also allowed legal separation, which was largely the same concept as it is today.<sup>123</sup> The logic

117. Lisa Abend, *Malta Says ‘We Do’ to Legalizing Divorce*, TIME, June 1, 2011, available at <http://content.time.com/time/world/article/0,8599,2074721,00.html> (last accessed May 3, 2014).

118. Carlos H. Conde, *Philippine Stands All but Alone in Banning Divorce*, THE N.Y. TIMES, June 17, 2011, available at [http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html?\\_r=0](http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html?_r=0) (last accessed May 3, 2014).

119. Floralie M. Pamfilo, *Ending Marital Iniquities and Revisiting the Issues on Divorce: Should it Be Finally Allowed in the Philippines?*, 52 ATENEO L.J. 418, 420 (2007).

120. The Family Code of the Philippines arts. 35-38 & 45-46 [FAMILY CODE], Executive Order No. 209 (1987).

121. Pamfilo, *supra* note 119, at 421 (citing F.C. FISHER, A MONOGRAPH ON MARRIAGE AND DIVORCE IN THE PHILIPPINES 8 (1926)).

122. Pamfilo, *supra* note 119, at 421.

123. *Id.* 421-22.

for disallowing absolute divorce was rooted in the possibility of forming illicit relations,<sup>124</sup> and in seeking to prevent wives from “becom[ing] mistresses and add[ing] to the swarm of illegitimate children.”<sup>125</sup> Here, we see the beginnings of the religion-based logic that informs anti-divorce arguments to this day.

During the American period, the Philippine Legislature passed Act No. 2710, which allowed absolute divorce, with the sole ground of adultery or concubinage, upon conviction of the offending spouse for these crimes as defined by the Penal Code.<sup>126</sup> This law was amended during the Japanese occupation, where Executive Order No. 141 expanded the grounds for absolute divorce to include insanity, contagious disease, impotence, an attempt on the life of one spouse by another, intentional abandonment, repeated physical violence, unexplained absence for three years, and slander by deed or gross insult.<sup>127</sup> It will be noted that these grounds are very similar to the grounds for legal separation that exist to day. After this brief dalliance with absolute divorce, however, Philippine liberation brought with it the nullity of laws passed under Japanese rule, and E.O. No. 141 was repealed.<sup>128</sup>

When the Philippines was granted complete autonomy, a new Civil Code was passed, under Republic Act No. 386. This is the Civil Code still effective today, as amended, most notably and most importantly for this discussion, by the Family Code of 1988. Here we see the continued influence of religion into matters of law — “the united stand of the Philippine Congress *and the Catholic population* [caused] absolute divorce [to be] excluded from the proposed code and legal separation incorporated.”<sup>129</sup> This early form of legal separation only included adultery, concubinage, and attempts on the lives of the spouses as grounds.<sup>130</sup>

At this point, absolute divorce was nowhere to be found, and has not reemerged to this day, even with the amendments introduced by the Family Code.

124. *Id.* at 422.

125. FISHER, *supra* note 121, at 18-19.

126. Pamfilo, *supra* note 119, at 422.

127. See Deogracias T. Reyes, *History of Divorce Legislation in the Philippines since 1900*, 1 PHIL. STUDIES 42, 47 (1953).

128. Pamfilo, *supra* note 119, at 423 (citing 1 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 311 (1990)).

129. Pamfilo, *supra* note 119, at 424 (citing Samuel R. Wiley, S.J., *The History of Marriage Legislation in the Philippines*, 20 ATENEO L.J. 23 (1976)).

130. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, as Amended, art. 97 (1950).

## 2. Divorce and Contemporary Philippine Culture

The Family Code was designed to “consider [ ] Filipino customs, values[,] and ideals reflecting contemporary trends and conditions.”<sup>131</sup> In a Note published in the *Ateneo Law Journal*, Floralie M. Pamfilo examined the trends affecting divorce, as they existed in 2007.

The first of these trends was in the cultural realm. While Filipino families were more tightly knit in decades past,<sup>132</sup> the “traditional” structure of “father as breadwinner and mother as caretaker” is no longer the norm.<sup>133</sup> The growing independence and prominence of women has also led to the growing awareness of women’s rights.<sup>134</sup> Pamfilo substantiates this by citing the growing number of marital abuses being reported — “what [was once] a private affair between husbands and wives a few decades ago has become the subject of social awareness campaigns[, and] even prominent personalities come out publicly with their own personal experiences.”<sup>135</sup>

This growing awareness has also led to a renewed clamor for legal aid to resolve such situations. Pamfilo notes that cases for Declaration of Nullity as well as Annulment have been increasing.<sup>136</sup> In 2011, the Social Weather Station reported that 50% of respondents in a survey approved of legalizing divorce.<sup>137</sup>

Despite this evidence, and efforts in legislature to enact a divorce law, any such legislation seems far away. Dr. Ricardo G. Abad, a Professor of Sociology and Anthropology from the Ateneo de Manila University, claims that “[t]he Philippines is ready ... but not the church and state. The greatest obstacles to the divorce law are organized religion and political power[.]”<sup>138</sup>

This resistance has been around for a long time. Recent pronouncements by the ever-vocal CBCP have been very definitive in their stand against introducing any divorce law into the Philippines,<sup>139</sup> claiming

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131. Pamfilo, *supra* note 119, at 439.

132. *Id.*

133. *Id.*

134. *Id.* at 440.

135. *Id.*

136. *Id.* at 441.

137. Karen Boncocan, More Filipinos favor legalization of divorce — SWS, *available at* <http://newsinfo.inquirer.net/11322/more-filipinos-favor-legalization-of-divorce%E2%80%944sws> (last accessed May 3, 2014).

138. Pamfilo, *supra* note 119, at 441.

139. Jerome Aning, Church remains firm against divorce – CBCP, PHIL. DAILY INQ., May 25, 2012, *available at* <http://newsinfo.inquirer.net/200061/church-remains-against-divorce%E2%80%944cbcp> (last accessed May 3, 2014).

that such laws (among others), would “destroy the traditional Filipino values of family and life.”<sup>140</sup>

#### *F. The Current Paradigm*

The landmark case which shows the currently most accepted view regarding conflicts between the Church and State is that of *Estrada v. Escritor*. In this case, which was decided in two parts, one in 2003<sup>141</sup> and another in 2006,<sup>142</sup> involved a court interpreter, Escritor, who was accused of immorality by her fellow court employees. This claim was predicated on the fact that Escritor lived and maintained a family with a man who was not legally her husband.<sup>143</sup> These claims were not denied by Escritor — rather, she argued that her religious beliefs as a member of the Jehovah’s Witnesses allowed such a conjugal arrangement.<sup>144</sup> This claim was bolstered by a “Declaration of Pledging Faithfulness,” which Escritor executed in accordance with the principles of her religion.<sup>145</sup>

Estrada, the principal accuser who alleged immorality, claimed that even if the declaration was valid and accepted by the religious sect, such could only be acceptable within that sect. He claimed that such “serve[d] only the internal purpose of displaying to the rest of the congregation that she and her mate are a respectable and morally upright couple.”<sup>146</sup> The main point of his contention was that this practice, however accepted within the Jehovah’s witnesses, could not “override the norms of conduct required by law for government employees.”<sup>147</sup> To rallow such justification would “create a dangerous precedent as those who cannot legalize their live-in relationship [could] simply join the Jehovah’s Witnesses ... and use their religion as a defense against legal liability.”<sup>148</sup> Escritor stood firm with her argument, maintaining that the conjugal arrangement she was living in was valid, based on their religion.

The issue here was simple and illustrates plainly how State and religion may collide. The State certainly has a right to regulate the behavior of its employees, making sure that a certain standard of morality is met. However,

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140. CBPC News, Gov’t ‘destroying’ traditional families, values, *available at* <http://www.cbcnews.com/cbcnews/?p=10326> (last accessed May 3, 2014).

141. *Estrada v. Escritor*, 408 SCRA 1 (2003) [hereinafter *Estrada 2003*].

142. *Estrada v. Escritor*, 492 SCRA 1 (2006) [hereinafter *Estrada 2006*].

143. *Estrada 2003*, 408 SCRA at 50.

144. *Id.* at 51.

145. *Id.* at 52.

146. *Id.* at 60.

147. *Id.*

148. *Id.*



may this right be asserted against the individual's right to freely practice his or her religion? The Court's views on this point lay the foundation for the current Philippine viewpoint on such conflicts.

Escritor's liability was not passed on until the 2006 case. In 2003, the Court's main thrust was to enunciate a determinable stance towards such issues. After a long and extensive examination of the history of religious freedom, Justice Puno gave two schools of thought with regard to the issue — separation, in its strict and liberal senses, and benevolent neutrality, also known as accommodation.<sup>149</sup>

Separation demands a rigid reading of the principle of Church-State separation. Under this school of thought, government's decisions on public policy should be based solely on secular considerations, without paying heed to any religious consequences. The *strict version* of this principle “erects an absolute barrier to formal interdependence of religion and [s]tate. [Thus] [r]eligious institutions could not receive aid, whether direct or indirect from the [S]tate. ... Only the complete separation of religion from politics would eliminate the formal influence of religious institutions and provide for a free choice among political views[.]”<sup>150</sup>

The *tame version* is called the “strict neutrality” view, which requires that the State is “neutral in its relations with groups of religious believers and non-believers; it does not require the [S]tate to be their adversary. State power is no more to be used so as to handicap religions that it is to favor them.”<sup>151</sup> This view strictly prohibits religion from being used as a basis for classification, limiting such to secular criteria.<sup>152</sup>

On the other hand, benevolent neutrality aims to *protect* “religious realities, tradition[,] and established practice with a flexible reading of the principle.”<sup>153</sup> This view allows accommodation in order to “allow individuals and groups to exercise their religion without hindrance.”<sup>154</sup> This principle would “remove a burden on, or facilitate the exercise of, a person's or institution's religion.”<sup>155</sup> Government would be allowed, or in fact encouraged, to “take religion into account ... to exempt, when possible, from generally applicable governmental regulation[,] individuals whose religious beliefs and practices would otherwise thereby be infringed, or to create without [S]tate involvement an atmosphere in which voluntary

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149. *Estrada 2003*, 408 SCRA at 90.

150. *Id.* at 114–15.

151. *Id.* at 116.

152. *Id.*

153. *Id.* at 113.

154. *Id.* at 121.

155. *Estrada 2003*, 408 SCRA at 121.

religious exercise may flourish.”<sup>156</sup> It will be noted that this does not signify *agreement* with any religion, but rather, *respect* for its beliefs and tenets.

This benevolent neutrality doctrine, the Court said, is preferable to the separationist view because it is more consistent with, and best achieves the purposes of the free exercise and non-establishment clauses. According to the Court, Philippine jurisprudence has mainly leaned towards this interpretation, while the U.S. has varied between the two views.<sup>157</sup>

The Court also laid down the test to be used in cases such as these, which did not involve religious speech but rather, religious freedom — the compelling state interest test. The test has three parts, to wit:

- (1) Has the statute or government action created a burden on the free exercise of religion? (In other words, the sincerity of the religious belief must be examined.)
- (2) Is there a sufficiently compelling state interest to justify this infringement of religious liberty? (There must be a legitimate and compelling purpose of government, and a balancing of interests between religious freedom and the stated government purpose)
- (3) Has the state in achieving its legitimate purposes used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state?” (Is the least intrusive means used?)<sup>158</sup>

In deciding the case, the Court applied the “Compelling State Interest” test, from a benevolent neutrality standpoint. This meant that should the government show that a more compelling state interest existed to justify the infringement of Escritor’s religious freedom. The 2003 case concluded that the sincerity of the religious belief, as shown by Escritor, was properly established, and that such exercise would evidently be burdened. However, the case was not decided then and there, but it was to go on — with a directive to the government to show that such compelling interest existed.<sup>159</sup>

After three years, the Court finally held that the government was unable to show that the conduct complained about was “demonstrat[ive of] the gravest abuses, endangering paramount interests which could limit or override [the] fundamental right to religious freedom.”<sup>160</sup> Neither was it shown that the desired action — dismissal due to immorality — was the least

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156. *Id.*

157. *Id.* at 133.

158. *Id.* at 126–29.

159. *Id.* at 90.

160. *Estrada 2006*, 492 SCRA at 82.

intrusive means of attaining the alleged state interest.<sup>161</sup> The complaint was dismissed, and Escritor's exercise of her religion was protected.

The above case serves as the Court's statement of policy regarding the doctrinal treatment of cases involving religious freedom to act. The Philippines thus adopts the Benevolent Neutrality Doctrine, and would accommodate free exercise of religion, provided that no compelling state interest existed in order to justify the infringement of such rights.

### *G. Imbong and the RH Bill*

The next major step in the continuing evolution of the Philippine jurisprudential concept of church-state conflict is the recent case of Imbong, related to the controversial and polarizing issue of the Reproductive Health (RH) Bill. In arguing against its passage, the issue of religion was brought up. First, it was claimed that some medical practitioners, based on their religious upbringing, believed that contraception was evil.<sup>162</sup> Thus, they said, the "State-sponsored procurement of contraceptives ... violates the guarantee of religious freedom since contraceptives contravene their religious beliefs."<sup>163</sup>

This attitude also extended to other aspects of the RH Bill, such as the duty imposed upon conscientious objectors to refer the patient to other practitioners.<sup>164</sup> This duty, it was claimed, would also be a violation of the religious beliefs of the practitioner in question.<sup>165</sup> This supposed freedom from doing the questioned acts was also said to be limited by the prohibition of refusal to provide reproductive health procedures.<sup>166</sup>

These concerns were bolstered by claims that there was no compelling state interest to justify this "regulation of religious freedom" absent an "emergency, risk, or threat that endangers state interest."<sup>167</sup>

The Court, after reviewing the doctrines of Church-State separation, as well as the concept of benevolent neutrality and accommodation as laid down in *Escritor*, took the position that it was not their duty to "determine whether the use of contraceptives or one's participation in the support of modern reproductive health measures is moral from a religious standpoint or

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<sup>161</sup> *Id.*

<sup>162</sup> *Imbong*, G.R. No. 204819.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

whether the same is right or wrong according to one's dogma or belief,"<sup>168</sup> limiting its power to only public and secular morality. Thus, while they would not rule on whether the RH Bill's provisions violated any particular religion, they would determine whether the statute impinges on the guarantee of religious freedom.<sup>169</sup>

In finding that the provisions of the RH Bill regarding the duty to refer actually violated the free exercise clause, the Court applied the compelling state interest test as laid down in *Escritor*.<sup>170</sup> The Court found that there was no compelling State interest which would validly limit the free exercise clause of the conscientious objectors, as there is "no immediate danger to the life or health of an individual in the perceived scenario of the subject provisions."<sup>171</sup> Neither was it shown that the means to be taken were the least intrusive means.<sup>172</sup>

The discussion on religion in *Imbong* highlights the practical application of the compelling state interest test laid down in *Escritor*. It also tempers the *Celdran* case by showing that religious interests still do hold sway over what the government may or may not do by means of statute.

#### IV. CONCLUSION

The foregoing discussion has highlighted and emphasized the fact of Philippine law's constant interaction with religion and religious concerns, despite the legal mandate to keep the two realms separate. This relationship is difficult to characterize. It is not symbiotic, for certainly, either could survive without the other. Neither can it be said that the two are diametrically opposed, for religious concepts often do fall in line with legal principles, and our laws do also acknowledge the existence and importance of religion, as in the case of the evolution and development of the Constitutional provisions regarding and referring to religion.

This tangled relationship, and the extent to which the two realms interact, is borne of the cultural experience of the Philippines, where the Church has been a central figure since the country's inception. While it obviously has lost much of the power and influence it once wielded, at least in an official capacity, religion remains to be a significant driving force motivating and informing the actions and interests of many Filipinos.

The Court, therefore, navigates a precarious tightrope when it comes to the inevitable clashes and disagreements between the State and religion. This

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<sup>168</sup> *Imbong*, G.R. No. 204819.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

is reflected in the manner by which the various cases involving these conflicts have been resolved. The analysis of such jurisprudence reveals that the Court constantly strives to seek a balancing of interests, treating each side of the equation as having equal weight. As laid down in the landmark case of *Escritor*, the benevolent neutrality doctrine mandates that a more accommodating approach be taken towards religion.

However, the metes and bounds of the subject are not set in stone, but are evolving and amorphous. The latest case on the matter, *Imbong*, touches on new aspects of the issue, and it is not difficult to imagine that more cases will eventually come to light, bearing on other angles. With the changing face of Philippine culture today, with the tension between tradition and newer ways of thinking, it will be interesting to see the continued evolution of the subject.