

RELIGION, RULE OF LAW AND SOCIAL STABILITY*

My dear friend Justice Wallace and fellow participants to the symposium:

Let me begin by publicly expressing my profound gratitude to the Brigham Young University and its International Center for Law and Religion Studies and to Director Durham for inviting me to this Twenty Second Annual International Law and Religion Symposium, with a focus on the theme, "Law, Religion and Social Stability." To be invited is a rare honor and to be able to participate and to be with the heavyweights on the subject is a distinct privilege.

On a personal note, this event brings me to a reunion with a highly respected personal friend who loves my country – the Philippines, a country of 7,107 islands in Southeast Asia, the first democratic and republican State in that part of the world – I refer to our Chairperson the Honorable Justice Clifford Wallace. He had visited the Philippines a number of times to attend judicial conferences and had contributed a lot to the

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Prefatory Statement of Chief Justice (ret.) Hilario G. Davide, Jr. At the Judiciary Plenary on the topic "Religion, Rule of Law and Social Stability" during the 22nd Annual International Law and Religion Symposium hosted by the Brigham Young University, Utah, USA, on the second day of the Symposium, 5 October 2015 at the J. Reuben Clark Law School in Provo, Utah.

institutionalization of various significant judicial reforms in the justice system in the Philippines. He was among my guiding lights when, during my watch of the Philippine Judiciary as Chief Justice (1998-2005), we initiated and pursued the most comprehensive reform package for the Philippine Judiciary. It was known as the Action Program for Judicial Reform (APJR) which the World Bank has recognized as a model for judicial reform program. Justice Wallace was also an institution in the Judicial Section of the biggest association of lawyers in Asia – the LAWASIA. This Section is composed of Chief Justices of Supreme Court and Constitutional Courts in Asia. His contributions to its growth and success are beyond measure.

Now, on the symposium's theme "Law, Religion and Social Stability" or for the specific topic for this Second Plenary "Religion, Rule of Law and Social Stability."

The histories of peoples and nations of the world teach us that law and religion or religion and the rule of law, together or separately, can be the most effective instruments in establishing, nurturing, nourishing, promoting, and safeguarding social stability at its best, on the other hand; or, in causing social chaos, disorder and instability at its worst, or the other. The best could be achieved when law and religion, recognizing the preeminence and dominance of each other in their respective spheres of influence and authority – the secular for law, and the spiritual for religion – accept that they have many more virtues and values in common than in what they cannot agree for the full development of the human person and the full flowering of his worth and dignity as endowed by the creator and for the building of a society and a world of justice, peace, freedom and love, where the common good is always the common goal. This achievement can be a reality in our times and even in the generations yet to come. For obvious reasons, we cannot afford to fail. A legacy of failure

is absolutely unacceptable. The prerequisites to the attainment of the ideal best are (1) there shall be no state religion and (2) there shall be free exercise of religious belief. In the Constitution of the United States (by way of the First Amendment) and in the Constitution of the Philippines – past and present –, these are known as the "non-establishment" clause and the "free exercise" clause. The present 1987 Constitution of the Philippines is founded on deep spiritual moorings. It is undoubtedly pro-God, pro-country, pro-people, pro-poor, pro-marriage, pro-family and pro-environment, in whose Preamble the sovereign Filipino people implore the aid of Almighty God to build a just and humane society and establish a government that shall, *inter alia*, secure to the sovereign Filipino people the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality and peace. I think this is the only Constitution in the world that mentions love in its preamble.

I think, too, that it has the best worded provision on the "non-establishment" and "free exercise" clauses. Consider Section 6 of Article II thereof on Declaration of Principles and State Policies. It reads:

Sec. 6. The separation of Church and State shall be inviolable.

Then, the "free exercise" clause is solemnly enshrined in its Bill of Rights.

Section 5 of provides:

Sec. 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 never be allowed. No religious test shall be required for the exercise of civil and political rights.

By express mandate of the same Constitution, among others, churches and personages or convents appurtenant thereto and mosques, and all lands, buildings and improvements actually, directly, and exclusively used for religious purposes shall be exempt from taxation [Sec. 28(3), Article VI].

Also it provides that "no public money or property shall be appropriated, applied, paid or employed directly or indirectly for the benefit, use or support of any sect, church, denomination, sectarian institution, system of religion or of any priest, preacher, minister or dignitary as such, except when such priest, preacher, minister or dignitary

assigned to the armed forces or to any penal institution or government orphanage or leprosarium (Sec. 29 (2), Article VI).

Recognizing the role religion plays in the education of the youth, the Article on Education (Article XIV), of this Constitution provides that "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 school 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" [Sec. 3(3)].

In this regard, I prepared and submitted to the conference organizers and to Justice Wallace a paper entitled: **Philippine Constitutional Exceptionalism: Managing the Separation of Church and State and Religious Freedom.**

Among the principal objectives of such management is the promotion and protection of social stability.

I understand that my paper may be posted - and I was informed that

it had been - on the Conference website and you may be able to view or visit it.

However, I will share with you a brief introduction and summary of the paper, without footnotes.

Religion has always been an important aspect of Filipino life. Philippine national religious consciousness traces its roots to the Spanish era in the 19th century, further shaped and informed by American occupation and American federal laws from 1898 and until Philippine independence in 1946, and by modern society and social understandings of the present time. Religion is widespread. Religious beliefs inform everyday Filipino opinion, including controversial issues such as the proper role of criminal prosecution between church ministers belonging to the same religion, to contraception and reproductive health, to yet grander issues such as Muslim autonomy in the southern island of Mindanao.

Government and World Bank estimates point to a total population of the Philippines of 100.1 million as of 2014. Approximately 57 percent of

the population is Roman Catholic, with the rest comprised of Christians and Muslims. A 2012 estimate by the National Commission on Muslim Filipinos, however, states that there are 10.7 million Muslims, which is approximately 11 percent of the total population. If this is the case, then Islam is the largest minority religion. Approximately 60 percent of Muslims reside in Mindanao, the second largest island in the Philippines. Muslim Mindanao today is characterized by conflict and social tension.

While the power of religion over normal life in the Philippines has not been as pervasive as it once was, especially during the Spanish era, matters of faith continue to shape and inform national consciousness. Religious freedom forms part of our fundamental law. No less than the preambles of the Constitutions of 1935, 1973, and 1987 recognize the existence of “an active power that binds and elevates man to his Creator.” In the recent landmark ruling of *Imbong vs. Ochoa*, the Supreme Court declared that “[t]he Filipino people in ‘imploring the aid of Almighty God’ manifested their spirituality innate in [Filipino] nature and consciousness as a people, shaped by tradition and historical experience. As this is embodied in the preamble, it means that the State recognizes with respect

the influence of religion in so far as it instills into the mind the purest principles of morality.” The fact that conceptions of religion, religious freedom, and the separation of church and state, have long been entrenched as constitutional norms requires state actors to consider, apply, and realize these norms whenever decisionmakers are seized of policy questions and legal controversies. In short, the ‘State’ is required to manage religious issues once these issues enter the realm of policy, law, and adjudication. How do we characterize religious freedom in the Philippines and how do state actors, particularly the Philippine Supreme Court, approach questions concerning religious freedom and church-state relations? How do religious actors and individuals contribute to the formulation of government policies which bear upon their religious beliefs?

In this paper, I explore the ways in which government balances its secular goals and interests with religious liberty and religious interests under constitutional boundaries. Philippine constitutional law adheres to the doctrine of “benevolent neutrality.” The benevolent neutrality theory believes that with respect to governmental actions, accommodation of religion may be allowed, not to promote the government's favored form of

religion, but to allow individuals and groups to exercise their religion without hindrance. "The purpose of accommodation is to remove a burden on, or facilitate the exercise of, a person's or institution's religion." In the Philippine jurisprudential context, discourse on contemporary notions of religious freedom is able to articulate progressive social and global understandings in religious affairs and yet remains steadfastly faithful to traditional, formalist, and originalist notions of religious freedom and separation of church and state. In fact, Philippine governmental and legal actors routinely merge progressive thought and constitutional tradition conspicuously through a comparative approach which considers the gains and successes of religious movements elsewhere. In short, Philippine jurisprudence and state behavior is both progressive and yet traditionalist, as well as comparative and dialogic. On the part of legal doctrine, Philippine religious freedom is driven in no small part by a robust and interactive dialogue between Philippine legal doctrine and foreign law, particularly U.S. Supreme Court decisions. Our laws are also shaped and informed by successes and gains of social movements and social-legal developments in the United States and parts of Europe.

The Philippine experience of religious freedom is also marked with social tension and, in the southern island of Mindanao, social instability. I will devote a significant part of my discussion on the peace accords between the Government of the Philippines and the Moro Islamic Liberation Front or the MILF, as well as recent legal and political developments done in the name of peace.

In **Part I**, I briefly chart the basis and origins of the constitutional guarantees of freedom of religion and of the separation of church and state up to the present constitutional order. In particular, I outline key constitutional developments since the passage of the Jones Law, also known as the Philippine Autonomy Act of 1916, which is the Organic Act passed by the United States Congress. I underscore the interplay between U.S. law and developments in Philippine law in the early Philippine republic up to the present day constitutional order.

In **Part II**, I briefly discuss the juridical personality or legal standing of the most dominant religion in the Philippines -- the Catholic Church.

In **Part III**, I focus on three Supreme Court decisions which can exemplify frontier understandings of religious freedom in the Philippines today, namely, the *Estrada vs. Escritor* cases, which decided upon the question of whether a female court interpreter, accused of immorality, can live and maintain a family with a man not legally her husband on the basis of her religious belief as a member of the Jehovah's Witnesses which, as she argued, allowed for such conjugal arrangement; the landmark case of *Imbong et al., v. Ochoa, Jr., et al.*, where our Supreme Court decided upon the constitutionality of the Responsible Parenthood and Reproductive Health Act of 2012 ("RH Law"); and *Leus v. St. Scholastica's College Westgrove*, where the Court ruled upon whether a Catholic educational institution can validly dismiss an employee for having engaged in pre-marital relations, who became pregnant out of wedlock, and then who later married the father of her child.

In **Part IV**, I point to three emerging areas which have the potential of furthering current understandings of religious freedom and permissible church and state boundaries. These pertain to a recent petition seeking to legitimize same-sex marriage in the Philippines following the wave of

decriminalization of such marriages in the United States, particularly in the case of *Obergefell v. Hodges* where the US Supreme Court recognized the right to marry among same-sex couples, as well as Ireland's May 2015 referendum in favor of same-sex marriage; an illegal detention case filed by an expelled minister of the Iglesia ni Cristo against eight incumbent ministers, which spurred mass protest; and, last but not least, the report and findings of our Peace Council about the draft Bangsamoro Basic Law, a centerpiece of the peace accords between the Government of the Philippines and the Moro Islamic Liberation Front.

I ended my paper with this principal conclusion:

While Philippine laws does recognize the church's influence and power, the State is directed to disallow any encroachment into the affairs of the church. Verily, the principle of separation of church and state is based on mutual respect. Generally, the State cannot meddle in the internal affairs of the church, much less question its faith and dogmas or dictate upon it. It cannot favor one religion and discriminate against another. On the other hand, the church cannot impose its beliefs and convictions on the State and the rest of its citizenry. It cannot demand that the nation follows its beliefs, even if it sincerely believes that they are good for the country.

Now, you may view on the web the rest of my paper. Forgive me for this homework. Thank you for your patience and attention. Finally, may these words forwarded to me by a friend of mine remind us always: God's love has no limit. God's grace has no measure. God's power has no boundaries. May you have endless blessings today and for always.