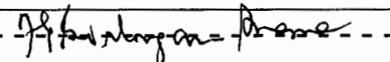


EN BANC

A.M. No. 10-4-19-SC – Re: Letter of Tony Q. Valenciano, re: Holding of Religious Rituals at the Halls of Justice Building in Quezon City

Promulgated:
March 7, 2017

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CONCURRING OPINION

LEONARDO-DE CASTRO, J.:

According to the Memorandum dated August 7, 2014 submitted by the Office of the Court Administrator (OCA), the case at bench originated from a series of Letters dated January 6, 2009, May 13, 2009, and March 23, 2010 that Mr. Tony Q. Valenciano (Valenciano) wrote to then Chief Justice Reynato S. Puno (Chief Justice Puno) wherein the former informed the latter about the regular and unabated practice of holding daily Roman Catholic Masses at the basement of the Quezon City Hall of Justice. In the aforementioned correspondences, Valenciano questioned the use of the said government facility for the aforesaid religious purpose and pointed out that the said practice violated the Constitutional principle of the separation of Church and State.¹ He likewise claimed that the same is violative of Article VI, Section 29(2) of the 1987 Constitution² which prohibits the appropriation of public funds to activities that benefit a religious organization.

In his January 6, 2009 Letter, Valenciano complained that the practice of allowing regular Roman Catholic Masses in the premises of the Quezon City Hall of Justice has generated a perception that there is “a stamp of approval of a bias favoring a religion” in violation of the Constitution. He further enumerated specific instances wherein the said practice had created unnecessary disturbance and inconvenience to the people who are employed and who utilize the said government facility, to wit:

1. Posted on the wall to the left side of the door of the Records Section of the OCC is a cork board where announcements are posted as in the name of the Priest due to say mass and at what time and day of the week.
2. Between 1:15pm to 1:30pm from Monday to Friday, the Basement Area also double-up as a “**conservatory of music**” as the Choral Group of the Chapel practices the hymnal of the Missal in preparation for the following

¹ 1987 Constitution, Article II, Section 6. “The separation of Church and State shall be inviolable.”

² “No public money or property shall ever be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.”

day's mass which disturb those other employees trying to take a nap or else resting in their respective office.

3. In so far as can be gathered, the building's basement was designed as a **place of rest for the transacting public from 12:00am to 1:30pm**. This function has been abolished by the above-cited activities it being the venue of the rituals, becoming fully occupied during this hour.

4. Personnel and litigants of the Public Attorney's Office, RTC Branch Nos. 82 & 83, Legal Library, Philippine Mediation Center, Records Section of the OCC go into **mild consternation attending to their personal necessities** because they cannot traverse the Basement between 12am to 1:15pm to go to the lavatories. Additionally, the personnel of the Courts and the Public cannot use the elevators because it is blocked during this hour of the Mass and are forced to take several flights of stairs to reach the Basement from the upper floor.

5. The institutionalization of the goings-on has taken root and the imagery above-cited is in veritable fruition what with the practice of each office, court officer or prominent personality being designated as sponsor for the Mass to be offered and with said sponsoring is the matter of how to raise the stipend of the Priest officiating the said Mass. The designate usually does the reading of the Epistles of the Saints. Additionally, the name of the celebrants of Wedding or Birth anniversary is announced to the congregation. And devotees who are lay ministers help the Priest distribute holy communion during the Mass. **Unmistakable signs all that the Church has appropriated the Basement Area as its regular venue, nay, as a private preserve.**

6. And as far as can be gathered, it is not uncommon to find among the Court personnel who have taken upon their shoulders the duty of ministering to the goings-on of the Chapel, have entered the practice of vying for the right to read the Epistle when the sponsor-designate is not in attendance or pass-up the opportunity, bringing in its train unsavory conduct toward each other. **A cause for back-biting and irritation among themselves.**

7. Usually, the water-pump generator because it produces discordant sound vis-a-vis the contrived silence during the Mass is shut-off, bringing in its train a **"no water in faucets state"** for the entire building with the attendant discomfort to the personnel who need to wash up after lunch for they bring their own lunch box to their respective workplace.

8. A question can be raised also as to whether or not the 2 dozens or so personnel of the Courts who have taken upon their shoulders the "Chapel Duties" have developed an attitude preferring to **engage more heartily in "Chapel Duties"** vis-a-vis their official duty for which they are being paid out of taxes collected from the people they ought to have priority for.

Then Chief Justice Puno referred Valenciano's January 6, 2009 Letter to then Deputy Court Administrator and Officer-in-Charge of the Office of Halls of Justice Antonio H. Dujua (DCA Dujua) for appropriate action who in turn requested then Quezon City Regional Trial Court (RTC) Executive Judge Teodoro A. Bay (Judge Bay) and Quezon City Metropolitan Trial Court (MeTC) Executive Judge Luis Zenon A. Maceren (Judge Maceren) to



provide their respective comments on the issue. Judge Bay responded by recommending via a Memorandum dated March 10, 2009 that pending final resolution of the case, daily mass be permitted to continue at the basement of the Quezon City Hall of Justice, provided that: (1) the mass is limited to 30 minutes; (2) no loud singing is allowed so as not to disturb others who are not attending the mass; and (3) inconveniences caused by the mass are addressed. For his part, Judge Maceren argued in his Letter dated March 6, 2009 that the holding of daily Roman Catholic mass does not violate the principle of separation of Church and State because the said principle does not prohibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general. He likewise claimed that the said activity is essential to achieving moral renewal which is in line with then Chief Justice Puno's advocacy on moral recovery. Valenciano subsequently wrote then Chief Justice Puno a Letter dated May 13, 2009 to inquire about the status of his complaint. The letter was again referred to DCA Dujua. No further action on the matter was made as per records.

Claiming that his concerns were not properly addressed, Valenciano sent his March 23, 2010 Letter to then Chief Justice Puno. In an *En Banc* Resolution dated June 22, 2010, the Court noted the aforementioned correspondence and referred the same to the OCA for evaluation, report and recommendation. Subsequently, the OCA through then Assistant Court Administrator Jenny Lind Aldecoa-Delorino (ACA Delorino) required then Quezon City RTC Executive Judge Fernando T. Sagun, Jr. (Judge Sagun) and Quezon City MeTC Executive Judge Carida M. Walse-Lutero (Judge Lutero) to comment on Valenciano's complaint.

In response, Judge Sagun informed the Court through his Letter-Comment dated September 9, 2010 that the concerns raised by Valenciano in his January 6, 2009 Letter have been addressed and measures have already been implemented to this end. He also maintained that the holding of daily masses should not be stopped because it is not detrimental and is in fact a source of an individual's power and strength. He also commented on the specific issues raised by Valenciano in this wise:

1. The cork board mentioned by Mr. Valenciano which used to be located at the Office of the Clerk of Court announcing the schedule of masses and the priest officiating the same is no longer being used;
2. While it is true that the choral group practices singing at the basement of the Quezon City Hall of Justice, it is not true that the group does this on a daily basis. Rehearsals are usually conducted either a few minutes before or after the celebration of mass;
3. Masses have been considerably shortened to a little over thirty (30) minutes. It is only during special holidays of obligation when the celebration of mass goes beyond past 1:00 o'clock in the afternoon;

4. It is not true that personnel and litigants go into mild consternation because they allegedly cannot traverse the basement going to the lavatories on the first floor between 12:00 noon and 1:15pm during mass. Indeed, the side pathways leading to the lavatories upstairs are open and can be used without obstruction;
5. As regards the use of elevators, note must be taken of the fact that elevator attendants operating the elevator also take their lunch break from 12:00 noon to 1:00pm;
6. On the issue of sponsoring masses, priests who officiate the masses never demand a fee for the services, and are rarely assisted by a lay minister as the priest distribute holy communion all by himself;
7. There is no such instance where court personnel vying to read the epistle during mass, cause back-biting and irritation amongst themselves;
8. Regarding the shutting off of the water pump to prevent the noise it caused from disrupting mass, but which allegedly also cut off water supply to the entire Hall of Justice, the said pump has been broken beyond repair and decommissioned since December of 2009;
9. Finally, with respect to court personnel who assist in the preparation of the mass, they do the preparations before the day official starts and do not hamper the performance of their official duties in court.³

On the other hand, Judge Lutero in her Memorandum to then ACA Delorino defended the Roman Catholic activity in question despite her being a Protestant Christian because she does not believe that, contrary to Valenciano's claims, it violates the principle of separation of Church and State. However, she suggested that in order to avoid offending the sensibilities of non-Roman Catholics, religious statues should not be displayed with the exception of the crucifix. She likewise made the following specific comments on the issue as enumerated in the August 7, 2014 OCA Memorandum:

1. Although mass is held at the basement of the Quezon City Hall of Justice during lunch breaks, it is not true that the Executive Judges of the Quezon City courts have approved the conversion of the said portion of the basement into a chapel, as in fact, the said area continues to be used as a waiting area for the public;
2. The allegation of Mr. Valenciano that holding of masses at the Quezon City Hall of Justice violates the Constitution is baseless. It is not the conduct of masses in public places which the Constitution prohibits, but the passage of laws or the use of public funds for the purpose of establishing a religion or prohibiting the free exercise thereof which is prohibited. In this instance, no law or rule has been passed nor have public funds been used to support the celebration of masses within the Quezon City Hall of Justice;

³ OCA Memorandum dated August 7, 2014, pp. 4-5.

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3. Considering that Catholic masses are held only during lunch breaks and do not disturb court proceedings, there is no reason to discontinue the practice. To stop the celebration of mass at the Quezon City Hall of Justice would be tantamount to repressing the right of those who attend these masses from freely exercising their religion. If Muslim court personnel are allowed to worship their Allah even during office hours inside their offices; Seventh Day Adventists are exempt from rendering Saturday court duties because their religion prohibits them from working on Saturdays; and Christians are allowed to conduct Bible studies inside their offices, Roman Catholics should also be allowed to freely exercise their religion and worship in the form of celebrating mass;

4. It is not true as alleged by Mr. Valenciano that the holding of Catholic masses attended by Judges, Branch Clerks of Court and other judicial employees grant Catholics better chances of obtaining favorable resolutions from the Court. The fear is imagined. Indeed, most cases filed in court are filed between and among Catholics. In such instance, how then can a magistrate favor one Catholic over the other;

5. The holding of masses has no connection to judges being biased. In any case, only a handful of judges attend the subject mass celebrated at the basement of the Quezon City Hall of Justice. Neither does the posting of announcements relating to mass schedules and name of officiating priests on the cork board of the Office of the Clerk of Court has anything to do with perceived judicial biases;

6. Contrary to Mr. Valenciano's allegation, the basement of the Quezon City Hall of Justice was not designed as a resting place for the public, but was originally occupied by the Register of Deeds. However, the said Office has since been moved to another location. Other court offices and branches were therefore, subsequently transferred to the basement after the Register of Deeds moved out;

7. The public is generally prohibited from loitering inside the Quezon City Hall of Justice unless they have official business transactions with the concerned offices thereat. On the other hand, no official business is transacted during lunch breaks. This being the case, the public is not actually deprived of a waiting space during lunch breaks as they cannot be said to have official business with the offices located at the Hall of Justice during the said time;

8. There is a clear path from the public offices leading to the comfort rooms. Court personnel and the public are thus never physically prevented from reaching the lavatories during mass. Neither are the elevators unreachable for use since the area fronting the same are clear of any obstructions. If at all the elevators cannot be used during the mass, it is because elevator attendants also take their lunch breaks from 12:00 noon to 1:00pm. In any case, to climb a single flight of stairs from the basement to the first floor should not really pose too much trouble, and should in fact be encouraged to save energy;

9. The alleged water interruption caused by the shutting off of the water pump during mass clearly has no basis. Executive Judge Lutero claims that being on the third floor of the Quezon City Hall of Justice, she has yet to experience the unavailability of water during mass. If ever water

interruptions occurred before, the same was caused by pump maintenance problems and not because the water pump was specifically shut off during mass;

10. There is really no problem in allowing court employees to volunteer their services during the mass as long as this does not interfere with the performance of their official duties. To date, the Office of the Executive Judge has yet to receive a single complaint coming from either judges of the Metropolitan Trial Court or other court users regarding such a situation[.]⁴

As pointed out by the OCA in its August 7, 2014 Memorandum, Valenciano seeks to abate and discontinue the practice of holding Roman Catholic Mass not only in the premises of the Quezon City Hall of Justice but also in all Halls of Justice in the country. He cites the violation of the Constitutional principle of the separation of Church and State and the general inconvenience created by such practice on the public as bases for requesting its total prohibition.

In the said memorandum, the OCA analyzes and frames Valenciano's Constitutional argument in the following manner:

On constitutional grounds, complainant Valenciano raises the issue of the Separation of the Church and the State.

Article II, Section 6 of the 1987 Constitution emphatically declares that the "separation of Church and State shall be inviolable." The Bill of Rights, specifically Article III, Section 5 of the Constitution, on the other hand, provides that: "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." The aforementioned provisions are known as the principal religion clauses of the Constitution, which essentially guarantee two things: *first*, the State cannot establish or favor a particular religion as embodied in the "Establishment Clause"; and *second*, the State cannot prohibit anyone from freely choosing his religion as embodied in the "Free Exercise Clause."

The Establishment Clause principally prohibits the State from sponsoring any religion, or favoring any religion as against other religions. It mandates a strict neutrality in affairs among religious groups. In the landmark United States case of *Everson v. Board of Education*, the United States Supreme Court, speaking through Justice Hugo Black, held that the Establishment Clause means at least this:

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can

⁴ Id. at 5-6.

be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation' between Church and State.

In our own landmark case of *Estrada v. Escritor*, the High Court has however scholarly explained that the Establishment Clause has been interpreted using either of two standards. First is the standard of *separation*, which may take the form of either (a) **strict separation**, or (b) the tamer version of **strict neutrality or separation**.

The **Strict Separation** believes that the Establishment Clause was meant to protect the state from the church, and the state's hostility towards religion allows no interaction between the two. According to this Jeffersonian view, an absolute barrier to formal interdependence of religion and state needs to be erected. Religious institutions could not receive aid, whether direct or indirect, from the state. Nor could the state adjust its secular programs to alleviate burdens the programs placed on believers. 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, thus a strict "wall of separation" is necessary. In short, there is total detachment between the church and the state, and neither should have anything to do with the other.

On the other hand, the tamer version of the strict separationist view, the **Strict Neutrality** view, believes that the "wall of separation" does not require the state to be their adversary. Rather, the state must be neutral in its relations with groups of religious believers and non-believers." State power is no more to be used so as to handicap religious than it is to favor them. The Strict Neutrality approach is not hostile to religion, but it is strict in holding that religion may not be used as a basis for classification for purposes of governmental action, whether the action confers right or privileges or imposes duties or obligations. Only secular criteria may be the basis of government action. It does not permit, much less require, accommodation of secular programs to religious belief.

Viewed in light of the foregoing discussion, it is clear that complainant Mr. Valenciano anchors his present protest on the standard of **Separation** in interpreting the Establishment Clause. Accordingly, by applying the standard of **Separation**, the courts in this case should either be totally disconnected with any religion (when approached from the **Strict Separation** perspective) or that it should, at the very least remain neutral among all religions (when approached from the **Strict Neutrality** perspective). Mr. Valenciano however contends that in allowing the celebration of masses in the basement of the Quezon City courthouses in this case, the State, as represented by the Judicial Branch of government, shows bias towards the Roman Catholic religion.

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Indeed, Mr. Valenciano imputes that the Executive Judges of Quezon City have neither exercised strict *separation* from the church nor strict *neutrality* when: (1) they allegedly gave tacit or formal approval in converting a portion of the basement of the Quezon City HOJ into a “Roman Catholic Church”; (2) resultantly, the attendance of judges, clerks of court, and other judicial employees to the said mass allegedly created an “imagery in the minds of non-Roman Catholics among the citizenry that Catholics always stand a better chance of being granted leniency before the Courts...”; and (3) the said Chapel was permitted to celebrate its 20th anniversary sometime in October of 2008, with the “pomp as befits a Chapel of the Roman Catholic Church.”⁵

The OCA then opined that Valenciano’s arguments are without merit. It arrived at this conclusion by using the standard of **Benevolent Neutrality/Accommodation** as the controlling approach that should be applied in this case which involves the interpretation of the Establishment Clause vis-a-vis the Free Exercise Clause. Quoting *Estrada v. Escritor*,⁶ the OCA declared that “[a]ccommodations are government policies that take religion specifically into account not to promote the government’s favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of, a person’s or institution’s religion.”⁷

Thus, the OCA concluded that:

In sum, the religious nature of the use of the herein public area is merely incidental. The primary secular purpose for accommodating the religious exercise within the court premises is apparently to sustain an individual’s free exercise of his religion as equally guaranteed by the Constitution and to reinforce an individual’s sense of morality. In case of the latter, there is no dispute that morality is a value most crucial and indispensable for government employees most especially for those working in the judicial branch of government. x x x.

x x x x

It is thus clear that while the celebration of mass is religious in nature, and while the Court allows its exercise within its public edifices, the overriding consideration for such an *accommodation* is not religious in nature, but secular – that is that the Court recognizes and appreciates that such an exercise help elevate an employee’s sense of morality which eventually translates in the performance of his work.⁸

The OCA then put forward the following recommendations for the consideration of the Court:

⁵ Id. at 7-9.
⁶ 525 Phil. 110 (2006).
⁷ OCA Memorandum dated August 7, 2014, p. 9.
⁸ Id. at 13.

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1. the 1st Indorsement dated 21 September 2010 by the Halls of Justice, containing photocopies and certified photocopies of previous actions made on the instant case, be **NOTED**;
2. the Letter-Comment dated 9 September 2010 of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr., be **NOTED**;
3. the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero, be **NOTED**;
4. the letter-complaints of Mr. Valenciano dated **9 January 2009, 13 May 2009** and **23 March 2010** be **DISMISSED** for lack of merit and basis;
5. the Executive Judges of Quezon City be **DIRECTED** to **CLOSELY REGULATE** and **MONITOR** the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring that: (a) the public is not unduly inconvenienced by the exercise thereof; (b) it does not adversely affect and interrupt the delivery of public service, and (c) display of religious icons are limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public; and
6. the instant administrative case be considered **CLOSED** and **TERMINATED**.⁹

Justice Jose C. Mendoza, who reviewed the August 7, 2014 Memorandum of the OCA, agreed with the findings and recommendations of the OCA and denied the prayer of Valenciano that the holding of religious rituals of any of the world's religions in the Quezon City Hall of Justice or any hall of justice all over the country be prohibited.

I fully concur with the *ponencia* of Justice Mendoza which comprehensively and with clarity enunciated the grounds to deny the prayer of Valenciano. I deemed it necessary, however, with due respect to Justice Marvic MVF Leonen, to respond to his Dissenting Opinion.

According to Justice Leonen, the views of Judges Sagun and Lutero are inconsistent with the stand of the Office of the Chief Attorney as reflected in its September 12, 2003 Memorandum for then Chief Justice Hilario G. Davide, Jr., wherein it recommended to deny on constitutional grounds, the request of Rev. Fr. Carlo M. Ilagan to hold a one-day vigil in honor of the Our Lady of Caysasay within the premises of the Supreme Court building.¹⁰

However, the jurisprudence cited in the Memorandum dated September 12, 2003 of the Office of the Chief Attorney (OCAT) addressed to then Chief Justice Davide had already been overturned. *Gerona v. Secretary of Education*¹¹ was superseded by *Ebralinag v. The Division*

⁹ Id. at 15-16.

¹⁰ J. Leonen, *Dissenting Opinion*, p. 3.

¹¹ 106 Phil. 2 (1959).

Superintendent of Schools of Cebu,¹² wherein the Court upheld the religious freedom of members of Jehovah's Witnesses not to salute the flag because, according to their religion, to do otherwise is prohibited by the Holy Bible. The Court, thus said:

We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes" (*Gerona vs. Sec. of Education*, 106 Phil. 2, 24). After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values (Sec. 3[2], Art. XIV, 1987 Constitution) as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this Court had feared in *Gerona*. Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.

The ruling in *County of Allegheny v. American Civil Liberties Union*¹³ also cited by the aforesaid Memorandum of the Office of the Court Attorney did not enunciate an absolute rule. In *Lynch v. Donnelly*,¹⁴ cited in *Estrada v. Escritor*,¹⁵ the Court upheld a city-sponsored Nativity scene or crèche in Pawtucket City, Rhode Island because the "city has a secular purpose for including the crèche, the city has not impermissibly advanced religion, and including the crèche does not create excessive entanglement between religion and government."¹⁶ Thus, the September 12, 2003 OCAT Memorandum is not a reliable support for the Dissenting Opinion.

Justice Leonen is also of the opinion that the case of *Estrada v. Escritor*¹⁷ involving an administrative complaint for immorality against a court interpreter who cohabited and had a son with a married man is not applicable to the case at bar since "jurisprudence which provides for exceptions to State regulation is different from doctrinal support for endorsing a specific religion without a separate overarching compelling lawful and separate state interest." He further argues that the aforementioned jurisprudence was not unanimously voted upon by the Court

¹² G.R. Nos. 95770 & 95887, March 1, 1993, 219 SCRA 256, 271-272.

¹³ 492 U.S. 573 (1989).

¹⁴ 465 U.S. 668 (1984).

¹⁵ 455 Phil. 411 (2003).

¹⁶ *Lynch v. Donnelly*, supra note 14.

¹⁷ Supra note 15.

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En Banc therefore the status of benevolent neutrality approach as doctrine is suspect.¹⁸

I respectfully submit that it is a mistake to trivialize the import of the ruling in *Estrada v. Escritor*¹⁹ in the case at bar which involves a lawful exercise of religious freedom. While this case does not concern an immoral act nor a criminal offense, *Estrada v. Escritor*²⁰ is a jurisprudential gem that painstakingly, comprehensively, and exhaustively considered numerous cases of different factual background before passing upon the issue in said case. It traced the Old World antecedents of the American religion clauses, particularly the history and background of the concepts, jurisprudence and standards of the two religion clauses in the United States – the Free Exercise Clause and the Establishment Clause – and the history of religious freedom in the Philippines from the Treaty of Paris of December 10, 1898, the Malolos Constitution of 1899, the laws and regulations enforced in the Philippines during the American regime, and the provisions of the 1935, 1973 and 1987 Constitution dealing with the religious clauses and the jurisprudence that applied the said provisions to diverse factual settings which called upon the Court to determine “what the clauses specifically require, permit and forbid.” The standards and the tests in the balancing of the interaction between the two religious clauses that jurisprudence has laid down throughout the long history of these clauses are valuable guides in the resolution of this case.

The dissenting opinions in the *Estrada v. Escritor*²¹ case focused on whether or not the act of respondent court employee which is penalized by our law as concubinage and which may be considered as immoral or prejudicial to the best interest of public service can be excused or condoned due to the Declaration of Pledging Faithfulness between respondent Escritor and her married partner which is recognized by their religious sect known as Jehovah’s Witnesses as sufficient justification for their cohabitation. The facts of the case which triggered the strong dissenting opinions in the aforesaid case are far removed from the religious exercise now before the Court, as no criminal act is committed by the faithful in hearing the mass during lunch break.

Moreover, it is also my view that religious freedom can be invoked not only against a facially-neutral law that unduly impairs such freedom but any regulation or practice that has the same effect unless it passes the accepted test or standard laid down by jurisprudence to protect the freedom of religion that occupies a preferred status in the hierarchy of human rights. Moreover, religion has an admitted moralizing influence that can contribute

¹⁸ Supra note 10 at 11-13.

¹⁹ Supra note 15.

²⁰ Id.

²¹ Id.

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in the nurturing of high moral values among public servants which will have a beneficial effect in the discharge of their duties.

At the outset, it must be stressed that the holding of the masses at the premises of the Quezon City Hall of Justice is not sponsored or supported by the said Court. It was at the own initiative of the Catholic faithful. Neither were the masses endorsed by the Court or any of its officials with the intention of propagating the Catholic religion to the detriment of other religions. The assumption that inequality of treatment is promoted has no factual basis. No person has complained that his/her religious practice has been discriminated upon. Hence, the holding of masses during lunch break would not amount to an excessive entanglement between the courts and religion.

To require the faithful to go to nearby churches to attend masses or to pray will make the exercise of religious freedom too burdensome, notwithstanding that no prejudice to public service nor discrimination of other religions is shown. The obligations demanded of a public servant to comply with the highest standards of integrity, morality and commitment in the efficient delivery of public service almost always coincide with the obligations dictated by his religion, which has been defined in *American Bible Society v. City of Manila*,²² also cited in *Estrada v. Escritor*,²³ as follows:

[Religion] has reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character, and obedience to His Will. x x x.

Hence, in the *Aglipay v. Ruiz*²⁴ case, Justice Laurel recognized the "elevating influence of religion in human society." Fr. Joaquin G. Bernas, SJ, a member of the 1986 Constitutional Commission, stated in his position paper that the Philippine Constitution is not hostile to religion and, in fact, recognizes the value of religion and accommodates religion.²⁵ In *Estrada v. Escritor*,²⁶ the Court further elucidated that:

Finally, to make certain the Constitution's benevolence to religion, the Filipino people "implored(ing) the aid of Divine Providence(,) in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, (in) ordain(ing) and promulgat(ing) this Constitution." A preamble is a "key to open the mind of the authors of the constitution as to the evil sought to be prevented and the objects sought to be accomplished by the provisions thereof." There was no debate on the inclusion of a "Divine Providence" in the preamble. In *Aglipay*, Justice Laurel noted that when the Filipino people implored

²² 101 Phil. 386, 398 (1957).

²³ Supra note 15.

²⁴ 64 Phil. 201, 206 (1937).

²⁵ *Estrada v. Escritor*, supra note 15 at 571.

²⁶ Id. at 569-573.

the aid of Divine Providence, “(t)hey thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The 1935 Constitution’s religion clauses, understood alongside the other provisions on religion in the Constitution, indubitably shows not hostility, but benevolence, to religion.

x x x x

The provisions of the 1935, 1973 and 1987 constitutions on tax exemption of church property, salary of religious officers in government institutions, optional religious instruction and the preamble all reveal without doubt that the Filipino people, in adopting these constitutions, did not intend to erect a high and impregnable wall of separation between the church and state. The strict neutrality approach which examines only whether government action is for a secular purpose and does not consider inadvertent burden on religious exercise protects such a rigid barrier. By adopting the above constitutional provisions on religion, the Filipinos manifested their adherence to the *benevolent neutrality* approach in interpreting the religion clauses, an approach that looks further than the secular purposes of government action and examines the effect of these actions on religious exercise. x x x.

The *benevolent neutrality* approach is further explored in *Estrada v. Escritor*²⁷ as follows:

Benevolent neutrality is manifest not only in the Constitution but has also been recognized in Philippine jurisprudence, albeit not expressly called “benevolent neutrality” or “accommodation.” In *Aglipay*, the Court not only stressed the “elevating influence of religion in human society” but acknowledged the Constitutional provisions on exemption from tax of church property, salary of religious officers in government institutions, and optional religious instruction as well as the provisions of the Administrative Code making Thursday and Friday of the Holy Week, Christmas Day and Sundays legal holidays. In *Garces*, the Court not only recognized the Constitutional provisions indiscriminately granting concessions to religious sects and denominations, but also acknowledged that government participation in long-standing traditions which have acquired a social character – “the *barrio fiesta* is a socio-religious affair” – does not offend the Establishment Clause. In *Victoriano*, the Court upheld the exemption from closed shop provisions of members of religious sects who prohibited their members from joining unions upon the justification that the exemption was not a violation of the Establishment Clause but was only meant to relieve the burden on free exercise of religion. In *Ebralinag*, members of the Jehovah’s Witnesses were exempt from saluting the flag as required by law, on the basis not of a statute granting exemption but of the Free Exercise Clause without offending the Establishment Clause.

While the U.S. and Philippine religion clauses are similar in form and origin, Philippine constitutional law has departed from the U.S. jurisprudence of employing a separationist or strict neutrality approach. The Philippine religion clauses have taken a life of their own, breathing the air of benevolent neutrality and accommodation. Thus, the wall of

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Id. at 575-576.

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separation in Philippine jurisdiction” is not as high and impregnable as the wall created by the U.S. Supreme Court in *Everson*. While the religion clauses are a unique American experiment which understandably came about as a result of America’s English background and colonization, the life that these clauses have taken in this jurisdiction is the Philippines’ own experiment, reflective of the Filipinos’ own national soul, history and tradition. After all, “the life of the law.... has been experience.” (Citations omitted.)

The Dissenting Opinion **reverses** the test enunciated in the *Estrada v. Escritor*²⁸ case when it posits that there must be an “urgent and compelling need” for allowing religious rituals or the exercise of one’s religious freedom. The said case ruled not that “urgent and compelling need” must be shown before religious freedom can be exercised, but instead, it is the State that bears a heavy burden to show a compelling State interest to hinder the exercise of religious freedom. I quote the case of *Estrada v. Escritor*²⁹:

A test that would protect the interests of the state in preventing a substantive evil, whether immediate or delayed, is therefore necessary. However, not any interest of the state would suffice to prevail over the right to religious freedom as this is a fundamental right that enjoys a preferred position in the hierarchy of rights – “the most inalienable and sacred of all human rights,” in the words of Jefferson. This right is sacred for an invocation of the Free Exercise Clause is an appeal to a higher sovereignty. The entire constitutional order of limited government is premised upon an acknowledgment of such higher sovereignty, thus the Filipinos implore the “aid of Almighty God in order to build a just and humane society and establish a government.” As held in *Sherbert*, only the gravest abuses, endangering *paramount interests* can limit this fundamental right. A mere balancing of interests which balances a right with just a colorable state interest is therefore not appropriate. Instead, only a compelling interest of the state can prevail over the fundamental right to religious liberty. The test requires the state to carry a heavy burden, a compelling one, for to do otherwise would allow the state to batter religion, especially the less powerful ones until they are destroyed. In determining which shall prevail between the state’s interest and religious liberty, reasonableness shall be the guide. The “compelling state interest” serves the purpose of revering religious liberty while at the same time affording protection to the paramount interests of the state. x x x. (Citations omitted.)

In this administrative matter, RTC Executive Judge Sagun and MeTC Executive Judge Lutero both submitted their respective comments as directed by the OCA findings that the Roman Catholic masses held during lunch breaks did not disturb court proceedings and the service of employees during the mass did not interfere with the performance of their official duties. Moreover, devotees of other religions were not discriminated upon.

²⁸ Id.

²⁹ Id. at 578.

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No compelling State interest to prohibit the exercise of religious freedom having been established in this instance, I reiterate my concurrence with the *ponencia* of Justice Mendoza.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice