

A liberty viewed through American constitutional lens: dissection of religious freedom rights in the Philippines

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Abstract – This paper examines the judicial practice in the Philippines in resolving religious freedom cases through the American constitutional lens. A qualitative analysis of Philippine cases selected based on their doctrinal value from 1959 to 2014 was employed. Results of this analysis yield a finding that the Philippine judicial system relies heavily on the American jurisprudence. Although admittedly the American concept of religious freedom rights was exported and transplanted into the Philippine legal framework, the propriety of this judicial practice remains to be suspect given with the diametrically opposed legal, social, and historical contexts on which this right was formed under the two respective legal spheres. This is since the Philippines remains to be predominated by the Catholic Church in contrast to religious pluralism existing in the United States. Thus, it is but proper for Philippine courts to resolve domestic religious freedom cases not only through a single American constitutional lens but also in reference to other social and historical contexts unique to the Philippine legal setting. Domestic courts may formulate a new legal framework for the resolution of religious freedom cases which encapsulates the unique historical, social, and legal backdrop in the Philippines.

Keywords – non-establishment of religion, religious freedom rights, right to religious belief.

INTRODUCTION

The Philippine Supreme Court views the Constitutional guarantee of religious freedom through American standard. In a long catena of cases, the high court upheld the American view of interpreting rights to religious freedom as applied in the Philippine setting. This practice cannot be conveniently avoided since the Philippine concept of religious freedom was faithfully lifted from its American origin [1]. A reading of the Philippine Bill of Rights on religious liberty will yield an impression that it was a twin provision of the United States' (US) First Amendment right.

It is undeniable that America's Founding Fathers were the first to bring the concept of religious freedom into being, tracing its origin way back during the dawn of its liberation [2]. This concept was created well-fitted into the unique American experience. However, *sans* any evolutions and transformations from its creation, the very same concept was exported and 'transplanted' in the Philippines [3].

The promotion of the American concept of religious freedom was among the primordial projects of the Americans in the Philippines. Although their objective is suspect, they were successful in introducing the concept of non-establishment of religion and the free exercise of

one's religious beliefs into the Catholic-dominated Philippine society. This eventually resulted in the proliferation of other religious sects — most of which are of American origin — and the disestablishment of the centuries-old system of unified church and state. The growth of Christian faith other than the Catholic, however, was not strong enough to dismantle Catholicism out of the Filipino consciousness. The Philippines still remained, even to this day, predominantly Catholic.

This point was the genesis of complexities which would, later on, cloud over the legal debate concerning the right to religious freedom in the Philippines. The fact that the Philippine concept of religious freedom was based on its American counterpart does not, at all, give sanction to the Philippine courts to construe cases falling within this subject matter through the American constitutional lens — all the way dismissing other interplaying factors which are relevant in deciding the controversy.

The exportation by the Americans and its adamant injection into the Philippine setting without any conceptual evolutions or transformations added to its detriment which eventually leads to the failure of its operation in the Philippine social backdrop.

To support this argument, a clear understanding of the formation of the concept from its origin until its adoption and 'transplantation' beyond the United States is warranted. Lastly, challenges which contributed to the failure of the operation of the American concept of religious freedom shall also be discussed with a more pointed focus in controversies resolved by Philippine Supreme Court *vis-a-vis* parallel cases decided by its US counterpart.

The American concept of religious freedom is a clash of various philosophical tenets respectively championed by its Founding Fathers [4]. This was conceived as a result of debates during the onset of the birth of the United States of America. The framers of the American Constitution were not unified in establishing a concrete concept of religious freedom to be operated in the envisioned nation-state. As a result, the concept was a hybrid of various philosophies, probably to accommodate the pluralistic society into one unifying concept. Consequently, the American religious freedom rights were a mixture of liberal enlightenment philosophy, civic republicanism and Puritan theology [4]. The fusion of these various philosophies was a product of a uniquely American experience.

The earlier concept of religious freedom in the United States was greatly influenced by Puritan theology since most of the inhabitants of the new world were English Puritans who were forced to leave the United Kingdom in fear of religious persecution [5]. Because of this experience, Puritan theology advocates for the complete separation of Church and State.

On the other side of the spectrum, however, lies the philosophy of civic republicanism which believes that a citizen will not act in favour of the state unless he has virtue for such service and the source of virtue in the society is the religion [6]. Hence, religion is indispensable in building and maintaining a state. Unlike puritan theology, civic republicanism calls for a church-state accommodation in a broader sense thereby resulted in the underscoring of the toleration of other religious beliefs.

Lastly, the philosophy of liberal enlightenment as championed by Thomas Jefferson, author of the US Declaration of Independence, completes the whole array of the conception of religious freedom. This philosophy upholds the firmer ground of complete separation of the Church and State and the liberty of the conscience of the people [4]. The heart of the contention is that the State and religion have different ends to meet — the former is for the realization of earthly needs of the people such as life, liberty, and property while the latter is for the

salvation of the soul. Consequently, the freedom of conscience should be beyond the reach of the state, and thus should be rightfully and exclusively regarded to religion alone.

This whole gamut of unique American experiences breathed life into the concept of religious freedom as the First Amendment right to the United States Constitution. Rightly, then, it was labelled as the America's first right guaranteeing the people's freedom to exercise their religious beliefs as well as the proscription to the State from intervening into the religious' sphere — thus the birth of the free exercise and the non-establishment clauses [7]. Without much reformation of these concepts, viewed through American perspective, religious freedom was exported to the Philippines and was subsequently 'transplanted' into its legal and political backdrops [1].

Although much of literature would suggest that the right to religious freedom in the Philippines was a product of the American colonization over the Archipelago, it does not mean that the Philippines has not initiated the creation of its own notion of religious freedom [2]. In fact, even before the Americans set foot in the Philippine archipelago, the First Philippine Republic, ruled by a revolutionary government, has already conceptualized the creation of its own religious freedom as provided in its Malolos Constitution [3]. It was enshrined in this constitution that there shall be a separation of church and state, perhaps a product of the long history of abuses perpetrated against Filipinos by Spanish friars and other religious officials.

During the Spanish rule, Spanish friars function in almost all aspect of government in the Philippine society. These friars are given key positions in the Spanish government from the lowest to the highest post. Spanish clergies ruled supreme and their powers were over-encompassing in all levels of government. Further, these Spanish friars, who held lordship over a vast area of lands, were oftentimes the instigators of abuses and excesses against native Filipinos whom they called as *Indios* or slaves. The most notable icon of this is Friar *Damaso* who is a character in the novel *Noli Me Tangere* written by Jose Rizal, Philippine's national hero. Probably, this was a reflection of the Filipino experience under the tyrannical rule of the Catholic Clergies.

Despite this, Philippines' own concept of religious freedom was never brought to fruition as the Philippine revolutionary movement itself was a canvass of conflicting interests of the ruling classes composed of the Oligarchs, Filipino Catholic clergies and the military [8].

As narrated through the annals of Philippine history, the 18th-century Filipino revolutionaries, although

enraged by the excesses and abuses of the Spanish Catholic clergies, never envisioned that Catholicism, as a religion, would be abrogated [3]. Their idea was to abrogate the Spanish clergies alone, as they see them as separate and distinct from the Catholic faith itself. The narrow victory gained by the Malolos Constitution's provision on religious freedom is telling of this prevailing conflict. Its suspension from effectivity despite approval by the First Philippine Constitutional Assembly, even more, supported the suspected clashing of interests among the ruling classes [1]. This incident is a hallmark, during the conception years of the Philippine Republic, that religious influence is a significant component in the Philippine political equation.

It was only when the Americans formally governed the Philippines that religious freedom was truly crystallized into the Philippine social backdrop. American religious freedom rights were promoted in the Philippines through various organic acts issued by the civil government. A reading of the Philippine Bill of 1902, The Jones Law of 1916 and the Tydings-McDuffie Law of 1934 would reveal that the same two-pronged clauses of religious freedom were exported into the Philippines — this is in stark contrast with the Malolos Constitution's religious freedom clause which only provides for the separation of Church and State alone [2].

The difference between the early Philippine concepts of religious freedom with that of the American concept paints a picture that it was conceived out of the different and unique historical and social experiences of the two societies and was addressed to curb diametrically opposed evils. The American concept viewed the State as the antagonistic player against the people's right to religious freedom while the Philippine concept viewed otherwise, that it was the religion which oppresses the people's right to freely exercise one's belief [1]. Simply put, the former protects the religion against any encroachment of the State while the latter protects the State against any intervention of religion into the affairs of the civil government.

OBJECTIVES OF THE STUDY

This paper argues that Philippine religious freedom rights should be viewed through Filipino perspective and not by American lens. The long-held practice of the Philippine high court in dissecting the right to religious liberty through American Constitutional lens is misplaced since it failed to consider in resolving religious freedom cases other social, political, historical and even legal factors.

MATERIALS AND METHODS

This paper employs the qualitative analysis of the Philippine and American Constitutions and relevant Philippine and United States Supreme Court decisions on religious freedom cases. These cases were selected based on their doctrinal value surveyed from 1959 to 2014. A case was considered to be of doctrinal value if it has an impact on shaping the legal treatment of religious freedom rights in the Philippines. A comparison of these laws and a list of significant jurisprudence were made in discussing right to religious freedom in the Philippines under the social, historical and legal contexts.

RESULTS AND DISCUSSION

It would be the height of impropriety if the Philippine concept of religious freedom be judged by American Constitutional standard. It is clear that the American experience which breathed life into religious freedom is diametrically opposed as to that of the Philippine experience. It is empirical that the former concept imposes the right in order to protect the people against the government from any religious discrimination while the latter guarantees the same in order to prevent the Church from perpetrating any abuses against the people [1].

Accordingly, the American concept of religious freedom treats religion as the protagonist, while its Philippine counterpart treats the same as the antagonist in the whole equation of historical experiences. Furthermore, in terms of social conditions upon which the right to religious freedom operates, there exists a stark difference between the United States and the Philippines. Particularly, the American society, at the time religious liberty was conceived, is marked with religious pluralism [3]. On the other hand, the Philippine society at the time when the concept was transplanted was a society of a dominant single religion in which there exists a unified Church and State.

Given with these overbearing contradictions, the American notion of religious freedom that was created, championed, and exported by the Americans cannot operate in all fours under the Philippine condition [9]. Unlike the American society which is marked by religious diversity and toleration, the Philippines is predominantly composed of Catholics. In fact, according to the latest Philippine census, more than 80% of Filipinos are Catholics while the remaining less than 20% is divided among Christians and non-Christians [10].

Moreover, much of Filipino traditions are Catholicised or infused with Catholic beliefs such as

town *fiestas* which are celebrated in favor of a particular Catholic saint and the lenten season and Christmas day which respectively commemorates Jesus' sufferings and birth. Although these are clear ecclesiastical practices, the Philippine Supreme Court upheld their validity rationalizing their nature as part of Filipino traditions.

The Catholic Church also played an important role in the ouster of two Philippine presidents, the instigation of at least two Philippine revolutions and the creation of Philippine public policies [3]. Even to this day, Catholic clergies play key position in the shaping of the contemporary Philippine political atmosphere [11]. Top Catholic leaders are regarded by Filipino politicians with much respect and ascendancy, especially on matters concerning public morals and opinions. Consequently, the forging of morality, either public or religious, has been greatly influenced by the Catholic Church [12]. The fact that contemporary Philippine society can be classified as pluralistic at some degree, given with the existence of various Christian and non-Christian religions, cannot deny that the Catholic Church still holds influence over decisions of the government.

Above all, some of the members of the Catholic faith are also part of the Committee which framed the 1987 Philippine Constitution [13]. Such as suspect, the Philippines has been more accommodating to religious faith as compared to the United States. In fact, the 1987 Philippine Constitution which guarantees the right of the people to freely exercise their religious belief, profession and worship and proscribes the government from establishing a religion is also the same constitution which rewards religious sects of privileges such as tax exemption, the opportunity to inculcate doctrinal teachings into the Philippine public school system and the employment of its gospel ministers into public offices. These provisions run contrary to the Jeffersonian notion of separation of Church and State, which is arguably the heart of the American concept of religious freedom.

There exists, at some level, a parallelism between the American and Philippine religious freedom rights [12]. However, it is undeniable that in these parallel lines lie some points of divergence. These parallelisms created confusion in the Philippine judicial system in deciding controversies involving rights to religious freedom. At one point, both the Philippine and American courts upheld strict neutrality in the interpretation of religious freedom rights [14]. This means that pursuant to the Jeffersonian separation of Church and State, the government by any means cannot interact with religion. Consequently, it is proscribed from utilizing religion as

a standard for action or inaction in the secular sphere of governance.

In so doing, judgments rendered by the high court treading the same path as that by the United States caused more imbalance rather than harmony in Philippine jurisprudence. The Philippine Constitution itself, unlike the United States, accommodated some religion-leaning and religion-accommodating provisions as what has already mentioned. Corollary to this is the adoption of judicial interpretation which reconciles the religious freedom clauses with other religion-related Constitutional provisions, hence the rise of the principle of benevolent accommodation in the interpretation of religious freedom right [12]. Unlike the strict neutrality interpretation, this principle accommodates to a certain extent religious beliefs, profession or worships not for the purpose of recognizing or establishing a religion but for regarding the people their right to freedom of conscience without any adversarial interference coming from the State [15].

During the early years when religious freedom rights were introduced in the Philippines, it is customary for the Philippine Supreme Court to adhere to American jurisprudence in deciding cases having parallel facts. Remarkable is the case of *Gerona v. Secretary of Education* [16] in which the Philippine high court relied much on the doctrine enunciated by the US Supreme Court in *Minersville School District v. Gobitis* [17]. In this case, the Court held that religious freedom is not the rule when such right runs against an established social or legal institution. The same doctrine was reiterated in the later case of *German v. Barangan* [18]. This doctrine, which was a hallmark of Jeffersonian notion of religious freedom, was not truly reflective of the Philippine social standards.

Despite prevailing doctrines in the US jurisprudence enunciated in *Sherbert v. Verner* [19], *Wisconsin v. Yoder* [20] and *Employment Division, Department of Human Resources of Oregon v. Smith* [21], the assertion of adoption of a flexible interpretation of religious freedom clauses was held true in the Philippine case of *Ebralinag v. Division Superintendent of Schools of Cebu* [22]. This case involves the same facts as that in *Gerona* and *Minersville* in which members of Jehovah's Witnesses refused to participate in flag ceremonies. Unlike in *Gerona* and *Minersville* which ruled that established institution of society and law are paramount over religious freedom, *Ebralinag* ruled that the right to religious freedom of an individual may only be curtailed if there is an existence of a grave and present danger to the public. This same doctrinal pronouncement was then

reiterated by the Philippine Supreme Court in the later case of *Iglesia Ni Cristo v. Court of Appeals et al.* [23].

A survey of these Philippine cases *vis-a-vis* American jurisprudence would reveal the faithful adherence by the Philippine Supreme Court to the principle of strict neutrality. The reasons being are those mentioned above. The Supreme Court itself recognized the polarity between these two systems as well as the misplaced application of strict separationist view in the Philippine setting [14]. In the case of *Escritor v. Estrada* [12], the Supreme Court upheld the proper application of benevolent neutrality doctrine in the Philippines. This advances a more flexible view of the religious freedom clauses with considerations to religious realities, tradition and established practice. This is more in line with the Philippine Constitutional traditions as well as its historical and political experiences.

The realization by the Philippine Courts of non-adherence to the American notion of rigid strict neutrality marks an onward march into a new chapter of developing its own true Filipino view and identity. This is especially important in the safeguarding of public morals of a society. In this modern time, it is empirical that the trend of almost all contemporary societies faces towards secularization of religious freedom rights to the detriment of its long-held sets of norms, traditions and morals [7]. This progression placed religious freedom rights under attack in almost all directions. This point calls on the judicial might either to take a stand for religious freedom or to succumb to pressures brought by popular opinions.

The protracted debate on abortions and contraceptives, both in the United States and the Philippines, is remarkable. The American Case of *Burwell v. Hobby Lobby Stores Inc.* [24], deviating from the long-held principle of Jeffersonian notion of rigid separation of church and state is instructive as to how the modern American Court safeguarded and championed the people's right to religious freedom. In this case, the owner of Hobby Lobby Stores sought an exemption from distributing abortifacients among its employees as it is contrary to his religious beliefs. Although met with fierce criticisms from the far left political spectrum, the US Supreme Court ruled in favour of the employer giving much weight on his right to religious freedom. The Court's interference, in this case, was a deviation from the long-held strict separation, especially since no undue burden was caused to the employer. The Court was steadfast enough to tip the scale in his favour and challenged the state to present a compelling interest that would warrant such non-interference.

In the parallel Philippine case of *Imbong v. Ochoa et al.* [14], the high court treads the same path in defending religious freedom rights in consonance with *Escritor*. In 2013, the Reproductive Health bill was passed into law by the Philippine Congress. Soon enough, its constitutionality was challenged before the high court. Its provision compelling state health institutions from distributing birth control pills and assisting women who committed abortion was particularly placed under fire. The main contention was anchored on the argument that this provision violates the religious freedom clauses of the constitution. Notwithstanding the pressures, the Philippine Supreme Court declared the provision unconstitutional as it violated the religious belief of the public health care provider [14].

Albeit the popular trend of social secularization won an advanced position in the battlefield against the promotion and safeguarding of religious freedom rights, both the US and Philippine society coursed through their respective Supreme Courts endeavoured to hold their grounds firmer. Otherwise, it would be contrary to the principle of fairness and justice if these very institutions which are regarded as the last bulwark of democracy would succumb to overwhelming pressures and give in to an interpretation detrimental to religious freedom.

CONCLUSION AND RECOMMENDATION

Results from the qualitative analysis of selected Philippine cases on religious freedom rights reveal the judicial practice of resolving these issues through American constitutional lens. This practice is attributable to the fact that the Americans were the ones who created, championed and later on exported the concept of religious freedom into the Philippines. This was a product of their unique historical, social and political experiences.

However, differences between Philippine and American societies brought an impropriety of interpreting religious freedom rights in the Philippines through the American lens. The Philippine notion of religious freedom is different from its American origin as it has been influenced by various key social, historical and legal factors. In fact, the Philippines, a Catholic-dominated society, has accommodated religious beliefs into its political, social, and legal frameworks. This calls for a more flexible interpretation of religious freedom rights under Philippine settings as contradistinguished from rigid interpretation under American jurisprudence.

By these observations, the Philippine domestic courts may well consider the formulation of a different legal framework in resolving such issues which will

accommodate the unique legal, social and historical backdrops in the Philippines revolving around religious freedom rights.

However, the analysis of this paper was limited only to cases selected based on their doctrinal value from 1959 to 2014 and no analysis was made as to other cases which are considered to be of no such value. Moreover, this paper focused mainly on the establishment of the said

judicial practice present in the Philippine legal system and on the impropriety of the same. Thus, a further analysis on other Philippine cases covering religious freedom rights may be conducted in the future as to fully establish the existence of this judicial practice. In addition, a study navigating the formulation of a legal framework in resolving religious rights cases in the Philippines may be undertaken.

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