

RE: LETTER OF TONY Q. VALENCIANO, HOLDING OF RELIGIOUS RITUALS AT THE HALL OF JUSTICE BUILDING IN QUEZON CITY.*A.M. No. 10-4-19-SC. March 07, 2017*

Ponente: MENDOZA, J.

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One of our fundamental differences lies in our chosen religion. Some put their faith in a god different from ours, while some may not believe in a god at all. Nevertheless, despite the inconveniences this difference may cause us, we must accept it unconditionally for only upon acceptance of the fact that we are different from each other will we learn to respect one another.

This controversy originated from a series of letters, written by Tony Q. Valenciano (Valenciano) and addressed to then Chief Justice Reynato S. Puno (Chief Justice Puno).

In his first Letter,[1] dated January 6, 2009, Valenciano reported that the basement of the Hall of Justice of Quezon City (QC) had been converted into a Roman Catholic Chapel, complete with offertory table, images of Catholic religious icons, a canopy, an electric organ, and a projector. He believed that such practice violated the constitutional provision on the separation of Church and State and the constitutional prohibition against the appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion.

Valenciano further averred that the holding of masses at the basement of the QC Hall of Justice showed that it tended to favor Catholic litigants; that the rehearsals of the choir caused great disturbance to other employees; that the public could no longer use the basement as resting place; that the employees and litigants of the Public Attorney's Office (PAO), Branches 82 and 83 of the Regional Trial Court (RTC), Legal Library, Philippine Mediation Center, and Records Section of the Office of the Clerk of Court (OCC) could not attend to their personal necessities such as going to the lavatories because they could not traverse the basement between 12:00 o'clock noontime and 1:15 o'clock in the afternoon; that the court employees became hostile toward each other as they vied for the right to read the epistle; and that the water supply in the entire building was cut off during the mass because the generator was turned off to ensure silence.

In his 1st Indorsement,[2] dated February 6, 2009, Chief Justice Puno referred Valenciano's letter to then Deputy Court Administrator (DCA) and Officer-in-Charge of the Office on Halls of Justice, Antonio H. Dujua (DCA Dujua).

In turn, DCA Dujua, in his 1st Indorsement,[3] dated February 11, 2009, referred the letter to Executive Judge Teodoro A. Bay (Judge Bay) of the RTC and to Executive Judge Luis Zenon Q. Maceren (Judge Maceren) of the Metropolitan Trial Court (MeTC) for their respective comments.

In his March 6, 2009 Letter,[4] addressed to DCA Dujua, Judge Maceren clarified that the basement of the QC Hall of Justice was known as the prayer corner. He opined that the use of the said area for holding masses did not violate the constitutional prohibition against the use of public property for religious purposes because the religious

character of such use was merely incidental to a temporary use.

In his Memorandum,[5] dated March 10, 2009, Judge Bay manifested that he was due to compulsorily retire on April 29, 2009, and he was taking a leave of absence prior to such date to concentrate in resolving cases submitted for decision before his sala and requested that then Vice-Executive Judge Jaime N. Salazar (Judge Salazar) be assigned to further investigate, study, and make recommendations on the matter raised by Valenciano.

In the meantime, Judge Bay recommended that, pending the final resolution of the case, daily masses be permitted to continue, provided that: (1) the mass be limited to thirty (30) minutes; (2) no loud singing be allowed so as not to disturb others; and (3) the inconveniences caused by the mass be addressed.

In his 1st Indorsement,[6] dated May 27, 2009, Chief Justice Puno referred another letter of Valenciano, dated May 13, 2009, to DCA Dujua for appropriate action, as he complained that masses continued to be held at the basement of the QC Hall of Justice.

On March 23, 2010, Valenciano wrote another letter,[7] praying that rules be promulgated by the Court to put a stop to the holding of Catholic masses, or any other religious rituals, at the QC Hall of Justice and in all other halls of justice in the country.

In its June 22, 2010 Resolution,[8] the Court noted the March 23, 2010 letter of Valenciano and referred the matter to the Office of the Court Administrator (DCA) for evaluation, report and recommendation.

Thus, in its 1st Indorsement,[9] dated September 6, 2010, the OCA, through then Assistant Court Administrator (ACA) Jenny Lind R. Aldecoa--Delorino (now Deputy Court Administrator), referred the letters of Valenciano to the incumbent RTC Executive Judge Fernando T. Sagun, Jr. (Judge Sagun, Jr.) and incumbent MeTC Executive Judge Caridad M. Walse--Lutero (Judge Lutero).

In his Letter-Comment,[10] dated September 9, 2010, Judge Sagun, Jr. informed the Court that his office had already implemented measures to address Valenciano's complaints. He reported that masses were shortened to a little over thirty (30) minutes; that it was only during special holy days of obligation when the celebration of mass went beyond one (1) o'clock in the afternoon; that the pathways leading to the lavatories were open and could be used without obstruction; that there was never an instance where the actions of court personnel, who were vying to read the epistle during mass, caused back-biting and irritation among themselves; that the water generator had been broken beyond repair and decommissioned since December 2009; and that the court employees prepared for the mass before the day officially started, so that the performance of their official duties in court was not hampered.

In her letter,[11] Judge Lutero reported that Catholic masses were being held only during lunch breaks and did not disturb court proceedings; that the basement of the QC Hall of Justice could still be used as waiting area for the public; that court personnel and the public were never physically prevented from reaching the lavatories during mass as there was a clear path from the public offices leading to the comfort rooms; that water service interruptions were caused by maintenance problems and not because the water pump was being shut off during mass; and that the elevators could not be used during mass because elevator attendants took their lunch break from twelve (12) o'clock to one (1) o'clock in the afternoon.

Judge Lutero opined that it is not the conduct of masses in public places which the Constitution prohibited, but the passage of laws or the use of public funds for the purpose of establishing a religion or prohibiting the free exercise thereof. She conveyed the fact that no law or rule had been passed and that no public funds had been appropriated or used to support the celebration of masses. She added that the holding of Catholic masses did not mean that Catholics had better chances of obtaining favorable resolutions from the court.

Accordingly, Judge Lutero recommended that the holding of masses at the basement of the QC Hall of Justice be allowed to continue considering that it was not inimical to the interests of the court employees and the public.

The OCA Report and Recommendation

In its Memorandum,[12] dated August 7, 2014, the OCA believed that the practical inconveniences cited by Valenciano were unfounded. It, thus, recommended that his letter-complaints, dated January 6, 2009, May 13, 2009 and March 23, 2010, be dismissed for lack of merit and that the RTC and MeTC Executive Judges of QC be directed to closely regulate and monitor the holding of masses and other religious practices within the premises of the QC Hall of Justice.

The OCA opined that the principle of separation of Church and State, particularly with reference to the Establishment Clause, ought not to be interpreted according to the rigid standards of separation; that the neutrality of the State on religion should be benevolent because religion was an ingrained part of society and played an important role in it; and that the State, therefore, instead of being belligerent (in the case of Strict Separation) or being aloof (in the case of Strict Neutrality) towards religion should instead interact and forbear.[13]

The OCA advanced the view that the standard of Benevolent Neutrality/Accommodation was espoused because the principal religion clauses in our Constitution were not limited to the Establishment Clause, which created a wall between the Church and the State, but was quickly followed by the declaration of the Free Exercise Clause, which protected the right of the people to practice their religion. In effect, the standard of Benevolent Neutrality/Accommodation balanced the interest of the State through the Establishment Clause, and the interest and right of the individual to freely exercise his religion as guaranteed by the Free Exercise Clause.[14]

The OCA observed that the present controversy did not involve a national or local law or regulation in conflict with the Free Exercise Clause. On the contrary, Valenciano was merely questioning the propriety of holding religious masses at the basement of the QC Hall of Justice, which was nothing more than an issue of whether the said religious practice could be accommodated or not. It ended up concluding that based on prevailing jurisprudence, as well as the interpretations given to the religion clauses of the 1987 Constitution, there was nothing constitutionally abhorrent in allowing the continuation of the masses.[15]

The OCA added that by allowing or accommodating the celebration of Catholic masses within the premises of the QC Hall of Justice, the Court could not be said to have established Roman Catholicism as an official religion or to have endorsed the said religion, for the reason that it also allowed other religious denominations to practice their religion within the courthouses.[16]

ISSUE

WHETHER THE HOLDING OF MASSES AT THE BASEMENT OF THE QUEZON CITY HALL OF JUSTICE VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF CHURCH AND STATE AS WELL AS THE CONSTITUTIONAL PROHIBITION AGAINST APPROPRIATION OF PUBLIC MONEY OR PROPERTY FOR THE BENEFIT OF ANY SECT, CHURCH, DENOMINATION, SECTARIAN INSTITUTION, OR SYSTEM OF RELIGION.

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA and denies the prayer of Valenciano that the holding of religious rituals of any of the world's religions in the QC Hall of Justice or any halls of justice all over the country be prohibited.

The Holding of Religious Rituals in the Halls of Justice does not Amount to a Union of Church and State

As earlier stated, Valenciano is against the holding of religious rituals in the halls of justice on the ground that it violates the constitutional provision on the separation of Church and State and the constitutional prohibition against the appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion. Indeed, Section 6, Article II of the 1987 Constitution provides:

The separation of Church and State shall be inviolable.[17]

The Court once pronounced that "our history, not to speak of the history of mankind, has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims." [18]

Justice Isagani Cruz expounded on this doctrine, viz.:

The rationale of the rule is summed up in the familiar saying, "Strong fences make good neighbors." The idea is to delineate the boundaries between the two institutions and, thus, avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Caesar the things that are Caesar's and unto God the things that are God's." [19]

This, notwithstanding, the State still recognizes the inherent right of the people to have some form of belief system, whether such may be belief in a Supreme Being, a certain way of life, or even an outright rejection of religion. Our very own Constitution recognizes the heterogeneity and religiosity of our people as reflected in *Imbong v. Ochoa*, [20] as follows:

At the outset, it cannot be denied that we all live in a heterogeneous society. It is made up of people of diverse ethnic, cultural and religious beliefs and backgrounds. History has shown us that our government, in law and in practice, has allowed these various religious, cultural, social and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all - the religious people of different sects and the non-believers. The undisputed fact is that our people generally believe in a deity, whatever they conceived Him to be, and to Whom they called for guidance and enlightenment in crafting our fundamental law. Thus, the preamble of the present Constitution reads:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

The Filipino people in "imploring the aid of Almighty God" manifested their spirituality innate in our 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. Moreover, in recognition of the contributions of religion to society, the 1935, 1973 and 1987 Constitutions contain benevolent and accommodating provisions towards religions such as tax exemption of church property, salary of religious officers in government institutions, and optional religious instructions in public schools. [Emphases supplied]

In *Aglipay v. Ruiz* [21] (*Aglipay*), the Court acknowledged how religion could serve as a motivating force behind each person's actions:

Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the

preamble of their Constitution, implored "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," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. Ordinance appended thereto; Assessment Law, sec. 344, par [c], Adm. Code) sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium xxx. Optional religious instruction in the public schools is by constitutional mandate allowed xxx. Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conducive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state xxx.[22] [Emphasis supplied]

Thus, the right to believe or not to believe has again been enshrined in Section 5, Article III of the 1987 Constitution:

Section 5. xxx. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. xxx.

Free Exercise Clause

Freedom of religion was accorded preferred status by the framers of our fundamental law. And this Court has consistently affirmed this preferred status, well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good." [23]

"The right to religious profession and worship has a two-fold aspect - freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare." [24] Justice Isagani A. Cruz explained these two (2) concepts in this wise:

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul - in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove." Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One's Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others.

It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent

in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Justice Frankfurter put it succinctly: "The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma." [25]

Allowing religion to flourish is not contrary to the principle of separation of Church and State. In fact, these two principles are in perfect harmony with each other.

The State is aware of the existence of religious movements whose members believe in the divinity of Jose Rizal. Yet, it does not implement measures to suppress the said religious sects. Such inaction or indifference on the part of the State gives meaning to the separation of Church and State, and at the same time, recognizes the religious freedom of the members of these sects to worship their own Supreme Being.

As pointed out by Judge Lutero, "the Roman Catholics express their worship through the holy mass and to stop these would be tantamount to repressing the right to the free exercise of their religion. Our Muslim brethren, who are government employees, are allowed to worship their Allah even during office hours inside their own offices. The Seventh Day Adventists are exempted from rendering Saturday duty because their religion prohibits them from working on a Saturday. Even Christians have been allowed to conduct their own bible studies in their own offices. All these have been allowed in respect of the workers' right to the free exercise of their religion. xxx" [26]

Clearly, allowing the citizens to practice their religion is not equivalent to a fusion of Church and State.

No Compelling State Interest

Religious freedom, however, is not absolute. It cannot have its way if there is a compelling state interest. To successfully invoke compelling state interest, it must be demonstrated that the masses in the QC Hall of Justice unduly disrupt the delivery of public services or affect the judges and employees in the performance of their official functions. In *Estrada v. Escritor*, [27] the Court expounded on the test as follows:

The "compelling state interest" test is proper where conduct is involved for the whole gamut of human conduct has different effects on the state's interests: some effects may be immediate and short-term while others delayed and far-reaching. 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. This was the test used in *Sherbert* which involved conduct, i.e. refusal to work on Saturdays. In the end, the "compelling state interest" test, by upholding the paramount interests of the state, seeks to protect the very state, without which, religious liberty will not be preserved.¹³⁷ [Citations omitted] [Emphases supplied]

As reported by the Executive Judges of Quezon City, the masses were being conducted only during noon breaks and were not disruptive of public services. The court proceedings were not being distracted or interrupted and that the performance of the judiciary employees were not being adversely affected. Moreover, no Civil Service rules were being violated. As there has been no detrimental effect on the public service or prejudice to the State, there is simply no state interest compelling enough to prohibit the exercise of religious freedom in the halls of justice.

In fact, the Civil Service Commission (CSC) was more lenient or tolerant. On November 13, 1981, the CSC came out with Resolution No. 81-1277, which provided, among others, that "during Friday, the Muslim pray day, Muslims are excused from work from 10:00 o'clock in the morning to 2:00 o'clock in the afternoon." The Court struck this down[28] as not sanctioned by the law. It wrote:

To allow the Muslim employees in the Judiciary to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year would mean a diminution of the prescribed government working hours. For then, they would be rendering service twelve (12) hours less than that required by the civil service rules for each month. Further, this would encourage other religious denominations to request for similar treatment.

The performance of religious practices, whether by the Muslim employees or those belonging to other religious denominations, should not prejudice the courts and the public. Indeed, the exercise of religious freedom does not exempt anyone from compliance with reasonable requirements of the law, including civil service laws.

Accommodation, Not Establishment of Religion

In order to give life to the constitutional right of freedom of religion, the State adopts a policy of accommodation. Accommodation is a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.[29]

In *Estrada v. Escritor*,[30] the Court adopted a policy of benevolent neutrality:

With religion looked upon with benevolence and not hostility, benevolent neutrality allows accommodation of religion under certain circumstances. Accommodations 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. As Justice Brennan explained, the "government [may] 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 state involvement an atmosphere in which voluntary religious exercise may flourish." [Emphases supplied]

In *Victoriano v. Elizalde Rope Workers Union*,[31] the Court upheld the exemption of members of *Iglesia ni Cristo* from the coverage of a closed shop agreement between their employer and a union, because it would violate the teaching of their church not to affiliate with a labor organization.

In *Ebralinag v. Division Superintendent of Schools of Cebu*,[32] the petitioners, who were members of the Jehovah's Witnesses, refused to salute the flag, sing the national anthem, and recite the patriotic pledge for it is their belief that those were acts of worship or religious devotion, which they could not conscientiously give to anyone or anything except God. The Court accommodated them and granted them an exemption from observing the flag ceremony out of respect for their religious beliefs.

Further, several laws have been enacted to accommodate religion. The Revised Administrative Code of 1987 has

declared Maundy Thursday, Good Friday, and Christmas Day as regular holidays. Republic Act (R.A.) No. 9177 proclaimed the first day of Shawwal, the tenth month of the Islamic Calendar, a national holiday for the observance of Eidul Fitr (the end of Ramadan). R.A. No. 9849 declared the tenth day of Zhul Hijja, the twelfth month of the Islamic Calendar, a national holiday for the observance of Eidul Adha. Presidential Decree (P.D.) No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, expressly allows a Filipino Muslim to have more than one (1) wife and exempts him from the crime of bigamy punishable under Revised Penal Code (RPC). The same Code allows Muslims to have divorce.[33]

As to Muslims in government offices, Section 3 of P.D. No. 291, as amended by P.D. No. 322, provides:

Sec. 3. (a) During the fasting season on the month of Ramadan, all Muslim employees in the national government, government-owned or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages, provided, that the employee who is not fasting is not entitled to the benefit of this provision.

Pursuant thereto, the CSC promulgated Resolution No. 81-1277, dated November 13, 1981, which reads in part:

2. During "Ramadan" the Fasting month (30 days) of the Muslims, the Civil Service official time of 8 o'clock to 12 o'clock and 1 o'clock to 5 o'clock is hereby modified to 7:30A.M. to 3:30 P.M. without noon break and the difference of 2 hours is not counted as undertime.

Following the decree, in *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*,[34] the Court recognized that the observance of Ramadan as integral to the Islamic faith and allowed Muslim employees in the Judiciary to hold flexible office hours from 7:30 o'clock in the morning to 3:30 o'clock in the afternoon without any break during the period. This is a clear case of accommodation because Section 5, Rule XVII of the Omnibus Rules Implementing Book V of E.O. No. 292, enjoins all civil servants, of whatever religious denomination, to render public service of no less than eight (8) hours a day or forty (40) hours a week.

Non-Establishment Clause

On the opposite side of the spectrum is the constitutional mandate that "no law shall be made respecting an establishment of religion,"[35] otherwise known as the non-establishment clause. Indeed, there is a thin line between accommodation and establishment, which makes it even more imperative to understand each of these concepts by placing them in the Filipino society's perspective.

The non-establishment clause reinforces the wall of separation between Church and State. It simply means that the State cannot set up a Church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt or teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa.[36] Its minimal sense is that the state cannot establish or sponsor an official religion.[37]

In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establish a state religion.[38]

Father Bernas further elaborated on this matter, as follows:

"In effect, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions: (1) Government must not prefer one religion over another or religion over irreligion because such preference would violate voluntarism and breed dissension; (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension; (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and] (4) Government action must not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension." [39]

Establishment entails a positive action on the part of the State. Accommodation, on the other hand, is passive. In the former, the State becomes involved through the use of government resources with the primary intention of setting up a state religion. In the latter, the State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion.

In a September 12, 2003 Memorandum for Chief Justice Hilario G. Davide, Jr., the Office of the Chief Attorney 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 Court. Such controversy must be distinguished from the present issue in that with respect to the former, a Catholic priest was the one who requested for the vigil. Moreover, in that case, the vigil would take one (1) whole working day; whereas in this case, the masses are held at the initiative of Catholic employees and only during the thirty-minute lunch break.

Guided by the foregoing, it is our considered view that the holding of Catholic masses at the basement of the QC Hall of Justice is not a case of establishment, but merely accommodation. First, there is no law, ordinance or circular issued by any duly constitutive authorities expressly mandating that judiciary employees attend the Catholic masses at the basement. Second, when judiciary employees attend the masses to profess their faith, it is at their own initiative as they are there on their own free will and volition, without any coercion from the judges or administrative officers. Third, no government funds are being spent because the lightings and airconditioning continue to be operational even if there are no religious rituals there. Fourth, the basement has neither been converted into a Roman Catholic chapel nor has it been permanently appropriated for the exclusive use of its faithful. Fifth, the allowance of the masses has not prejudiced other religions.

No Appropriation of Public Money or Property for the Benefit of any Church

Section 29 (2), Article VI 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, 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."

The word "apply" means "to use or employ for a particular purpose." [40] "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand." [41]

Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in

order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[42]

Thus, the words "pay" and "employ" should be understood to mean that what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church.

It has also been held that the aforecited constitutional provision "does not inhibit 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." Hence, a public street may be used for a religious procession even as it is available for a civic parade, in the same way that a public plaza is not barred to a religious rally if it may also be used for a political assemblage.[43]

In relation thereto, the phrase "directly or indirectly" refers to the manner of appropriation of public money or property, not as to whether a particular act involves a direct or a mere incidental benefit to any church. Otherwise, the framers of the Constitution would have placed it before "use, benefit or support" to describe the same. Even the exception to the same provision bolsters this interpretation. The exception contemplates a situation wherein public funds are paid to a priest, preacher, minister, or other religious teacher, or dignitary because they rendered service in the armed forces, or to any penal institution, or government orphanage or leprosarium. That a priest belongs to a particular church and the latter may have benefited from the money he received is of no moment, for the purpose of the payment of public funds is merely to compensate the priest for services rendered and for which other persons, who will perform the same services will also be compensated in the same manner.

Ut magis valeat quam pereat. The Constitution is to be interpreted as a whole.[44] As such, the foregoing interpretation finds support in the Establishment Clause, which is as clear as daylight in stating that what is proscribed is the passage of any law which tends to establish a religion, not merely to accommodate the free exercise thereof.

The Constitution even grants tax exemption to properties actually, directly and exclusively devoted to religious purposes.[45] Certainly, this benefits the religious sects for a portion of what could have been collected for the benefit of the public is surrendered in their favor.

In *Manosca v. CA*,[46] a parcel of land located in Taguig was determined by the National Historical Institute to be the birthsite of Felix Y. Manalo, the founder of Iglesia ni Cristo. The Republic then sought to expropriate the said property. The exercise of the power of eminent domain was questioned on the ground that it would only benefit members of Iglesia ni Cristo. The Court upheld the legality of the expropriation, viz.:

The practical reality that greater benefit may be derived by members of the Iglesia ni Cristo than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature.[47] [Emphasis supplied]

Again, in *Aglipay*, the issuing and selling of postage stamps commemorative of the Thirty-third International Eucharistic Congress was assailed on the ground that it violated the constitutional prohibition against the appropriation of public money or property for the benefit of any church. In ruling that there was no such violation, the Court held:

It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. The main

purpose should not be frustrated by its subordination to mere incidental results not contemplated.[48]
[Emphasis supplied]

Here, the basement of the QC Hall of Justice is not appropriated, applied or employed for the sole purpose of supporting the Roman Catholics

Further, it has not been converted into a Roman Catholic chapel for the exclusive use of its faithful contrary to the claim of Valenciano. Judge Maceren reported that the basement is also being used as a public waiting area for most of the day and a meeting place for different employee organizations. The use of the area for holding masses is limited to lunch break period from twelve (12) o'clock to one (1) o'clock in the afternoon. Further, Judge Sagun, Jr. related that masses run for just a little over thirty (30) minutes. It is, therefore, clear that no undue religious bias is being committed when the subject basement is allowed to be temporarily used by the Catholics to celebrate mass, as the same area can be used by other groups of people and for other purposes.[49] Thus, the basement of the QC Hall of Justice has remained to be a public property devoted for public use because the holding of Catholic masses therein is a mere incidental consequence of its primary purpose.

Conclusion

Directing the Executive Judges of the RTC and MeTC to regulate and closely monitor the holding of masses and other religious practices within the courts does not promote excessive collaboration between courts and various religions. On the contrary, this is necessary to ensure that there would be no excessive entanglement

To disallow the holding of religious rituals within halls of justice would set a dangerous precedent and commence a domino effect. Strict separation, rather than benevolent neutrality/accommodation, would be the norm. Thus, the establishment of Shari'a courts, the National Commission for Muslim Filipinos, and the exception of Muslims from the provisions of the RPC relative to the crime of bigamy would all be rendered nugatory because of strict separation. The exception of members of Iglesia ni Cristo from joining a union or the non-compulsion recognized in favor of members of the Jehovah's Witnesses from doing certain gestures during the flag ceremony, will all go down the drain simply because we insist on strict separation.

That the holding of masses at the basement of the QC Hall of Justice may offend non-Catholics is no reason to proscribe it. Our Constitution ensures and mandates an unconditional tolerance, without regard to whether those who seek to profess their faith belong to the majority or to the minority. It is emphatic in saying that "the free exercise and enjoyment of religious profession and worship shall be without discrimination or preference." Otherwise, accommodation or tolerance would just be mere lip service.

One cannot espouse that the constitutional freedom of religion ensures tolerance, but, in reality, refuses to practice what he preaches. One cannot ask for tolerance when he refuses to do the same for others.

In fine, the Court denies the plea that the holding of Catholic masses at the basement of the QC Hall of Justice be prohibited because the said practice does not violate the constitutional principle of separation of Church and State and the constitutional prohibition against appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion.

WHEREFORE, the Court resolves to:

- NOTE the letter-complaints of Mr. Tony Q. Valenciano, dated January 6, 2009, May 13, 2009, and March 23, 2010;
- NOTE the 1st Indorsement, dated September 21, 2010, by the Office on Halls of Justice, containing photocopies and certified photocopies of previous actions made relative to the complaint;

- NOTE the Letter-Comment, dated September 9, 2010, of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr.;

- NOTE the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero;

- DENY the prayer of Tony Q. Valenciano to prohibit the holding of religious rituals in the QC Hall of Justice and in all halls of justice in the country; and

- DIRECT the Executive Judges of Quezon City to REGULATE and CLOSELY MONITOR the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring, among others, that:

(a)

it does not disturb or interrupt court proceedings;

(b)

it does not adversely affect and interrupt the delivery of public service; and

(c)

it does not unduly inconvenience the public.

In no case shall a particular part of a public building be a permanent place for worship for the benefit of any and all religious groups. There shall also be no permanent display of religious icons in all halls of justice in the country. In case of religious rituals, religious icons and images may be displayed but their presentation is 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. After any religious affair, the icons and images shall be hidden or concealed from public view.

The disposition in this administrative matter shall apply to all halls of justice in the country. Other churches, religious denominations or sects are entitled to the same rights, privileges, and practices in every hall of justice. In other buildings not owned or controlled by the Judiciary, the Executive Judges should coordinate and seek approval of the building owners/administrators accommodating their courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, Del Castillo, Reyes, and Perlas-Bernabe, JJ., concur.

Leonardo-De Castro, J., Please see my Separate Concurring Opinion.

Leonen, J., I dissent. See Separate Opinion.

Jardeleza, J., See Separate Opinion.

Caguioa, J., I concur of Separate Opinion of J. Jardeleza.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on March 7, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on March 28, 2017 at 1:55 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, pp. 20-22.

[2] Id. at 2.

[3] Id. at 23.

[4] Id. at 28-30.

[5] Id. at 31-33.

[6] Id. at 3.

[7] Id. at 34.

[8] Id. at 6-7.

[9] Id. at 8.

[10] Id. at 10-12.

[11] Id. at 13-16.

[12] Id. at 52-67.

[13] Id. at 60.

[14] Id. at 61-62.

[15] Id. at 62.

[16] Id. at 63.

[17] Const. (1987), Article II, Sec. 6.

[18] *Aglipay v. Ruiz*, 64 Phil. 201, 205 (1937).

[19] Cruz, *Philippine Political Law* (2002), p. 68.

[20] 732 Phil. 1 (2014).

[21] *Supra* note 18.

[22] Id. at. 206-207.

[23] *Islamic Da'wah Council of the Philippines, Inc. v. Executive Secretary*, 453 Phil. 440, 449 (2003). [Citations omitted]

[24] Cruz, *Constitutional Law* (2007), p. 188.

- [25] Cruz, Constitutional Law (2007), pp. 188-189.
- [26] Rollo, p. 14.
- [27] 455 Phil. 411, 577-588 (2006).
- [28] Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours), 514 Phil. 31, 40 (2005).
- [29] See Cruz, Constitutional Law (2007), p. 189.
- [30] Estrada v. Escritor, supra note 27, at 522-523.
- [31] 158 Phil. 60 (1974).
- [32] G.R. No. 95770, March 1, 1993, 219 SCRA 256.
- [33] Rollo, p. 61.
- [34] Supra note 28.
- [35] Section 5, Article III, 1987 Constitution.
- [36] Everson v. Board of Education, 330 U.S. 1.
- [37] Bernas, the 1987 Constitution of the Philippines, 2009 Ed., p. 345.
- [38] Imbong v. Ochoa, supra note 20.
- [39] Bernas, the 1987 Constitution of the Philippines, 2009 Ed., p. 346.
- [40] Black's Law Dictionary (Fifth Ed.), p. 91.
- [41] Black's Law Dictionary (Fifth Ed.), p. 93.
- [42] Chavez v. Judicial and Bar Council, 691 Phil. 173, 200 (2012).
- [43] Cruz Philippine Political Law (2002), pp. 174-175.
- [44] Francisco v. House of Representatives, 460 Phil. 830, 886 (2003).
- [45] Section 28 (3), Art. VI, 1987 Constitution.
- [46] 322 Phil. 442 (1996).
- [47] Id. at 453.
- [48] Supra note 18, at 209-210.
- [49] Rollo, p. 63.

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 Constitution[2] 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 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. 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 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.

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:

1. the 1[st] 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 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 creche in Pawtucket City, Rhode Island because the "city has a secular purpose for including the creche, the city has not impermissibly advanced religion, and including the creche 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 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 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 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 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.

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.

[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."

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

[4] *Id.* at 5-6.

[5] *Id.* at 7-9.

[6] 525 Phil. 110 (2006).

[7] OCA Memorandum dated August 7, 2014, p. 9.

[8] *Id.* at 13.

[9] *Id.* at 15 16.

[10] J. Leonen, Dissenting Opinion, p. 3.

[11] 106 Phil. 2 (1959).

[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.

[18] Supra note 10 at 11-13.

[19] Supra note 15.

[20] Id.

[21] Id.

[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.

[27] Id. at 575-576.

[28] Id.

[29] Id. at 578.

DISSENTING OPINION

"Imagine there's no countries, it isn't hard to do. Nothing to kill or die for, and no religion, too. Imagine all the people living life in peace ..."

- Lennon, John. "Imagine."

Imagine. Ascot, 1971. Vinyl.

"But Jesus, aware of their malice, said, 'Why put me to the test, you hypocrites? Show me the money for the tax.' And they brought him a coin. And Jesus said to them, 'Whose likeness and inscription is this?' They said, 'Caesar's.' Then he said to them, 'Render therefore to Caesar the things that are Caesar's, and to God the things that are God's.' When they heard it, they marveled; and they left him and went away."

- Matthew 22:15-22[1]

LEONEN, J.:

Tolerating and allowing court personnel to hold and celebrate daily masses within public Halls of Justice is a clear violation of the Constitutional prohibition against the State's establishment of a religion. It has no secular purpose other than to benefit and, therefore, promote a religion. It has the effect of imposing an insidious cultural discrimination against those whose beliefs may be different. Religious rituals should be done in churches, chapels, mosques, synagogues and other private places of worship.

To provide that all faiths of all denominations may likewise avail of the same public space within courts of law is a painful illusion. Apart from violating Sections 5 and 29 (2) of Article III of the Constitution, it is a privilege that is not available to those who profess non-belief in any god or whose conviction is that the presence or absence of god is unknowable. It likewise undermines religious faiths, which fervently believe that rituals that worship icons and symbols are contrary to their conception of god.

Furthermore, the majority opinion invites judges to excessively entangle themselves with religious institutions and worship. Decisions on the duration, frequency, decorations, and other facets of religious rituals are not judicial functions. This also should certainly not be a governmental one.

By holding daily Catholic masses or any religious ritual within court premises, courts unnecessarily shed their impartiality. It weakens our commitment to protect all religious beliefs.

I

Mr. Tony Q. Valenciano (Mr. Valenciano) wrote this Court in 2009[2] and again, in 2010,[3] questioning the practice of holding Roman Catholic masses at the basement of the Quezon City Hall of Justice. He submitted that the basement floor of the court of law was practically converted into a Roman Catholic chapel, with religious icons permanently displayed, in violation of the separation of church and State[4] and the constitutional prohibition on the appropriation of public money for the benefit of a sect, church, denomination, or any other system of religion.[5]

Mr. Valenciano's letters were indorsed to Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun, Jr.) of the Regional Trial Court and Executive Judge Caridad W. Lutero (Executive Judge Lutero) of the Metropolitan Trial Court of Quezon City for comment.[6] The Executive Judges shared the view that there was nothing constitutionally infirm in celebrating daily masses at the Quezon City Hall of Justice during lunch break.

Executive Judge Sagun, Jr.'s Comment[7] discussed the measures already implemented to address Mr. Valenciano's specific complaints, such as the shortening of masses to 30 minutes. For her part, Executive Judge Lutero maintained that court personnel must be allowed to freely exercise their respective religions:

The undersigned finds no reason to discontinue the masses being held at the basement since they do not disturb the proceedings of the court and are held during lunch break. As we all know, the Roman Catholics express their worship through the holy mass and to stop these would be tantamount to repressing the right of those holding the masses to the free exercise of their religion. Our Muslim brethren who are government employees are allowed to worship their Allah even during office hours inside their own offices. The Seventh Day Adventists are exempted from rendering Saturday duty because their religion prohibits them from working on a Saturday. Even Christians have been allowed to conduct their own bible studies in their own offices. All these have been allowed in respect of the worker's right to the free exercise of their religion. I therefore see no reason why we should stop our Catholic brethren (sic) from exercising their religion during lunch breaks.[8] (Emphases provided)

The views of Executive Judges Sagun, Jr. and Lutero are inconsistent with the view of the Office of the Chief

Attorney.

In a September 12, 2003 Memorandum for Chief Justice Hilario G. Davide, Jr., the Office of the Chief Attorney recommended to deny, on constitutional grounds, the request of Rev. Fr. Carlo M. Hagan to hold a one- day vigil in honor of Our Lady of Caysasay within the premises of this Court. Said the Office of the Chief Attorney:

[T]he Court is not an ordinary government department. It is the recognized bulwark of justice and the rule of law, with its much vaunted independence, impartiality, and integrity. It thus behooves the Court to consider the constitutional and legal issues surrounding the request for the conduct in its premises of vigil for a religious image.

Article II of the Constitution declares, as one of the policies of the State, the inviolability of the separation of Church and State.

In consonance therewith, the Bill of Rights of the Constitution states:

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 forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision is a reproduction of Section 8, Article IV of the 1973 Constitution, and Section 1 (7) of the 1935 Constitution. Its basic principle regarding religions is the "establishment clause" provided for in the first sentence of the section. The "establishment clause" is reiterated in Section 29 (2) of Article VI of the Constitution in the form of a prohibition against the enactment of laws that support any religion. Thus:

Sec. 29 (1)

(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, 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.

The constitutional provision on religious freedom in the Bill of Rights has two aspects: freedom of conscience and freedom to exercise the chosen form of religion. Freedom to believe is absolute while freedom to act on the belief is not. Conduct remains subject to regulation and even prohibition for the protection of society.

In *Gerona v. Secretary of Education*, the Court, holding that saluting the flag does not involve a religious ceremony and hence the requirement that students should attend the flag ceremony does not violate the religious freedom of Jehovah's Witnesses, likewise said:

...But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The Government steps in and either restrains said exercise or even prosecutes the one exercising it.

The overt acts in pursuit of religious belief are thus subject to regulation by the State.

No case has yet been filed in this Court to restrain an act similar to the subject of the instant requests; neither has there been an instance when this Office was required to comment on a similar requests. However, an American decision regarding the placing of a religious item in a courthouse is of persuasive effect as far as this jurisdiction is concerned.

In *G. County of Allegheny v. American Civil Liberties Union*, since 1981 the county of Allegheny had been

permitting the Holy Name Society, a Roman Catholic Church group, to display a creche in the County Courthouse during the Christmas holiday season. The creche, a visual representation of the nativity scene, was placed at the Grand Staircase, the most public part of the County Courthouse which was used as a setting for the county's annual Christmas carol program. In ruling that the display of the creche had the effect of endorsing religious beliefs in violation of the Establishment Clause, the court said:

...There is no doubt, of course, that the creche itself is capable of communicating a religious message.... Indeed, the creche in this lawsuit uses words, as well as the picture of the nativity scene, to make its religious meaning unmistakably clear. "Glory to God in the Highest!" says the angel in the creche - Glory to God because of the birth of Jesus. This praise to God in Christian terms is indisputable religious indeed sectarian -just as it is when said in the Gospel or in a church service.

... ..

Nor does the fact that the creche was the setting for the county's annual Christmas carol-program diminish its religious meaning. First, the carol program in 1986 lasted only from December 3 to December 23 and occupied at most two hours a day.... The effect of the creche on those who viewed it when the choirs were not singing the vast majority of the time - cannot be negated by the presence of the choir program. Second, because some of the carols performed at the site of the creche were religious in nature, those carols were more likely to augment the religious quality of the scene than to secularize it.

Furthermore, the creche sits on the Grand Staircase, the "main" and "most beautiful part" of the building that is the seat of county government.... No viewer could reasonably think that it occupies this location without the support and approval of the government. Thus, by permitting the "display of the creche in this particular physical setting,"... the county sends an unmistakable message that it supports and promotes the Christian praise to God that is the creche's religious message.

The fact that the creche bears a sign disclosing its ownership by a Roman Catholic organization does not alter this conclusion. On the contrary, the sign simply demonstrates that the government is endorsing the religious message of that organization, rather than communicating a message of its own. But the Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations.... Indeed, the very concept of "endorsement" conveys the sense of promoting someone else's message. Thus, by prohibiting governmental endorsement of religion, the Establishment Clause prohibits precisely what occurred here: the government's lending its support to the communication of a religious organization's religious message.

Finally, the county argues that it is sufficient to validate the display of the creche on the Grand Staircase that the display celebrates Christmas, and Christmas is a national holiday. This argument obviously proves too much. It would allow the celebration of the Eucharist inside a courthouse on Christmas Eve. While the county may have doubts about the constitutional status of celebrating the Eucharist inside the courthouse under the government's auspices,... this Court does not. The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus.

In sum, Lynch teaches that government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine. Here, Allegheny County has transgressed this line. It has chosen to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Jesus Christ. Under Lynch, and the rest of our cases, nothing more is required to demonstrate a violation of the Establishment Clause. The display of the creche in this context, therefore, must be permanently enjoined.

When the image of Our Lady of Manaoag was once brought to the Court, it was displayed at the lobby of the second floor of the Old Supreme Court Building. The choice of that area could not have been made without the

permission of the Court and/or its proper officials. The vigil conducted entailed praying the rosary, a form of prayer of Roman Catholics, by groups of employees or by offices scheduled at an hourly basis. A vigil would thus involve not only the display of a religious image but the performance of a religious act. Hence, it is undeniable that the "visit" of the image of Our Lady of Caysasay would involve likewise the use of the Court's properties, resources, employees, and official working time.

There is likewise no denying that should the instant requests be granted, the Court would "endorse" the Roman Catholic religion in violation of the Constitution. By allowing the "visit" of the image in the Court, it would convey the message that the Virgin Mother it represents is, in Fr. Hagan's words, the "Advocate of Faith," specially the Roman Catholic Church.

Although it is true that other Christian groups or sects are allowed to hold Bible-reading and other similar activities within Court premises, it appears that other religious groups have not made similar requests for the conduct of their religious services. In the event that such requests are made, the Court would have to grant such requests and thus cater to the needs of all religious persuasions, lest it be charged with favoritism and partiality. Obviously, the grant of such requests would result in the sacrifice of services that are needed in the exercise of the Court's constitutional duties and responsibilities. It is thus high time that the Court clearly defines [a] policy statement founded on pertinent provisions of the Constitution, its position regarding the holding of religious practices and activities in Court premises.

The denial of the instant request on constitutional grounds is imperative but it must be stressed that such denial does not in any way reflect the religious fervor or lack of it of the Members of the Court and its officials and employees who are Roman Catholics. Their personal beliefs and official acts are distinct and separate.

The denial is likewise impelled by the need to prevent the cropping up of another issue against the Court that militant non-Catholics may pick up and raise publicly to the detriment of the Court, notwithstanding its good faith and intention.[9] (Emphasis in the original; citations omitted)

II

On the other hand, the Office of the Court Administrator argued for the dismissal of the complaints of Mr. Valenciano in an August 7, 2014 Memorandum addressed to Chief Justice Maria Lourdes P. A. Sereno.

The Office of the Court Administrator recommended that the daily Roman Catholic masses at the Quezon City Hall of Justice be allowed, subject to the close regulation and monitoring by the Quezon City Executive Judges and so long as "(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." [10]

In making its recommendations, the Office of the Court Administrator cited *Estrada v. Escritor* [11] where this Court, speaking through Justice, subsequently Chief Justice, Reynato S. Puno, held that the religion clauses of our Constitution are to be read and interpreted using the benevolent neutrality approach. The Office of the Court Administrator explained:

[T]he principle of Separation of Church and State, particularly with reference to the Establishment Clause, ought not to be interpreted according to the rigid standards of Separation. Rather, the state's neutrality on religion should be benevolent because religion is an ingrained part of society and plays an important role in it. The state therefore, instead of being belligerent (in the case of Strict Separation) or being aloof (in the case of Strict Neutrality) toward religion should instead interact and forbear.[12] (Emphasis in the original)

III

The majority essentially agrees with the recommendation of the Office of the Court Administrator. According to the majority, our State adopts the policy of accommodation; that despite the separation of church and State required by the Constitution, the State may take religion into account in forming government policies not to favor religion but only to allow its free exercise.[13] The majority cites as bases *Victoriano v. Elizalde Rope Workers Union*,[14] where this Court allowed the exemption of members of *Iglesia ni Cristo* from closed shop provisions; and *Ebralinag v. Division Superintendent of Schools of Cebu*,[15] where this Court allowed the exemption of members of *Jehovah's Witnesses* from observance of the flag ceremony.

In discussing the non-establishment clause, the majority cites Father Joaquin Bernas (Father Bernas), a Catholic priest:

In effect, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions: (1) Government must not prefer one religion over another religion or religion over irreligion because such preference would violate voluntarism and breed dissension; (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension; (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and] (4) Government action must not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension.[16]

The majority views the holding of daily Roman Catholic masses at the Quezon City Hall of Justice constitutionally permissible. They see no violation of the establishment clause because court personnel are not coerced to attend masses; no government funds are allegedly spent in the exercise of the religious ritual; the use of the basement for masses was not permanent; and other religions are allegedly not prejudiced.[17]

Thus, the majority disposes of this administrative matter in this wise:

WHEREFORE, the Court resolves to:

- NOTE the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010;
- NOTE the 1st Indorsement dated September 21, 2010, by the Office on Halls of Justice, containing photocopies and certified photocopies of previous actions made relative to the complaint;
- NOTE the Letter-Comment dated September 9, 2010, of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr.;
- NOTE the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse- Lutero;
- DENY the prayer of Tony Q. Valenciano to prohibit the holding of religious rituals in the QC Hall of Justice and in all halls of justice in the country; and
- DIRECT the Executive Judges of Quezon City to REGULATE and CLOSELY MONITOR the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring, among others, that:
 - (a)
it does not disturb or interrupt court proceedings;
 - (b)
it does not adversely affect and interrupt the delivery of public service; and

(c)

it does not unduly inconvenience the public.

In no case shall a particular part of a public building be a permanent place for worship for the benefit of any and all religious groups. There shall also be no permanent display of religious icons in all Halls of Justice in the country. In case of religious rituals, religious icons and images may be displayed but their presentation is 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. After any religious affair, the icons and images shall be hidden or concealed from public view.

The disposition in this administrative matter shall apply to all halls of justice in the country. Other churches and religious denominations or sects are entitled to the same rights, privileges and practices in every hall of justice. In other buildings not owned or controlled by the Judiciary, the Executive Judges should coordinate and seek approval of the building owners/administrators accommodating their courts.[18]

IV

Allowing the exercise of religious rituals within government buildings violate both Section 5, Article III and Section 29(2), Article VI of the Constitution.

Section 5, Article III of the Constitution provides:

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.

This provision articulates two fundamental duties of the State. The first is to respect the free exercise of any religious faith. The second is not to establish, endorse, or favor any religion.

The parameters of the duty to respect the free exercise of any religion manifest in the context of a continuum. On the one hand, freedom to believe is absolute. On the other, physical manifestations of one's faith in the form of rituals will largely be tolerated except if they will tend to encroach or impede into the rights of others.[19]

Among those who profess adherence to the Roman Catholic Church, the Holy Eucharist is not simply a ritual, it is an important sacrament. More than a symbolism or the occasion to display icons, it requires the active, collective and public participation of its believers. It will require the presence of a priest and, while the ritual is ongoing, the prayers and incantations will be heard beyond the vicinity of its participants.

The offensiveness of this ritual cannot be obvious to those who belong to this dominant majority religion. It will not be obvious to those who will continuously enjoy the privilege of consistently hosting this in a government building charged with the impartial adjudication of the rule of law. The inability to see how this practice will not square with those who believe otherwise will especially be because religion is a matter of faith. The stronger one's faith is, the more tenacious the belief in the conception of one's god and the correctness of his or her fundamental teachings.

It will take great strides in both humility and sensitivity to understand that religious practices within government buildings are offensive to those who do not believe in any of the denominations or sects of Christianity. Those who do believe in a god but do not practice any ritual that worships their supernatural being or their deity will also find the allowance of the full Catholic sacrament of the Holy Eucharist demeaning.

Definitely, the sponsorship of these rituals within the halls of justice will not be acceptable to atheists, who

fervently believe that there is no god; or to agnostics, who fundamentally believe that the existence of a supernatural and divine being cannot be the subject of either reason or blind faith.

As correctly underscored by the Chief Attorney, courts are not simply venues for the resolution of conflict. Our Halls of Justice should symbolize our adherence to the majesty and impartiality of the rule of law. Unnecessary sponsorship of religious rituals undermines the primacy of secular law and its impartiality. It consists of physical manifestations of a specific kind of belief which can best be done in private churches and chapels, not in a government building. There is no urgency that it be done in halls of justice.

V

Justice Jardeleza is of the view that allowing the holding of religious rituals in our courts is an allowable accommodation under the freedom to worship clause. Accommodation, also termed "benevolent neutrality," was extensively discussed in *Estrada v. Escritor*.^[20]

I disagree.

The precedent cited is inappropriate. It is also not a binding precedent.

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.

Escritor involved an administrative complaint for immorality against Soledad Escritor, a court interpreter in the Regional Trial Court of Las Piñas, who cohabited and had a son with a married man. Invoking her religious freedom, Escritor argued that her conjugal arrangement conformed to the teachings of the Jehovah's Witnesses, the religious sect to which she belonged.

After a review of religion cases, the Court in *Escritor* formulated a two-part test in resolving cases involving freedom to worship. First, "the spirit, intent, and framework underlying the religion clauses in our Constitution"^[21] is benevolent neutrality or accommodation. Government actions must neither burden nor facilitate "the exercise of a person's or institution's religion"^[22] and that the State should "exempt, when possible, from generally governmental regulation individuals, whose religious beliefs and practices would otherwise thereby be infringed, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish."^[23] Second, there must be a compelling state interest should religious liberty be burdened.^[24]

Escritor was ultimately absolved of the immorality charge against her, but only because the State failed to prove the compelling state interest in overriding her religious freedom. *Escritor* therefore involved a state policy that was apparently neutral and the question as to whether its consistent application given the ambient facts specific to a religion would violate the adherent's freedom to worship.

This is not the situation in this administrative matter. Here, we are asked to create a policy to sponsor religious rituals. There is no neutral state policy we are asked to interpret. We are asked to create a policy to enable a specific religion, and others similarly situated, to conduct their rituals within government space.

Escritor involved accommodation or exceptions to a state policy. In this administrative matter, we create a policy that benefits a group of religions that have rituals. It will not benefit believers who do not have public rituals or a deity. It certainly will not benefit all beliefs including those who profess to atheism or agnosticism.

Escritor therefore is not the proper precedent.

Since *Escritor's* promulgation, benevolent neutrality has been constantly but erroneously quoted as a talisman to erase all legitimate constitutional objections to religious activity that impinges upon secular government policy.

Yet, in the 2003 Decision, where the two-part test was formulated, only five Justices fully concurred with Justice Puno's ponencia.[25] Two other Justices wrote separate concurring opinions.[26] There were five other Justices who dissented, with Justice Carpio leading in the dissent.[27] That benevolent neutrality is even doctrine is, therefore, suspect.

More importantly, benevolent neutrality in reality may turn out to be an insidious means for those who believe in a majority decision to maintain their dominance in the guise of neutral tolerance of all religions.

Not all Buddhists have as active, collective, and public a ritual that requires a public space as Catholics. Agnostics do not practice any ritual. Opening space in our Halls of Justice for rituals such as the Holy Eucharist in effect provides further advantage to an already dominant religion. Since the number of Catholics in Quezon City far outnumbers any other denomination, the number of requests to make use of public spaces within the Halls of Justice will likely dwarf any other Christian denomination or religion. This is true in Quezon City. This is also true in most other Halls of Justice, including portions of the Supreme Court Compound. Catholic rituals dominate.

Benevolent neutrality in practice, thus, favors the already dominant.

VI

The proscription in Section 5, Article III of the Constitution against the State's establishment of a religion covers not only official government communication of its religious beliefs. It likewise generally prohibits support and endorsement of a religious organization or any of their activities or rituals.

The non-establishment clause can be appreciated in two basic ways. First, it can be a corollary to the Constitutional respect given to each individual's freedom of belief and freedom of exercise of one's religion. Second, it is also a restatement of the guarantee of equality of each citizen. That is, that no person shall be discriminated against on the basis of her or his creed or religious beliefs.

Congeaed in this provision is the concept that the Constitution acknowledges the cultural power of the State. Government's resources, its reach, and ubiquity easily affect public consciousness. For example, actions of public officials are regular subjects of media in all its forms. The statements and actions of public officials easily pervade public deliberation. They also constitute frames for public debate on either personality or policy.

The rituals and symbolisms of government not only educate the public but also etch civic and constitutional values into mainstream culture. The flag for instance, reminds us of our colorful history. Flag ceremonies instill passionate loyalty to the republic and the values for which it stands. Halls of Justice consist of buildings to remind the public that their cases are given equal importance. The arrangement of bench and bar within our courtrooms exhibits the majesty of the law by allowing the judicial occupants to tower over the advocates to a cause. This arrangement instills the civic value that no one's cause will be above the law: that no matter one's creed or belief, all will be equal.

Any unnecessary endorsement, policy, or program that privileges, favors, endorses, or supports a religious practice or belief per se therefore would be constitutionally impermissible. It communicates a policy that contrary beliefs are not so privileged, not so favored, not so endorsed and unsupported by the Constitutional order. It implies that those whose creeds or whose faiths are different may not be as part of the political community as the other citizens who understand the rituals that are supported. It is to install discrimination against minority faiths or even against those who do not have any faith whatsoever.

There is no urgency in holding masses within the Halls of Justice. The Catholic Church owns many elegant places of worship. There are churches and chapels accessible to court personnel in the Quezon City Hall of Justice

during their lunch hour. There are some, which are walking distance from their offices.

Allowing masses to be held within Halls of Justice therefore have no other purpose except to allow a sect, or religious denomination to express its beliefs. The primary purpose of the policy that is favored by the majority of this Court is not secular in nature, but religious. This is contrary to the existing canons of our Constitutional law.

Section 5, Article III does not allow the endorsement by the State of any religion. The only exception would be if such incidental endorsement of a religious exercise is in the context of a governmental act that satisfies the following three-part test: it has a "secular legislative purpose";[28] "its primary effect [is] that [which] neither advances nor inhibits religion";[29] and that it "must not foster 'an excessive entanglement with religion.'"[30]

In *Aglipay v. Ruiz*,[31] this Court allowed the issuance of postage stamps with a Philippine map and an indication that the City of Manila was the seat of the Roman Catholic Church's Eucharistic Congress in 1937. The Court held that "while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government." [32] In *Aglipay*, the legitimate public purpose was to boost the country's tourism, not to celebrate religion. The Court found that the principal purpose was secular. The religious benefit was also considered to be incidental.

There is no duration, degree of convenience, or extent of following that justifies any express or implied endorsement of any religious message or practice. There is also no type of endorsement allowed by the provision. It is sufficient that the State, through its agents, favors expressly or impliedly a religious practice.

The majority opinion cites Father Bernas in discussing the non-establishment clause. Unfortunately, Father Bernas, even as a celebrated author in Constitutional law, is not the Supreme Court. Neither are his statements precedents for purposes of this Court. He is also a Catholic priest and therefore his opinions on the impact of law on religion should be taken with a lot of advisement.

Furthermore, directing our Executive Judges to regulate and closely monitor the holding of masses and other religious practices within our courts promotes excessive entanglements[33] between courts and various religions. This close monitoring will result in an unnecessary interaction between the church and the State. It will take time from our Executive Judges, who, instead of monitoring the holding of religious rituals, could otherwise be performing their secular functions such as reducing court dockets. They will be asked to arbitrate between religions.

VII

Justices De Castro[34] and Jardeleza[35] take a contrary view. For them, allowing our employees to hold religious rituals in our Halls of Justice serves "a human resource purpose"[36] in that "it renews in [our employees] daily their desire to achieve the highest principles of morality [which] can only better equip them to meet their secular obligation to be at all times accountable to the people." [37]

Unfortunately, this is a rationalization which benefits only those who are of the same faith for which the rituals will be conducted. It does not apply to those who do not share in the same beliefs. The non-establishment clause does not protect those that believe in the religion that is favored, privileged, endorsed, or supported. It is supposed to protect those that may be in the minority. The alleged secular purpose of the Holy Mass therefore only benefits Catholics. It does not apply to a Buddhist, a Taoist, an atheist, or an agnostic.

Any moralizing effect of religion notwithstanding, religion should correctly remain to be "a private matter for the individual, the family, and the institutions of private choice." [38] As Justice Jardeleza points out, setting and

context determine whether the use of a religious symbol effectively endorses a religious belief.[39] There is no violation of the establishment clause if we allow an employee to privately pray the rosary within the confines of his or her workspace.[40]

The case is different, however, if the religious ritual is collectively and publicly performed. Our Halls of Justice were not built for religious purposes. Allowing the performance of religious rituals in our Halls of Justice runs roughshod over the rights of non-believing employees and other litigants who, for non-religious purposes, are present in the courthouse but are involuntarily exposed to the religious practice.

Moreover, the purpose and goal of our secular laws and service to our people should be enough motivation for all public officers to do their best in their jobs. To provide the public space for a supposedly private matter like religion, in the name of morality, is not what the Constitution concedes.

If rituals for any religion serve any human resource incentive, so should any form of non-belief, be it in the form of atheism or agnosticism. It does not make sense for a state to favor any religious ritual yet at the same time accommodate citizens, who fervently believe that rituals should never be done.

VIII

More specific to the prohibition against the establishment of a religion are the provisions in the second paragraph of Section 29, Article VI of the Constitution:

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, 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. (Emphasis supplied)

The Constitution specifically prohibits public property from being "employed for the benefit or support of any sect, church, denomination, sectarian institution or system of religion."

This provision allows for no qualification. Allowing Catholic masses to be celebrated daily within the Halls of Justice definitely employs public property for the "benefit or support" of the Catholic religion. Catholicism is a "church," "denomination," and a "system of religion."

The majority believes that Section 29(2), Article VI of the Constitution "contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church." [41] In interpreting the provision, the majority deploys the statutory interpretative device labelled as *noscitur a sociis* - the doctrine of associated words and examined the definitions of "appropriate" and "apply" mentioned before "use" and "employ" in the provision. Based on the definitions in Black's Law Dictionary, "appropriate" and "apply" are similarly done for a particular purpose.[42] The ponencia then concluded that "use" and "employ," associated with "appropriate" and "apply," must similarly be done for a particular purpose, specifically, to benefit a particular religion.[43]

I do not agree with this interpretation. It implies that the religious use or employment of public property is allowable so long as other religious groups may use or employ the property.

Section 29(2), Article VI of the Constitution is straightforward and needs no statutory construction. The religious use of public property is proscribed in its totality. This proscription applies to any religion. This is especially so if

the accommodation for the use of public property is principally, primarily, and exclusively only for a religious purpose.

This holistic interpretation of the Constitution is more sensitive to those who disbelieve the agonistics and the atheists - who are equally protected under the Constitution. It is also more sensitive to the concept that the state remains neutral in matters pertaining to faith: that no institutional religion, due to their dominance or resources, may have any form of advantage over another act of religious belief.

IX

The other cases cited by the majority do not involve the non-establishment clause. Rather, the cases involve exceptions to a secular policy.

Victoriano v. Elizalde Rope Workers Union[44] challenged the applicability of the closed shop provisions to Members of Iglesia ni Cristo. The closed shop provisions were meant to further the State's protection to labor through collective negotiations. The petitioner in that case alleged that the means through which the purpose was to be achieved interferes with the exercise of his religion. That case did not involve allowance for any religious ritual within public property for the convenience of its adherents.

Ebralinag v. Division Superintendent of Schools of Cebu[45] examined the plea of a group of students who adhered to the tenets of the Jehovah's Witnesses to be exempted from certain gestures during the flag ceremony. Like Escritor and Victoriano, Ebralinag pursued a secular governmental interest. Religion, thus, only becomes significant as a basis to seek exemption to its application.

Allowing religious rituals within the Halls of Justice is not supported by these cases. Allowing the celebration of Roman Catholic masses within court premises definitely is not occasioned by a need to relieve their faithful from any burdensome effect. This case involves the State, through its employees, allowing the practice of religious rituals with no other purpose except to practice religious rituals in a public space. This cannot be done.

X

The Constitution guarantees liberty for those who choose to believe in a god. It does not, however, sanction insensibilities towards those who believe otherwise. The Constitution is also a guarantee that those who profess a dominant religion do not, in fact and in reality, further dominate our government spaces with their rituals or messages.

The non-establishment clause is the normative protection that ensures and mandates tolerance. It is meant to sharpen the sensitivity of those who are powerful so that they understand the point of view of others who have different beliefs. It is a sovereign command that those who hold important public offices - such as judges and justices - be conscious that their fervent personal and religious beliefs should not be mirrored in the doctrines and results of their cases.

Projecting the verses of Catholic prayers in a public building, using powerful sound systems to proclaim one's faith, selecting a space in the center of a Hall of Justice where the rituals resonate will not be obviously offensive to Catholics in the majority. However, it is utter callousness to say that it will offend no one. It causes discomfort to all those who will pass and do not share or have objections to the teachings broadcast in the Holy Eucharist. It offends those who believe that the State should endeavor to be neutral and impartial and avoid situations where this will be compromised.

Certainly, there is no urgent and compelling need to allow a certain sect to exercise their rituals within the Halls

of Justice on a regular basis. There are churches, chapels, mosques, synagogues and private spaces available for worship.

"Benevolent neutrality" to render state regulation impotent in a situation where a religion dominates becomes a painful illusion to those at the margins of our society. For this Court to adopt this facade is to reward the dominant. It is to maintain the status quo and reify the hegemony of those who have power. This will not be lost to those that pass our Halls of Justice.

To reward the dominant would be to further ensure divisiveness, distrust, and intolerance. It will ultimately result in the accommodation of fundamentalist views embedded in popular religions. The marginalized will perceive no succor in the system. They will see no opening and no space for their own freedoms. Religious rituals in our Halls of Justice, no matter the justification, breed contempt for the impartiality of the Rule of Law.

The faiths which anchor our Constitution are diverse. It should not be the monopoly of any sect. The diversity mandated by our Constitution deepens our potentials as sovereigns. To favor a belief system in a divine being therefore, in any shape, form, or manner, is to undermine the very foundations of our legal order.

The Constitution does mention god. It may be that the divine is the Judea-Christian God. It may be that it is Allah of Islam or Yahweh of the Jews. The god may not be theistic and may simply be the Dharma of the Buddhists. It may also not be a divinity but reasoned secularism as advocated by the most militant Atheists.

It may also be a god that is so secure in itself that it does not require any kind of religious rituals, just the humility of not imposing one's belief on others.

Except for our own individual consciences, we are not competent to make these religious judgments as Supreme Court Justices. Certainly, it is not within our constitutional mandate to favor one over the other in any manner.

There is no reason for the Holy Eucharist to be celebrated in our Halls of Justice. Catholic churches are ubiquitous. Should the faithful among our judges and employees find the need to worship, I am of the belief that they should practice the compassion for others and the virtue for humble sacrifice taught by no less than Jesus Christ himself. Thus, they should muster the patience to walk to the closest church and there to fervently pray for more humility and a socially just and tolerant society.

The same doctrine applies for all other religions.

ACCORDINGLY, I vote to NOTE the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010 and GRANT his request to disallow the holding of daily Roman Catholic masses, or any other religious ritual, at the basement of the Quezon City Hall of Justice.

[1] Revised Standard Version Catholic Edition.

[2] Rollo, pp. 20-22.

[3] Id. at 34.

[4] CONST., art. II, sec. 6.

[5] CONST., art. VI, sec. 29(2) provides:

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, 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.

[6] Rollo, p. 8.

[7] Id. at 10-12.

[8] OCA Memorandum dated August 7, 2014, p. 11.

[9] OCAT Memorandum dated September 12, 2013, pp. 2-5.

[10] OCA Memorandum dated August 7, 2014, p. 16.

[11] 455 Phil. 411 (2003) [Per J. Puno, En Banc].

[12] OCA Memorandum dated August 7, 2014, p. 9.

[13] Ponencia, pp. 12-13.

[14] 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc]. Members of Iglesia ni Cristo are not allowed to affiliate with labor organizations.

[15] 292 Phil. 267 (1993) [Per J. Griño-Aquino, En Banc]. Members of Jehovah's Witnesses believe that saluting the flag, singing the National Anthem, and reciting the patriotic pledge constitute acts of worship not due to the State.

[16] Ponencia, p. 15.

[17] Id. at 15-16.

[18] Id. at 19-20.

[19] Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours), 514 Phil. 31, 38-39 (2005) [Per J. Callejo, Sr., En Banc]; Estrada v. Escritor, 455 Phil. 411, 537-538 (2003) [Per J. Puno, En Banc]; Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206-207 [Per J. Regalado, Second Division]; German v. Barangan, 220 Phil. 189, 202 (1985) [Per J. Eseolin, En Banc]; Gerona v. Secretary of Education, 106 Phil. 2, 9-10 (1959) [Per J. Montemayor, En Banc].

[20] 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc].

[21] Id. at 137.

[22] Id. at 148.

[23] Id. at 148-149.

[24] Id. at 137.

[25] The ponencia was concurred in by the Chief Justice Davide, Jr., and Associate Justices Austria-Martinez, Corona, Azcuna, and Tinga.

[26] Associate Justices Bellosillo and Vitug.

[27] Associate Justices Ynares-Santiago and Carpio wrote their separate dissenting opinions. Associate Justices Panganiban, Carpio-Morales, and Callejo, Sr. joined the dissenting opinion of Associate Justice Carpio.

[28] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 83 (1974) [Per J. Zaldivar, En Banc] citing *Board of Education v. Allen*, 392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923. See *Aglipay v. Ruiz*, 64 Phil. 201 (1937) [Per J. Laurel, En Banc].

[29] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 83 (1974) [Per J. Zaldivar, En Banc] citing *Board of Education v. Allen*, 392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923.

[30] *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc] citing *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

[31] 64 Phil. 201 (1937) [Per J. Laurel, First Division].

[32] *Id.* at 209.

[33] *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc]. In this case, this Court mentions the concept of "excessive entanglement" which appears in *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). In *Lemon v. Kurtzman*, it was noted that the way to determine whether government entanglement with religion is excessive is by "[examining] the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority."

[34] Justice de Castro's Concurring Opinion, p. 15, where Justice de Castro stated that "[i]s religion without any redeeming value or beneficial effect insofar as public service is concerned?"

[35] Justice Jardeleza's Reflections, p. 19.

[36] *Id.* at 20.

[37] *Id.* at 19.

[38] *Lemon v. Kurtzman*, 402 U.S. 613, 625 (1971).

[39] Justice Jardeleza's Reflections, p. 12, citing *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

[40] Justice de Castro's Concurring Opinion, p. 15.

[41] *Id.* at 16.

[42] *Id.* The ponencia states:

The word "apply" means "to use or employ for a particular purpose." "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand."

[43] *Id.*

[44] 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

[45] 292 Phil. 267 (1993) [Per J. Griño-Aquino, En Banc].

CONCURRING OPINION

"Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views x x x." [1]

JARDELEZA, J.:

I agree with the excellently argued ponencia and its conclusion that the Catholic masses held at the Quezon City Hall of Justice should not be prohibited. I take this opportunity to add a few words on the important constitutional issues raised in this case.

Mr. Tony Q. Valenciano (Mr. Valenciano) wrote this Court in 2009, and again in 2010, concerning the holding of Roman Catholic masses at the basement of the Quezon City Hall of Justice. He claims that this is a violation of the constitutional command of separation of church and state and the constitutional prohibition against the appropriation of public money for the benefit of a sect, church, denomination, or any other system of religion. This Court asked Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun) of the Regional Trial Court, and Executive Judge Caridad W. Lutero (Executive Judge Lutero) of the Metropolitan Trial Court of Quezon City to comment on the letters. Both judges take the position that the questioned practice violates no constitutional provision. Executive Judge Sagun explains that steps have been taken to address Mr. Valenciano's concerns, such as the shortening of the mass to thirty (30) minutes. Executive Judge Lutero adds that all denominations are allowed to engage in religious practices within the confines of the Quezon City Hall of Justice. Christians are allowed to conduct their own bible studies and Muslims to worship Allah in their offices.

The Office of the Court Administrator recommends that daily masses at the Quezon City Hall of Justice be allowed subject to the following conditions: (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) the 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.

The Establishment Clause is a central doctrine in our constitutional democracy. Through the years, this Court has been called upon to uphold this constitutional provision and strike down government acts that threaten to break the wall of separation that prevent religion and government from excessively entangling. In all Establishment Clause cases, the "measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." [2] I believe that this case poses no danger to the separation of church and state.

Section 5 of the Bill of Rights of the Constitution states-

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 forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision encapsulates the Religion Clauses of our Constitution-the Establishment Clause and the Free Exercise Clause. These two clauses complement each other, and together, they promote the flourishing of the freedom to choose to believe or not to believe in the concept of a supreme being.

The Free Exercise Clause mandates an absolute protection of the freedom to believe. Thus, a person is free to worship any god he or she may choose or none at all. [3] The difficulty and the beauty of the Free Exercise Clause, however, are found in its application in the realm of actions. While a person is free to believe what he or she may choose, he or she is not absolutely free to act on his or her beliefs. In constitutional adjudication, the challenge has often been the determination of whether a governmental act jeopardizes the freedom to act on one's belief, and

whether the freedom to exercise a religion justifies an exemption from a law or government regulation. We have had the opportunity to rule on cases involving the Free Exercise Clause, and we have consistently endeavored to find the delicate balance between the secular interest of the state and the freedom of religion of the individual.

On the other hand, the Establishment Clause, in its strict sense, bars a state from creating a state religion or espousing an official religion. There are, however, several gradations in the application of the Establishment Clause. It extends its prohibition not only to official acts establishing a state religion but also to government acts that have the effect of endorsing religion or favoring one over others. In *Iglesia Ni Cristo v. Court of Appeals*,^[4] we held that the Establishment Clause prohibits the state from leaning in favor of religion. "Neutrality alone is its fixed and immovable stance."^[5]

This notwithstanding, the Establishment Clause must not be construed so literally so as to impose an absolute separation between the affairs of the state and the church. It exists not in the pursuit of separation for its own sake. Rather, the goal of the Establishment Clause is to create constitutional space where religion may flourish. The Establishment Clause bars the state from favoring any religion so that it may not inhibit religious belief by rewarding other religious beliefs.^[6] The Establishment Clause has never been intended, and as such, should not be interpreted to serve as a tool to alienate the church from the state.

The Religion Clauses are unique in that while their application oftentimes creates tension, they also exist to protect the essential need to promote liberty of conscience-the choice to believe or not to believe in a greater being. The Free Exercise Clause insures this by insulating the individual from any government act that may prevent or burden his or her right to practice his or her faith within the limits of the law. The Establishment Clause upholds freedom of religion by enforcing neutrality and making volunteerism the determining factor in an individual's religious choices.^[7] The state is neutral to all religions. It does not espouse any of them so that an individual will be free, without any kind of compulsion, to make the choice for himself or herself.

Our jurisprudence on the Religion Clauses reveal that in cases where this Court is called upon to perform the delicate balancing of protecting freedom of religion and upholding the legitimate interest of the state, we have always chosen not to espouse a blind adherence to an absolute separation of church and state but one that permits accommodation, whenever possible, in the greater pursuit of allowing freedom of religion to flourish.

In *Aglipay v. Ruiz*,^[8] we found that the Director of Posts may validly issue and sell postage stamps commemorative of the Thirty-Third International Eucharistic Congress without violating the Establishment Clause. We found that the purpose for issuing and selling the stamps was to promote the Philippines and attract tourists as it was the seat of the Eucharistic Congress. While the issuance and sale of the stamps may be "inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government."^[9] It is the main purpose and not the mere incidental results that should matter. We categorically declared that what is guaranteed in the Constitution is religious liberty and not mere religious toleration. In explaining the many ways that the affairs of the state and the church often intersect, we held-

Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored "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," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him

who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. 4, Ordinance appended thereto; Assessment Law, sec. 344, par. [c], Adm. Code). Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium (sec. 13, subsec. 3, Art. VI, Constitution of the Philippines). Optional religious instruction in the public schools is by constitutional mandate allowed (sec. 5, Art. XIII, Constitution of the Philippines, in relation to sec. 928, Adm. Code). Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays and made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conclusive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state (see arts. 132 and 133, Revised Penal Code).[10]

In *American Bible Society v. City of Manila*,^[11] we held that ordinances requiring businesses to obtain permits and pay license fees cannot be applied to the American Bible Society's practice of distributing and selling bibles and/or gospel excerpt. We explained that the constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of this right can only be justified on the ground that there is a clear and present danger of any substantive evil which the state has the right to prevent.^[12]

We also upheld, in *Victoriano v. Elizalde Rope Workers' Union*,^[13] a law exempting certain employees from close shop agreements in collective bargaining when their religion prohibits it. In explaining the Religion Clauses of the Constitution, we declared-

The constitutional provision [not] only prohibits legislation for the support of any religious tenets or the modes of worship of any sect, thus forestalling compulsion by law of the acceptance of any creed or the practice of any form of worship, but also assures the free exercise of one's chosen form of religion within limits of utmost amplitude. It has been said that the religion clauses of the Constitution are all designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good.^[14]

In *Ebralinag v. The Division Superintendent of Schools of Cebu*,^[15] we reversed the thirty-year old doctrine in *Gerona v. Secretary of Education*^[16] that members of the Jehovah's Witness may be validly dismissed from school because of their refusal to salute the Philippine flag. We held that while saluting the flag is required under the law, members of the Jehovah's Witness ought to be exempted out of respect for their religious beliefs. We said that dismissing students from school because of their refusal to salute the flag in accordance with their religion is "alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights which guarantees their rights to free speech and the free exercise of religious profession and worship."^[17]

We also found constitutionally infirm the decision of the Movie and Television Review and Classification Board (MTRCB) in giving an X-rating to the show "Ang Iglesia Ni Cristo."^[18] The MTRCB used as one of its grounds the fact that the show, which discussed the doctrines of the Iglesia Ni Cristo, "offend[s] and constitute[s] an attack against other religions."^[19] We ruled that the MTRCB has no authority to stifle the show's criticisms of other religions as it is not the task of the state "to favor any religion by protecting it against an attack by another religion."^[20] We emphasized that neutrality alone is the "fixed and immovable stance."^[21]

We have even incorporated in our administrative policy an accommodation of the religious practices of our court employees. In *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*,^[22] we allowed Muslim court employees to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without any break

during the month of Ramadan. While we refused to allow them to hold office from 7:30 am to 3:30 pm every Friday for the entire calendar year, this was based on what we deem is a value that justifies slightly inconveniencing the religious practice of Muslims. Specifically, we upheld the civil service rule which enjoins all civil servants, of whatever religious denomination, to render public service of no less than eight hours a day or 40 hours a week. In other words, our declared policy is to allow the practice and expression of religious faith for as long as it does not unjustifiably prejudice our avowed duty to serve the public.[23]

In 2003, we promulgated *Estrada v. Escritor*[24] which became an essential case in our growing jurisprudence on the Religion Clauses. Here, we categorically and unequivocally declared that in resolving claims involving religious freedom benevolent neutrality or accommodation, whether mandatory or permissive, is the spirit, intent, and framework underlying the Religion Clauses in our Constitution.

Benevolent neutrality, as held in *Estrada*, is an approach to the Religion Clauses which leaves room for the accommodation of religion. In explaining the concept of accommodation and how it is compatible with the Establishment Clause, we quoted the American case *Zorach v. Clauson*,[25] which said-

The First Amendment, however, does not say that, in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one or the other. That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other-hostile, suspicious, and even unfriendly.[26]

Estrada then proceeded to analyze our religion cases and declared that "the well-spring of Philippine jurisprudence on this subject is for the most part, benevolent neutrality which gives room for accommodation." [27] I agree.

Estrada has, since its promulgation, been cited by this Court in cases involving the Religion Clauses. We invoked the benevolent neutrality accommodation in *Imbong v. Ochoa, Jr.*[28] In ascertaining whether the duty to refer, under the Reproductive Health Law, unduly burdened the free exercise of religion of conscientious objectors, we applied the compelling

state interest test in accordance with the benevolent neutrality approach. We ruled that conscientious objectors must be exempt from the duty to refer so as not to infringe their freedom of religion.

In my view, *Estrada* did not introduce anything new in applying benevolent neutrality in religion cases. Rather, it is an expression of the decades of jurisprudence that has persistently chosen a path where the separation of church and state may be used to create a space where religion is not stifled but is allowed to flourish.

Of course there have been cases where we refused to grant a claim based on religion. In all these cases, however, this Court found interests that justify the refusal of a claim under the Religion Clauses.

German v. Barangan,[29] a decision involving a public demonstration at the peak of anti-government rallies during the Martial Law, is one such case. Petitioners intended to pray in the St. Jude Chapel which was within the Malacañang premises. They were, however, prevented from doing so, on the ground that St. Jude Chapel was located within a Malacañang security area. Petitioners went to this Court and claimed that they should be allowed to pray inside the chapel in accordance with their freedom to practice their religion. This Court denied their petition. While the case was hinged on the petitioners supposed lack of good faith in their claim, the Court also found that even if there was good faith, the refusal to allow them within a Malacañang security area did not violate their freedom of religion. The refusal to allow them into the security area was motivated by the need to protect the life of the then President Marcos and his family, as well as other governmental officers transacting business in Malacañang.

In *Ang Ladlad LGBT Party v. Commission on Elections (COMELEC)*,^[30] we chastised the COMELEC for relying on the Holy Bible and the Koran in their decision to disqualify Ang Ladlad LGBT Party from participating in the party-list elections. We found this to be a clear violation of the Establishment Clause. The government must act for secular purposes for primarily secular effects. We explained-

x x x Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, i.e., to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens.

In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. x x x^[31]

In this case, we clarified that not all claims based on religion should be recognized. But even while we disagreed with the COMELEC, we emphasized that the imperative for the government to pursue secular purposes rather than religious ones is to avoid the endorsement of any particular religion and in effect, disapproving others. Neutrality is the stance not because the Establishment Clause requires the government to put up a wall of separation between church and state that is "high and impregnable"^[32] but because it is only in neutrality that freedom of religion can find expression.

In *Imbong*, we also refused a claim based on the Religion Clauses. In this case, petitioners argued that the use of contraceptives is against their religion. Thus, the state procurement of contraceptives is unconstitutional as it violates the Religion Clauses. We ruled that the question of whether the use of contraceptives is moral from a religious standpoint falls outside the province of the Court. Further, this Court invoked the Establishment Clause in denying the petitioner's claims. We explained that while "the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do with the government."^[33] Members of a particular religion cannot ask the government to adopt their religious doctrine as the policy for everyone else. We said, "[t]o do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establishing a state religion."^[34] *Imbong* exemplifies the delicate balancing act involved in cases involving the Establishment Clause. It also demonstrates that in protecting the wall of separation, the goal is not to shun all religion for the sake of stifling the presence of religion in the sphere of government but rather refuse any policy that may directly or indirectly favor one religion over others.

This is the path that our jurisprudence on the Religion Clauses has taken. It is one that chooses accommodation, where there is no danger of breaching the wall of separation, instead of a blind and literal adherence to the concept of a separate church and state. To repeat, the Establishment Clause exists not for the sake of separation per se but as a tool to allow all religion (as well as the choice not to have one) to thrive and flourish. Our Establishment Clause, existing in the context of a unique Filipino culture, has developed its own narrative. It is this narrative that must permeate any understanding of what it means for our constitutional democracy to uphold the separation of church and state.

I note, however, that the present case is one of first impression. While we have had the opportunity to rule on cases involving our Religion Clauses, these cases generally involved a challenge of an official act that threatens to burden the free exercise of religion. In the present case, this Court is asked to interpret a governmental institution's acquiescence to a religious practice and ascertain whether this acquiescence amounts to an

endorsement or support for a particular region.

Our Establishment Clause finds its source in the First Amendment of the American Constitution. In several Establishment Clause cases, this Court has relied upon the guidance of American jurisprudence in appreciating the complexities of the separation of church and state. American jurisprudence has persuasive weight in this jurisdiction. More importantly, a review of relevant American cases may give us a guide on what analytical tools we can use in exploring the boundaries of permissible religious accommodation.

I highlight that the issue presented before us actually involves two matters-the constitutionality of allowing religious practice within the premises of the Quezon City Hall of Justice and of allowing Catholic images to be displayed in a particular area. Most relevant to the present case are the United State Supreme Court's rulings in matters pertaining to government entities allowing the display of religious items in their premises as well as the act of government instrumentalities of opening government activities with prayer. The leading cases of *Marsh v. Chambers*,^[35] *Town of Greece v. Galloway*,^[36] *Lynch v. Donnelly*,^[37] and *County of Allegheny v. ACLU*^[38] merit a review.

Marsh v. Chambers dealt with the constitutionality of the practice of the Nebraska Legislature of beginning its session with a prayer by a chaplain paid by the state and with the legislature's approval. Here, the United States Supreme Court ruled that the practice did not violate the Establishment Clause. In arriving at this conclusion, the United States Supreme Court used history and the intent of the framers of the First Amendment as the framework of analysis. The United States Supreme Court found that the practice of opening the sessions of congress with a prayer has existed for two centuries. The First Congress, during whose term the language of the American Bill of Rights which includes the United States' religion clauses was finalized, adopted the policy of selecting a chaplain to open each session with a prayer. The United States Supreme Court explained-

Standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees, but there is far more here than simply historical patterns. In this context, historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress-their actions reveal their intent.^[39]

The United States Supreme Court found that the unique history of opening prayers in legislative sessions and the First Amendment leads to the conclusion that the drafters of the First Amendment Religion Clauses saw no real threat to the Establishment Clause in a practice of prayer similar to that used in the Nebraska Legislature. *Marsh* also declared that the content of the prayer is not the concern of the court in the absence of any indication that the prayer opportunity has been exploited to advance or disparage any other faith or belief.

This ruling was echoed in the 2014 case *Town of Greece v. Galloway* where the United States Supreme Court upheld the practice of beginning town board meetings with a prayer led by a chosen "chaplain of the month" who may come from any religious congregation selected from a list of available ministers in the town. The practice was challenged on the ground that the prayers were sectarian and dominated by Christian themes. The petitioner insisted that prayers must be inclusive and ecumenical so as not to associate the government with one particular religion. The United States Supreme Court found that the town board meeting opening prayer follows the tradition of the legislative prayer declared constitutional in *Marsh*. The decision also highlighted that *Marsh* did not find relevant the content of the prayer itself so long as the practice is not being used to promote or disadvantage any other religion. The validity of prayers in this particular context does not arise from the generic theism of the prayers themselves but from a finding that history and tradition have shown that this kind of practice can be accommodated without posing a threat to the Establishment Clause. *Town of Greece* further highlighted that the prayers being challenged were intended for the board members only and no member of the public was compelled to participate. The religious practice was an internal act among the town board members and not meant to

promote any religion to the public. So long as the town board pursued a policy of non-discrimination and the prayers may be in accord with any religious denomination of the particular chaplain assigned to lead the opening prayer, no violation of the Establishment Clause exists. The United States Supreme Court added that non-believers may feel offended by the practice is no justification to rule that it is unconstitutional. Said the court-

x x x Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions. x x x[40]

While Marsh and Town of Greece involve the constitutionality of a religious practice sanctioned by the government, Lynch and County of Allegheny pertain to the constitutionality of government sanctioned displays of religious images.

In Lynch v. Donnelly, the United State Supreme Court was called upon to rule on the constitutionality of the City of Pawtucket's annual Christmas display which includes a Santa Claus house, a Christmas tree, a banner that reads "SEASONS GREETINGS," and a creche or Nativity scene. Here, the United States Supreme Court held that the Establishment Clause does not seek to establish a regime of total separation between church and state. It explained-

No significant segment of our society, and no institution within it, can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. "It has never been thought either possible or desirable to enforce a regime of total separation..." x x x Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. x x x Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. x x x[41]

Thus, not every governmental action that has religious undertones must be automatically struck down as a breach of the wall of separation. In Lynch, the United States Supreme Court held that each case requires courts to scrutinize whether the challenged official conduct, in reality, establishes a religion or tends to do so. Each case thus requires line-drawing.[42] In this task, Lynch applied the test established in Lemon v. Kurtzman,[43] which involves an inquiry as to whether the official act has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion.

In the application of the Lemon Test, Lynch necessarily required an examination of the circumstances surrounding the challenged Christmas display. The United States Supreme Court pursued this framework of analysis in County of Allegheny v. ACLU.[44] This case repeated and emphasized that a government's use of religious symbols is unconstitutional if it has the effect of endorsing a religious belief. Whether the use of religious symbols has this effect, in turn, depends upon the context. Here, the United States Supreme Court ruled that the display of a creche at the grand staircase of the county courthouse violated the Establishment Clause. Its setting clearly signified the government's endorsement of a particular religious message. County of Allegheny, however, declared valid the display of a menorah in front of the city-county building. Relying on an analysis of setting and context, particularly that the menorah was displayed during the winter holidays along with a Christmas tree and a sign that reads "Salute to Liberty," the United States Supreme Court found that taken as a whole, the religious display does not amount to an endorsement of a religion but only recognizes that both Christmas and Chanukah are part of the same winter holiday season.

These four cases capture the doctrine and the framework of analysis that ought to apply in cases where the state uses religious symbols. The Establishment Clause is breached when the state, by using a religious symbol, effectively endorses religion. In determining if this endorsement exists, reliance has been made on history insofar

as it reflects the intent of the drafters of the Religion Clause. The particular setting of the religious display is also taken into account in order to ascertain if it indeed amounts to the sponsorship of religion.

It is within these contexts that this Court must proceed to apply the principles of the Establishment Clause to the present case.

Majority of the country's population believe in some form of religion. Out of around 92 million Filipinos, about 74 million are Catholics and around 5 million are Muslims. There are also millions belonging to the Christian faith such as the Iglesia Ni Cristo and the Philippine Council of Evangelical Church.[45] While these numbers alone do not justify any erosion of the wall of separation, they are, however, an indication of the inevitable link between this government and the various religious faiths present among its people. The duty of the state, as mandated by the Religion Clauses of the Constitution, is not to endeavor to completely rid itself of any traces of respect for religion, but to pursue a policy where the freedom to believe or not to believe may thrive.

Thus, historically, the government has accommodated religion in the public space. This is seen in the various national holidays declared in the name of important religious events such as Eid'l Fitr, Eidul Adha, Maundy Thursday, Good Friday, and All Saints' Day.

Even the oath of office prescribed for government officials end with the phrase "So help me God." While government officials are free to omit this line, it is, nevertheless, an indication that a display of faith in a supreme being is not completely barred from the public space.

Further, the Preamble of the Constitution also mentions an Almighty God. In fact, the sessions of the 1986 Constitutional Commission always began with a prayer. This manifests how the drafters of the Constitution understood the Establishment Clause. The acknowledgment of religion, the acceptance that ours is a generally theistic society, the agreement that the phrase "Almighty God" appear in the Preamble of the Constitution, and the shared participation in prayer at the start of every Constitutional Commission session all shed light as to how the Establishment Clause was intended to be construed. The framers of the Constitution themselves did not perceive the acknowledgment of religion as a threat to the separation of church and state. The records of the debates on the floor of the Constitutional Commission show the deliberateness of the inclusion of the term "Almighty God" in the Preamble. While the Committee on the Preamble initially used the term Divine Providence and proposals were made to change it to "Lord of History," the phrase "Almighty God" eventually found its way into the Preamble as we know it now. The drafters of the Constitution agreed that this phrase more accurately reflected the spirit and culture of the Filipinos and was accepted both by the Christian and Muslim representatives in the Constitutional Commission.[46]

In fact, our Constitution, as well as its predecessors, the 1935 and the 1973 Constitutions, all contain provisions granting tax exemptions to religious institutions. These have never been seen as endangering the wall of separation between church and state.

Even this Court has been consistent in recognizing the role of religion in our society. The Supreme Court arms and great seal contains an image of the ten commandments described in Section 1 of Rule 136 of the Rules of Court as "x x x two tablets containing the commandments of God x x x." [47] Similarly, the entrance to our own Supreme Court Old Building has a statue of Moses and the Ten Commandments.

In the United States, the display of the Ten Commandments in government property has been found constitutional by the United States Supreme Court. In *Van Orden v. Perry*, [48] the United States Supreme Court held that the display of a monument of the Ten Commandments in the Texas State Capitol does not violate the Religion Clauses. The United States Supreme Court further noted that even its own courtroom-

x x x Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as well as the doors leading into the Courtroom. Moses also sits on the exterior east facade of the building holding the Ten Commandments tablets.

The United States Supreme Court stated that while Moses and the Ten Commandments are religious symbols, they also possess significance in the country's national heritage and history. That it is placed in the United States Supreme Court courtroom is a recognition of this significance. The same is true in the case of this Court's arms and great seal as well as the image of Moses in the entrance steps of our building.

Further, we have consistently chosen a policy of benevolence to the practice of various religions. The Court has an Ecumenical Prayer[49]-a prayer carefully crafted to reflect and represent the various faiths in the judiciary and in the country. This prayer is used at the beginning of sessions of this Court, in the lower courts, and in flag ceremonies. As a matter of fact, this Court begins its sessions whether en banc or in division by reciting this Ecumenical Prayer. This same Ecumenical Prayer is printed in the official Supreme Court calendars distributed among Supreme Court employees and courts nationwide.

Nevertheless, it is important to highlight that the Court has never made this prayer mandatory. We also have the Centennial Prayer for the Courts[50] (Centennial Prayer) which this Court encourages to be recited at the start of sessions in this Court and in lower courts. As in the Ecumenical Prayer, this Centennial Prayer was crafted after consultations with various major religious denominations. At no point, however, has it been made mandatory. As Supreme Court Memorandum Circular No. 001-2001 states, its regular recitation is voluntary and no administrative sanction will be imposed on those who refuse to use it for any personal reason.

In accordance with the protection accorded to freedom of religion, every person in the judiciary is free to pray in the way he or she desires or not at all. The Ecumenical and Centennial prayers exist merely as options for members and employees of the judiciary to express their prayer in one particular way. These prayers exist to support the practice of religious faith but they do not impose a monopoly or a singular standard on the proper expression of prayers. Consistent with the Religion Clauses, these practices allow all religions to flourish while leaving sufficient room for people to practice their faith or lack thereof in the manner they deem proper.

Supreme Court employees also hold first Friday masses within the Court premises. These employees have done so voluntarily during lunch break for years now. This Court has not deemed it necessary to prevent them from doing so. We merely regulate the time and place for the holding of the masses so as to insure that there will be no prejudice to public service. It is worth highlighting that this Court, while it has not prohibited the holding of first Friday masses, has refused to designate one particular room where the masses may be held. These employees are free to hold their masses during lunch break within the Court's premises provided that the area they intend to use is not currently needed for any official Court activity. The Court has, and continues to exercise, the right to regulate the use of rooms within the Court premises for the purpose of these first Friday masses. To me, this practice is an eloquent example of the proper understanding of our Religion Clauses and their narrative within the unique Filipino culture.

All these are efforts to recognize the unique role that religion plays in the lives of Filipinos. These efforts do not espouse one particular religion or insist on theism over atheism. These practices are the Court's contribution to giving life to the mandate of the Constitution's Religion Clauses-the creation of space where all religions may exist while at the same time giving the people absolute freedom to believe and practice their faith in the manner they deem proper or to have none at all.

Further, this long history of the presence of religion in the conduct of the judiciary's affairs speaks volumes of its

perceived effect on the constitutional wall of separation. There is no indication that these practices have led to the establishment of a religion in the judiciary or the mandatory participation of non-Catholics or atheists in religious activities. In the words of United States Supreme Court Justice Oliver Wendell Holmes, "a page of history is worth a volume of logic."^[51]

These and our consistent jurisprudence all point to the conclusion that the Establishment Clause does not mandate an automatic finding of unconstitutionality whenever the State engages in an activity that has religious undertones. Whether a government practice breaches the wall of separation depends on whether the effect of that practice is to endorse a religion. This analysis then compels us to examine the context of a particular case.

I note that in 2003, the Office of the Chief Attorney recommended to then Chief Justice Hilario G. Davide that the request to hold a one-day vigil in honor of the Our Lady of Caysasay be rejected on constitutional grounds. Specifically, the Chief Attorney opined that this would violate the wall of separation between the Church and the State. Certainly while the recommendations of the Chief Attorney, and even of the Court Administrator, are given due consideration, they are nonetheless not binding on the Supreme Court. How the Constitution should be applied in a matter involving the administration of our courts is a matter that ultimately lies within the province of the Supreme Court. While recommendations of the Court Administrator and Chief Attorney are important, they are not definitive. This Court determines for itself what the rule is.

To facilitate our discussion, we repeat the facts of this case. There exists a practice among certain Catholic employees of attending mass within the Quezon City Hall of Justice. It appears that attendance in the mass is purely voluntary and there has been no official institutionalization of the practice by virtue of any act from any of the officials of the courts in Quezon City. In other words, this case involves a group of employees who have decided to come together at assigned hours during the workweek to practice their faith. It also appears from the records that these Catholic masses are allowed only during lunch break and for a period of 30 minutes. There is a designated area in the basement of the Quezon City Hall of Justice for this activity. There are religious icons and objects displayed during the mass.

There is no proof that these masses have affected the delivery of public service or disrupted judges and employees in their work. There is no proof that the Quezon City trial courts have spent money to support the Catholic masses being held or that it has made a policy to actively provide resources for the continuous conduct of this religious activity. There is no showing that the specific area has been made exclusive for the use of the Catholic employees. There is also no indication that other employees who are non-Catholics are prevented from practicing their faith within the premises. In fact, Executive Judge Lutero explains that Muslim employees are allowed to pray while Christians are allowed to hold bible studies in their offices.

Mr. Valenciano would have us put an end to this activity on the ground that our acquiescence to this practice amounts to a violation of the Establishment Clause. I find that no violation exists.

At the risk of repetition, the responsible officials in the Quezon City Hall of Justice never ordered the holding of the Catholic masses. Instead, the Catholic court employees themselves decided to organize the activity. The trial courts never officially sanctioned these Catholic masses nor have they actively supported it. It is quite a stretch to insist that though the trial courts have not been officially participating at all in any of these activities, they are endorsing the Catholic faith.

Further, there can be no endorsement of the Catholic faith when the masses are not being held to send a religious message to the public. Attending a Catholic mass is a central tenet in the Catholic faith. The Catholic court employees who regularly go to mass do not do so to communicate a message but for purely personal reasons between them and their God. As the Catholic masses are being held during lunch break, there is little opportunity

for litigants and other people visiting the Quezon City Hall of Justice to actually witness the practice. More importantly, no member of the public and the non-Catholic employees has been coerced to participate in the masses.

Moreover, that these Catholic masses are being held within the Quezon City Hall of Justice is, by no means, an indication that the trial court endorses Catholicism. For as long as these Catholic masses are not being used to discriminate against any other religion or against the choice to believe, the Quezon City trial courts' acquiescence ought not to be interpreted as endorsing a religion. Rather, the Quezon City trial courts are simply allowing people of a particular faith to practice it. In *Re: Request of Muslim Employees*, we allowed our Muslim employees to hold office within flexible hours during the period of Ramadan. We have pursued a policy of creating a work environment where our employees may be free to worship as they see fit, the only limitation being that public service is not prejudiced. As the Catholic masses in this case are being held during lunch break and only for 30 minutes, the Catholic employees who persist in pursuing the practice of their faith cannot be said to have sacrificed their duty to serve the public.

I highlight that even the framers of our Constitution began the sessions of the Constitutional Commission with a prayer. They did not find this open profession of their faith offensive to the Establishment Clause that they drafted into constitutional law. We can compare the religious significance of an opening prayer during the sessions of the Constitutional Commission to the holding of masses at the Quezon City Hall of Justice premises. If prayer participated in by the drafters themselves was not deemed as a threat to the separation of church and state, it escapes reason why a trial court's acquiescence to the practice of its employees of voluntarily holding mass during lunch break should be interpreted as constituting a violation. The drafters of the Constitution have given us a guidepost in exploring the bounds of the Establishment Clause. We must give life to their intent.

That there are churches near the Quezon City Hall of Justice or that it is not mandatory in the Catholic faith for its members to attend mass every day is no reason for this Court to interfere with the religious practice of the Catholic employees. In the absence of any indication that these masses are being used to discriminate against non-Catholics and that attendance in these masses prejudice public service, it is in the best interest of the Court to allow sufficient public space for the practice of religion. It is not for us to determine whether the expression of faith of these Catholic employees in choosing to attend mass every day is unreasonable or excessive. The manner and frequency by which these Catholic employees choose to express their faith are matters between them and their God. It is not our place to say that it is too much or that it is unnecessary. Our duty is to grant permissive accommodation when there is no breach of the wall of separation.

That Mr. Valenciano and other non-Catholics may be offended by these Catholic masses is no reason to declare the practice unconstitutional. Religious tolerance, a doctrine essential to our religious clauses, mandates that, within the bounds of law, we give space for religion even if to us, it is unusual or unnecessary. As the United States Supreme Court pronounced in *Town of Greece*, offense itself is not sufficient for a finding of unconstitutionality. We protect speech even if it is offensive as it is essential to the freedom of speech. The Bill of Rights, in truth, realizes its purpose and reaffirms its value in instances where what is sought to be protected is the exercise of a right that does not seem traditional, acceptable, or normal. In the realm of religion, it is in the lawful practice of religious activities that may seem odd or unusual that we are challenged, as a society, to further extend the limits of our religious tolerance. It is in questions like this that we are called to choose between an interpretation of the law that is humane or one that is literal, strict, and blind to the dictates of conscience. The Establishment Clause, as well as the Bill of Rights, speaks to our humanity. It is this humanity, rather than a blind adherence to an overly literal interpretation of the law, that must prevail.

Further, there is an important secular purpose achieved when employees are allowed to practice their religion

during their free time in the workplace, under defined restrictions that ensure they do not obstruct their delivery of public service. The Constitution declares that public office is a public trust. In Aglipay, we recognized that religion exerts an elevating influence in human affairs because it instills into human minds the purest principles of morality.[52] Among the many general concessions indiscriminately accorded to religious sects and denominations, we declare certain religious holy days as legal holidays "because of the secular idea that their observance is conducive to beneficial moral results." [53] Allowing the faithful among public servants to hear mass in the workplace, insofar as it renews in them daily their desire to achieve the highest principles of morality, can only better equip them to meet their secular obligation to be at all times accountable to the people. That other public servants may draw their sense of morality from other faiths, or no religion at all, or find no need for any morality to define or guide their discharge of the public trust, is of no moment. This is what religious tolerance is all about.

The Supreme Court not only dispenses justices through decisions, we also have the obligation to manage our human resources. The same is true for lower courts. Part of our duty as administrators and managers is to motivate our employees, maximize their skills, and create a work environment that encourages them to do their best in the service of the public. This is the reason why we organize sports fests, celebrations, and events within our premises and support our employees' decision to form groups that cater to their interests. When our employees feel that we look after their interests and well-being, they are motivated to work harder and to choose to stay in the judiciary.

From this management perspective, allowing Catholic employees to group together in prayer and in Catholic masses serves an important human resources purpose. By choosing to allow Catholic masses instead of stifling them, these Catholic employees are made to feel that their spiritual well-being, on a non-discriminatory basis, is important to the Judiciary. At the same time, the Court, as administrator, must emphasize that all religions represented within the Judiciary are free to express their religious beliefs, provided they similarly do not interfere with public service and do not coerce others to participate. In the same vein, non-believers can pursue their own interests without prejudice or bias against them. In a very real sense, choosing not to interfere with what employees decide to do in their free time, whether it is to attend mass, pray, or participate in sports activities, provided it does not affect their work and the delivery of public service, carries an important secular purpose. It creates a satisfying working environment for our employees who can then perform their work with better efficiency.

Thus, while Justice Leonen argues that our decision to allow the Catholic masses provided they do not interfere with public service violates Section 29 of Article VI of the Constitution, I view the matter differently. This is not a circumstance where the Judiciary is consciously or purposively designating a particular public property for religious purposes. This is, in truth, a matter of allowing employees to pursue an activity that, while it may relate to religion, ultimately benefits the interest of the Judiciary. It ensures that we keep employee morale high and reaffirms that we care enough about our employees and their spiritual pursuits.

Further, there is no breach of the proscription against using public property to benefit a religion. I see no distinction between allowing employees to group together to attend mass in the Quezon City Hall of Justice in their free time and allowing them to use their workspace to pray, which Justice Leonen concedes in his dissent as valid. These two situations involve similar religious acts done in government property. It is not as if we allowed or funded the construction of a particular portion of the Quezon City Hall of Justice for the sole purpose of allowing Catholic Masses to be held there. The Quezon City Hall of Justice's basement remains to be an area dedicated for the use of the courts. That it sometimes becomes a venue, for a brief thirty-minute period during lunch break, of the activities of certain employees does not change the situation into one where the judiciary is allotting a public property for the benefit of a religion.

I note, however, that the matter of the display of Catholic images may be a different matter. I agree with the recommendation of the Court Administrator that Catholic images used for the Catholic mass must not be permanently stationed in the area. This is to avoid any impression that the Quezon City Trial Courts are endorsing a particular religion by allowing the building of a chapel exclusive for the use of Catholic employees. There is here a greater danger that we become entangled in the religious practice of Catholicism as well as greater likelihood that we be misconstrued to espouse Catholicism as a favored religion. This threatens to breach the wall of separation, and thus must be avoided.

To ensure that no espousal or sponsoring of the Catholic faith arises out of this case, the Executive Judges of the Regional Trial Court and Municipal Trial Court of Quezon City should be allowed to regulate the time, place, and manner of the holding of the Catholic masses at the Quezon City Hall of Justice. While the Catholic mass is traditionally held during lunch break at the basement of the Quezon City Hall of Justice, the Executive Judges of the trial courts should retain the authority to order its transfer to another area or its conduct at other time before or after office hours, when public service so demands.

Allowing Executive Judges to regulate the time, place, and manner of the Catholic masses by no means leads to excessive entanglement by the government in religious matters.

Excessive entanglement is part of a three part-test now known as the Lemon Test first used by the United States Supreme Court in *Lemon v. Kurtzman*.^[54] Lemon involves the constitutionality of government aid to church-related elementary and secondary schools. To resolve the constitutional question presented before it, the United States Supreme Court applied a three-part test. A law which involves direct contact with religion is valid if, first, it has a secular legislative purpose. Second, the law's principal and primary effect must be one that neither advances nor inhibits religion. Third, the law must not foster an "excessive government entanglement with religion."^[55] As to the third part of the test, now famously known as the excessive entanglement test, Lemon identified the criteria that make a law or government act one that excessively entangles the State in church affairs. These criteria are the "character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority."^[56]

In *Lemon*, the United States Supreme Court found that the government aid granted to church-related schools led to excessive entanglement. It found that the schools that stood to benefit from the financial aid were characterized by "substantial religious activity and purpose." Further, it involved aid to schools where two-thirds of the teachers were nuns and the students were of an impressionable age. Furthermore, even when the law involved provided for means so that the State may ensure that no religious teaching is encouraged, these means would inevitably excessively entangle the government in religious matters.^[57]

Nevertheless, Lemon recognized that "[s]ome relationship between government and religious organizations is inevitable." Thus, it held that "[f]ire inspections, buildings and zoning regulations, and state requirements under compulsory school attendance laws are examples of necessary and permissible contacts."^[58]

In later cases where the United States Supreme Court found the need to apply the Lemon Test, the issue usually revolved around the grant of government aid to particular institutions or activities. Thus, the question of excessive entanglement can be said to arise when the circumstances pertain to a positive government act affecting identified beneficiaries.

In my view, there can be no talk of excessive entanglement in a case as the one before us where the judiciary, in fact, does nothing to directly support any religious organization. The issue presented to us by Mr. Valenciano's letter is whether we must allow the Catholic masses voluntarily held by Catholic employees in their own free time or interfere in their religious practice because these are offensive to non-Catholics. There is no direct government

action or policy involved. As Lemon teaches, there is a whole of a difference between excessive entanglement and necessary and permissible contact.

Moreover, even if we gratuitously assume that there is a question of excessive entanglement in this case, we can proceed to look at the criteria set forth in Lemon and arrive at the conclusion that no excessive entanglement exists.

First, as to the nature and character of the beneficiaries, allowing the Catholic masses does not benefit one particular religion. Allowing employees to practice their faith in the matter they deem fit, provided it does not interfere with their work and the freedom of religion of other employees, contributes to their well-being as our employees and is ultimately beneficial to us.

Second, as to the nature of the aid granted. The facts show that there truly is no aid being given by the judiciary in allowing the Catholic masses. The Quezon City trial courts have not required any attendance in the masses. They have not spent government funds for these activities. They have refused to dedicate any particular portion of the Quezon City Hall of Justice to these religious pursuits.

Third, the conduct of these Catholic masses creates no relationship between the judiciary and the Catholic Church. Even if the Executive Judges are to regulate the time, place, and manner of the conduct of these masses, any entanglement is so de minimis and by no stretch of the imagination can it be deemed as excessive. This is similar to zoning regulations which the United States Supreme Court held in Lemon as permissible contact between the State and the church. To assume that ascertaining whether the basement of the Quezon City Hall of Justice is available on lunch time for the conduct of a particular group of employees' activity will lead to excessive entanglement and will distract our judges from their duty is presumptuous and unfair. It assumes that our judges are incapable of so minimal a task as determining whether the activity of a group of Catholic employees may be held on a particular place in the Quezon City Hall of Justice on a particular day without immersing themselves in religious protestations. It also assumes that our judges are so easily distracted so as to be unable to dispense justice whenever they are saddled with minor administrative concerns.

In truth, the question asked of us in this case is whether we should leave the Catholic employees in the Quezon City Hall of Justice to practice their faith in the manner they seem fit or whether we should interfere with their voluntary and private activity because it might be offensive to other people of a different religion or those with none at all. Our Constitution compels us to rule that we must let these employees be. There is no constitutional duty to prevent them from holding these masses. That it offends non-participants who may happen to witness the event is not a constitutionally recognized ground for regulating religious freedom. That some of us may not like something does not mean that we should stop it because it offends our sensibilities. The Constitution deals in matters far more important than our feelings and sentiments. It deals with fundamental freedoms that cannot be trifled with, much less on the basis of our personal biases.

Thus, I submit that the Catholic Mass regularly held at the Quezon City Hall of Justice should be allowed to continue subject to the conditions prescribed by the Office of the Court Administrator.

I vote to deny the prayer in Mr. Valenciano's letter. I agree with the ponencia that the Catholic masses and other religious practices in the Quezon City Hall of Justice should be allowed subject to regulation.

[1] *Tawn of Greece v. Galloway*, 12-696, May 5, 2014.

[2] *School Dist. of Abington Tp. v. Schempp*, 374 U.S. 203, 308 (1963), Justice Goldberg, concurring.

[3] Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours), A.M. No. 02-2-10-SC, December 14, 2005, 477 SCRA 648, 655-656, citing Justice Isagani A. Cruz, Constitutional Law (1995).

[4] G.R. No. 119673, July 26, 1996, 259 SCRA 529.

[5] Id. at 547.

[6] Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1, 33.

[7] Estrada v. Escritor, A.M. No. P-02-1651, August 4, 2003, 408 SCRA 1.

[8] 64 Phil. 201 (1937).

[9] Id. at 209.

[10] Id. at 206-207.

[11] G.R. No. L-9637, 101 Phil. 386 (1957).

[12] Id. at 398-399.

[13] G.R. No. L-25246, September 12, 1974, 59 SCRA 54.

[14] Id. at 73; citations omitted; emphasis ours.

[15] G.R. No. 95770, March 1, 1993, 219 SCRA 256.

[16] 106 Phil. 2 (1959).

[17] Ebralinag v. The Division Superintendent of Schools of Cebu City, *supra* at 270.

[18] Iglesia Ni Cristo v. Court of Appeals, *supra* note 4.

[19] Id. at 535.

[20] Id. at 547.

[21] Id.

[22] *Supra* note 3.

[23] Id. at 657.

[24] *Supra* note 7.

[25] 343 U.S. 306 (1952).

[26] Estrada v. Escritor, *supra* note 7 at 118-119; Zorach v. Clauston, *supra* at 312.

[27] *Supra* note 7 at 133.

[28] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[29] G.R. No. L-68828, March 27, 1985, 135 SCRA 514.

[30] G.R. No. 190582, April 8, 2010, 618 SCRA 32.

[31] Id. at 59.

[32] Estrada v. Escritor, supra note 7 at 106.

[33] Imbong v. Ochoa, Jr., supra note 28 at 33.

[34] Id.

[35] 463 U.S. 783 (1983).

[36] Supra note 1.

[37] 465 U.S. 668 (1984).

[38] 492 U.S. 573 (1989).

[39] Marsh v. Chambers, supra note 35 at 790.

[40] Town of Greece v. Galloway, supra note 1.

[41] Lynch v. Donnelly, supra note 37 at 674; citations omitted.

[42] Id. at 669.

[43] 403 U.S. 602 (1971).

[44] Supra note 38.

[45] 2015 Philippine Statistical Yearbook, Philipinies, Statistics Authority, October 2015, <<https://psa.gov.ph/sites/default/files/2015%20PSY%20PDF.pdf>> (visited November 28, 2016).

[46] I RECORD, CONSTITUTIONAL COMMISSION (June 11, 1986).

[47] RULES OF COURT, Rule 136, Sec. 1.

[48] 545 U.S. 677 (2005).

[49] See Supreme Court Human Resources Manual, 2012, p. xiv.

The Ecumenical Prayer for the Courts

"Almighty God, we stand in Your holy presence as our Supreme Judge. We humbly beseech You to bless and inspire us so that what we think, say, and do will be in accordance with Your will. Enlighten our minds, strengthen our spirit, and fill our hearts with fraternal love, wisdom a understanding, so that we can be effective channels of truth, justice, and peace. In our proceedings today, guide us in the path of righteousness for the fulfillment of Your greater glory. Amen."

[50] Supreme Court Memorandum Circular No. 001-2001.

Centennial Prayer for the Courts

Almighty God, we stand in Your holy presence as our Supreme Judge. We humbly beseech You to bless and inspire us so that what we think, say, and do will be in accordance with Your will.

Enlighten our minds, strengthen our spirit, and fill our hearts with fraternal love, wisdom and understanding, so that we can be effective channels. of truth, justice, and peace. In our proceedings today, guide us in the path of righteousness. Amen.

[51] New York Trust Co. v. Eisner, 256 U.S. 345 (1921).

[52] Supra note 8 at 206.

[53] Id.

[54] Supra note 43.

[55] Id., citing Walz v. Tax Comm'n of City of New York, 397 U.S. 664 (1970).

[56] Lemon v. Kurtzman, supra note 43.

[57] Id.

[58] Id.

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