

IGLESIA NI CRISTO (INC.), PETITIONER, VS. THE HONORABLE COURT OF APPEALS, BOARD OF REVIEW FOR MOTION PICTURES AND TELEVISION AND HONORABLE HENRIETTA S. MENDEZ, RESPONDENTS.

G.R. No. 119673. July 26, 1996

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision dated March 24, 1995 of the respondent Court of Appeals affirming the action of the respondent Board of Review for Motion Pictures and Television which x-rated the TV Program "Ang Iglesia ni Cristo."

Petitioner Iglesia ni Cristo, a duly organized religious organization, has a television program entitled "Ang Iglesia ni Cristo" aired on Channel 2 every Saturday and on Channel 13 every Sunday. The program presents and propagates petitioner's religious beliefs, doctrines and practices often times in comparative studies with other religions.

Sometime in the months of September, October and November 1992, petitioner submitted to the respondent Board of Review for Motion Pictures and Television the VTR tapes of its TV program Series Nos. 116, 119, 121 and 128. The Board classified the series as "X" or not for public viewing on the ground that they "offend and constitute an attack against other religions which is expressly prohibited by law."

Petitioner pursued two (2) courses of action against the respondent Board. On November 28, 1992, it appealed to the Office of the President the classification of its TV Series No. 128. It succeeded in its appeal for on December 18, 1992, the Office of the President reversed the decision of the respondent Board. Forthwith, the Board allowed Series No. 128 to be publicly telecast.

On December 14, 1992, petitioner also filed against the respondent Board Civil Case No. Q-92-14280, with the RTC, NCR, Quezon City.[1] Petitioner alleged that the respondent Board acted without jurisdiction or with grave abuse of discretion in requiring petitioner to submit the VTR tapes of its TV program and in x-rating them. It cited its TV Program Series Nos. 115, 119, 121 and 128. In their Answer, respondent Board invoked its power under P.D. No. 1986 in relation to Article 201 of the Revised Penal Code.

On January 4, 1993, the trial court held a hearing on petitioner's prayer for a writ of preliminary injunction. The parties orally argued and then marked their documentary evidence. Petitioner submitted the following as its exhibits, viz.:

- (1) Exhibit "A", respondent Board's Voting Slip for Television showing its September 9, 1992 action on petitioner's Series No. 115 as follows:[2]

REMARKS:

There are some inconsistencies in the particular program as it is very surprising for this program to show series of Catholic ceremonies and also some religious sects and using it in their discussion about the bible. There are remarks which are direct criticism which affect other religions.

Need more opinions for this particular program. Please subject to more opinions.

(2) Exhibit "A-1", respondent Board's Voting Slip for Television showing its September 11, 1992 subsequent action on petitioner's Series No. 115 as follows:[3]

REMARKS:

This program is criticizing different religions, based on their own interpretation of the Bible.

We suggest that the program should delve on explaining their own faith and beliefs and avoid attacks on other faith.

(3) Exhibit "B", respondent Board's Voting Slip for Television showing its October 9, 1992 action on petitioner's Series No. 119, as follows:[4]

REMARKS:

The Iglesia ni Cristo insists on the literal translation of the bible and says that our (Catholic) veneration of the Virgin Mary is not to be condoned because nowhere it is found in the bible that we should do so.

This is intolerance and robs off all sects of freedom of choice, worship and decision.

(4) Exhibit "C", respondent Board's Voting Slip for Television showing its October 20, 1992 action on petitioner's Series No. 121 as follows:[5]

REMARKS:

I refuse to approve the telecast of this episode for reasons of the attacks, they do on, specifically, the Catholic religion.

I refuse to admit that they can tell, dictate any other religion that they are right and the rest are wrong, which they clearly present in this episode.

(5) Exhibit "D", respondent Board's Voting Slip for Television showing its November 20, 1992 action on petitioner's Series No. 128 as follows:[6]

REMARKS:

The episode presented criticizes the religious beliefs of the Catholic and Protestant's beliefs.

We suggest a second review.

(6) Exhibits "E", "E-1", petitioner's block time contract with ABS-CBN Broadcasting Corporation dated September 1, 1992.[7]

(7) Exhibit "F", petitioner's Airtime Contract with Island Broadcasting Corporation.[8]

(8) Exhibit "G", letter dated December 18, 1992 of former Executive Secretary Edelmiro A. Amante, Sr., addressed to Henrietta S. Mendez reversing the decision of the respondent Board which x-rated the showing of petitioner's Series No. 129. The letter reads in part:

"xxx xxx xxx

The television episode in question is protected by the constitutional guarantee of free speech and expression under Article III, Section 4 of the 1987 Constitution.

We have viewed a tape of the television episode in question, as well as studied the passages found by MTRCB to be objectionable and we find no indication that the episode poses any clear and present danger sufficient to limit the said constitutional guarantee."

(9) Exhibits "H", "H-1", letter dated November 26, 1992 of Teofilo C. Ramos, Sr., addressed to President Fidel V. Ramos appealing the action of the respondent Board x-rating petitioner's Series No. 128.

On its part, respondent Board submitted the following exhibits, viz.:

(1) Exhibit "1", Permit Certificate for Television Exhibition No. 15181 dated December 18, 1992 allowing the showing of Series No. 128 under parental guidance.

(2) Exhibit "2", which is Exhibit "G" of petitioner.

(3) Exhibit "3", letter dated October 12, 1992 of Henrietta S. Mendez, addressed to the Christian Era Broadcasting Service which reads in part:

x x x

In the matter of your television show "Ang Iglesia ni Cristo" Series No. 119, please be informed that the Board was constrained to deny your show a permit to exhibit. The material involved constitute an attack against another religion which is expressly prohibited by law. Please be guided in the submission of future shows.

After evaluating the evidence of the parties, the trial court issued a writ of preliminary injunction on petitioner's bond of P10,000.00.

The trial court set the pre-trial of the case and the parties submitted their pre-trial briefs.[9] The pre-trial briefs show that the parties' evidence is basically the evidence they submitted in the hearing of the issue of preliminary injunction. The trial of the case was set and reset several times as the parties tried to reach an amicable accord. Their efforts failed and the records show that after submission of memoranda, the trial court rendered a Judgment,[10] on December 15, 1993, the dispositive portion of which reads:

"x x x

WHEREFORE, judgment is hereby rendered ordering respondent Board of Review for Motion Pictures and Television (BRMPT) to grant petitioner Iglesia ni Cristo the necessary permit for all the series of 'Ang Iglesia ni Cristo' program.

Petitioner Iglesia ni Cristo, however, is directed to refrain from offending and attacking other existing religions in showing 'Ang Iglesia ni Cristo' program.

SO ORDERED."

Petitioner moved for reconsideration[11] praying: (a) for the deletion of the second paragraph of the dispositive portion of the Decision, and (b) for the Board to be perpetually enjoined from requiring petitioner to submit for review the tapes of its program. The respondent Board opposed the motion.[12] On March 7, 1993, the trial court granted petitioner's Motion for Reconsideration. It ordered:[13]

"x x x

WHEREFORE, the Motion for Reconsideration is granted. The second portion of the Court's Order dated December 15, 1993, directing petitioner to refrain from offending and attacking other existing religions in showing 'Ang Iglesia ni Cristo' program is hereby deleted and set aside. Respondents are further prohibited from requiring petitioner Iglesia ni Cristo to submit for review VTR tapes of its religious program 'Ang Iglesia ni Cristo.'"

Respondent Board appealed to the Court of Appeals after its motion for reconsideration was denied.[14]

On March 5, 1995, the respondent Court of Appeals[15] reversed the trial court. It ruled that: (1) the respondent board has jurisdiction and power to review the TV program "Ang Iglesia ni Cristo," and (2) the respondent Board did not act with grave abuse of discretion when it denied permit for the exhibition on TV of the three series of "Ang Iglesia ni Cristo" on the ground that the materials constitute an attack against another religion. It also found the series "indecent, contrary to law and contrary to good customs."

In this petition for review on certiorari under Rule 45, petitioner raises the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT 'ANG IGLESIA NI CRISTO' PROGRAM IS NOT CONSTITUTIONALLY PROTECTED AS A FORM OF RELIGIOUS EXERCISE AND EXPRESSION.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT BEING AN EXERCISE OF RELIGIOUS FREEDOM, THE 'ANG IGLESIA NI CRISTO' PROGRAM IS SUBJECT TO THE POLICE POWER OF THE STATE ONLY IN THE EXTREME CASE THAT IT POSES A CLEAR AND PRESENT DANGER.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE MTRCB IS VESTED WITH THE POWER TO CENSOR RELIGIOUS PROGRAMS.

IV

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE 'ANG IGLESIA NI CRISTO,' A PURELY RELIGIOUS PROGRAM IS INDECENT AND CONTRARY TO LAW AND GOOD CUSTOMS.

The basic issues can be reduced into two: (1) first, whether the respondent Board has the power to review petitioner's TV program "Ang Iglesia ni Cristo," and (2) second, assuming it has the power, whether it gravely abused its discretion when it prohibited the airing of petitioner's religious program, series Nos. 115, 119 and 121, for the reason that they constitute an attack against other religions and that they are indecent, contrary to law and good customs.

The first issue can be resolved by examining the powers of the Board under P.D. No. 1986. Its Section 3 pertinently provides:

"Sec. 3 Powers and Functions. - The BOARD shall have the following functions, powers and duties:

xxx xxx xxx

b) To screen, review and examine all motion pictures as herein defined, television programs, including publicity materials such as advertisements, trailers and stills, whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution for television broadcast or for general viewing, imported or produced in the Philippines and in the latter case, whether they be for local viewing or for export.

c) To approve, delete objectionable portion from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials, subject of the preceding paragraph, which, in the judgment of the BOARD applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines and its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime, such as but not limited to:

- i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;
- ii) Those which tend to undermine the faith and confidence of the people, their government and/or duly constituted authorities;
- iii) Those which glorify criminals or condone crimes;
- iv) Those which serve no other purpose but to satisfy the market for violence or pornography;
- v) Those which tend to abet the traffic in and use of prohibited drugs;
- vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead;
- vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are sub-judice in nature (emphasis ours).

The law gives the Board the power to screen, review and examine all "television programs." By the clear terms of the law, the Board has the power to "approve, delete x x x and/or prohibit the x x x exhibition and/or television broadcast of x x x television programs x x x." The law also directs the Board to apply "contemporary Filipino cultural values as standard" to determine those which are objectionable for being "immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines and its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime."

Petitioner contends that the term "television program" should not include religious programs like its program "Ang Iglesia ni Cristo." A contrary interpretation, it is urged, will contravene Section 5, Article III of the Constitution which guarantees 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."

We reject petitioner's submission which need not set us adrift in a constitutional voyage towards an uncharted sea. Freedom of religion has been accorded a preferred status by the framers of our fundamental laws, past and present. We have 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."^[16] We have also laboriously defined in our jurisprudence the intersecting umbras and penumbras of the right to religious profession and worship. To quote the summation of Mr. Justice Isagani Cruz, our well-known constitutionalist:^[17]

Religious Profession and Worship

The right to religious profession and worship has a two-fold aspect, viz., 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.

(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 the 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.

Accordingly, while one has full freedom to believe in Satan, he may not offer the object of his piety a human sacrifice, as this would be murder. Those who literally interpret the Biblical command to "go forth and multiply" are nevertheless not allowed to contract plural marriages in violation of the laws against bigamy. A person cannot refuse to pay taxes on the ground that it would be against his religious tenets to recognize any authority except that of God alone. An atheist cannot express his disbelief in acts of derision that wound the feelings of the faithful. The police power can be validly asserted against the Indian practice of the suttee born of deep religious conviction, that calls on the widow to immolate herself at the funeral pile of her husband.

We thus reject petitioner's postulate that its religious program is per se beyond review by the respondent Board. Its public broadcast on TV of its religious program brings it out of the bosom of internal belief. Television is a medium that reaches even the eyes and ears of children. The Court iterates the rule that the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, i.e., serious detriment to the more overriding interest of public health, public morals, or public welfare. A laissez faire policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our country today. Across the sea and in our shore, the bloodiest and bitterest wars fought by men were caused by irreconcilable religious differences. Our country is still not safe from the recurrence of this stultifying strife considering our warring religious beliefs and the fanaticism with which some of us cling and claw to these beliefs. Even now, we have yet to settle the near century old strife in Mindanao, the roots of which have been nourished by the mistrust and misunderstanding between our Christian and Muslim brothers and sisters. The bewildering rise of weird religious cults espousing violence as an article of faith also proves the wisdom of our rule rejecting a strict let alone policy on the exercise of religion. For sure, we shall continue to subject any act pinching the space for the free exercise of religion to a heightened scrutiny but we shall not leave its rational exercise to the irrationality of man. For when religion divides and its exercise destroys, the State should not stand still.

It is also petitioner's submission that the respondent appellate court gravely erred when it affirmed the ruling of the respondent Board x-rating its TV Program Series Nos. 115, 119, 121 and 128. The records show that the respondent Board disallowed the program series for "attacking" other religions. Thus, Exhibits "A", "A-1", (respondent Board's Voting Slip for Television) reveal that its reviewing members x-rated Series 115 for "x x x criticizing different religions, based on their own interpretation of the Bible." They suggested that the program should only explain petitioner's "x x x own faith and beliefs and avoid attacks on other faiths." Exhibit "B" shows

that Series No. 119 was x-rated because "the Iglesia ni Cristo insists on the literal translation of the bible and says that our Catholic veneration of the Virgin Mary is not to be condoned because nowhere it is found in the bible that we should do so. This is intolerance x x x." Exhibit "C" shows that Series No. 121 was x-rated "x x x for reasons of the attacks, they do on, specifically, the Catholic religion. x x x (T)hey can not tell, dictate any other religion that they are right and the rest are wrong x x x." Exhibit "D" also shows that Series No. 128 was not favorably recommended because it "x x x outrages Catholic and Protestant's beliefs." On second review, it was x-rated because of its "unbalanced interpretations of some parts of the Bible." [18] In sum, the respondent Board x-rated petitioner's TV program series Nos. 115, 119, 121 and 128 because of petitioner's controversial biblical interpretations and its "attacks" against contrary religious beliefs. The respondent appellate court agreed and even held that the said "attacks" are indecent, contrary to law and good customs.

We reverse the ruling of the appellate court.

First. Deeply ensconced in our fundamental law is its hostility against all prior restraints on speech, including religious speech. Hence, any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows. [19] It is the burden of the respondent Board to overthrow this presumption. If it fails to discharge this burden, its act of censorship will be struck down. It failed in the case at bar.

Second. The evidence shows that the respondent Board x-rated petitioners TV series for "attacking" other religions, especially the Catholic church. An examination of the evidence, especially Exhibits "A", "A-1", "B", "C", and "D" will show that the so-called "attacks" are mere criticisms of some of the deeply held dogmas and tenets of other religions. The videotapes were not viewed by the respondent court as they were not presented as evidence. Yet they were considered by the respondent court as indecent, contrary to law and good customs, hence, can be prohibited from public viewing under Section 3(c) of PD 1986. This ruling clearly suppresses petitioner's freedom of speech and interferes with its right to free exercise of religion. It misappreciates the essence of freedom to differ as delineated in the benchmark case of *Cantwell v. Connecticut*, [20] viz.:

xxx

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields, the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are prominent in church or state or even to false statements. But the people of this nation have ordained in the light of history that in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of democracy.

The respondent Board may disagree with the criticisms of other religions by petitioner but that gives it no excuse to interdict such criticisms, however, unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Religious dogmas and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. Vis-a-vis religious differences, the State enjoys no banquet of options. Neutrality alone is its fixed and immovable stance. In fine, respondent board cannot squelch the speech of petitioner Iglesia ni Cristo simply because it attacks other religions, even if said religion happens to be the most numerous church in our country. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be met by more speech for it is the spark of opposite speech, the heat of colliding ideas that can fan the embers of truth.

Third. The respondents cannot also rely on the ground "attacks against another religion" in x-rating the religious program of petitioner. Even a sideglance at Section 3 of PD 1986 will reveal that it is not among the grounds to justify an order prohibiting the broadcast of petitioner's television program. The ground "attack against another religion" was merely added by the respondent Board in its Rules.[21] This rule is void for it runs smack against the hoary doctrine that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce.

It is opined that the respondent board can still utilize "attack against any religion" as a ground allegedly "x x x" because Section 3 (c) of PD 1986 prohibits the showing of motion pictures, television programs and publicity materials which are contrary to law and Article 201 (2) (b) (3) of the Revised Penal Code punishes anyone who exhibits "shows which offend any race or religion." We respectfully disagree for it is plain that the word "attack" is not synonymous with the word "offend." Moreover, Article 201 (2) (b) (3) of the Revised Penal Code should be invoked to justify the subsequent punishment of a show which offends any religion. It cannot be utilized to justify prior censorship of speech. It must be emphasized that E.O. 876, the law prior to PD 1986, included "attack against any religion" as a ground for censorship. The ground was not, however, carried over by PD 1986. Its deletion is a decree to disuse it. There can be no other intent. Indeed, even the Executive Department espouses this view. Thus, in an Opinion dated November 28, 1985 then Minister of Justice, now President of the Senate, Neptali Gonzales explained:

"x x x

"However, the question whether the BRMPT (now MTRCB) may preview and censor the subject television program of INC should be viewed in the light of the provision of Section 3, paragraph (c) of PD 1986, which is substantially the same as the provision of Section 3, paragraph (c) of E.O. No. 876-A, which prescribes the standards of censorship, to wit: 'immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people or with dangerous tendency to encourage the commission of violence, or of a wrong' as determined by the Board, 'applying contemporary Filipino cultural values as standard.' As stated, the intention of the Board to subject the INC's television program to 'previewing and censorship is prompted by the fact that its religious program makes mention of beliefs and practices of other religion.' On the face of the law itself, there can conceivably be no basis for censorship of said program by the Board as much as the alleged reason cited by the Board does not appear to be within the contemplation of the standards of censorship set by law." (Italics supplied)

Fourth. In x-rating the TV program of the petitioner, the respondents failed to apply the clear and present danger rule. In *American Bible Society v. City of Manila*,[22] this Court held: "The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints on freedom of expression on the ground that there is a clear and present danger of any substantive evil which the State has the right to prevent." In *Victoriano vs. Elizalde Rope Workers Union*,[23] we further ruled that "x x x it is only where it is unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger."

The records show that the decision of the respondent Board, affirmed by the respondent appellate court, is completely bereft of findings of facts to justify the conclusion that the subject video tapes constitute impermissible attacks against another religion. There is no showing whatsoever of the type of harm the tapes will bring about especially the gravity and imminence of the threatened harm. Prior restraint on speech, including religious speech, cannot be justified by hypothetical fears but only by the showing of a substantive and imminent evil which has taken the life of a reality already on ground.

It is suggested that we re-examine the application of clear and present danger rule to the case at bar. In the United States, it is true that the clear and present danger test has undergone permutations. It was Mr. Justice Holmes who formulated the test in *Schenck v. US*,^[24] as follows: "x x x the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." Admittedly, the test was originally designed to determine the latitude which should be given to speech that espouses anti-government action. Banned by Justices Holmes and Brandeis, the test attained its full flowering in the decade of the forties, when its umbrella was used to protect speech other than subversive speech.^[25] Thus, for instance, the test was applied to annul a total ban on labor picketing.^[26] The use of the test took a downswing in the 1950's when the US Supreme Court decided *Dennis v. United States* involving communist conspiracy.^[27] In *Dennis*, the components of the test were altered as the High Court adopted Judge Learned Hand's formulation that "x x x in each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." The imminence requirement of the test was thus diminished and to that extent, the protection of the rule was weakened. In 1969, however, the strength of the test was reinstated in *Brandenburg v. Ohio*,^[28] when the High Court restored in the test the imminence requirement, and even added an intent requirement which according to a noted commentator ensured that only speech directed at inciting lawlessness could be punished.^[29] Presently in the United States, the clear and present danger test is not applied to protect low value speeches such as obscene speech, commercial speech and defamation. Be that as it may, the test is still applied to four types of speech: speech that advocates dangerous ideas, speech that provokes a hostile audience reaction, out of court contempt and release of information that endangers a fair trial.^[30] Hence, even following the drift of American jurisprudence, there is reason to apply the clear and present danger test to the case at bar which concerns speech that attacks other religions and could readily provoke hostile audience reaction. It cannot be doubted that religious truths disturb and disturb terribly.

It is also opined that it is inappropriate to apply the clear and present danger test to the case at bar because the issue involves the content of speech and not the time, place or manner of speech. Allegedly, unless the speech is first allowed, its impact cannot be measured, and the causal connection between the speech and the evil apprehended cannot be established. The contention overlooks the fact that the case at bar involves videotapes that are pre-taped and hence, their speech content is known and not an X quantity. Given the specific content of the speech, it is not unreasonable to assume that the respondent Board, with its expertise, can determine whether its sulphur will bring about the substantive evil feared by the law.

Finally, it is also opined by Mr. Justice Kapunan that "x x x the determination of the question as to whether or not such vilification, exaggeration or fabrication falls within or lies outside the boundaries of protected speech or expression is a judicial function which cannot be arrogated by an administrative body such as a Board of Censors." He submits that a "system of prior restraint may only be validly administered by judges and not left to administrative agencies." The same submission is made by Mr. Justice Mendoza.

This thoughtful thesis is an attempt to transplant another American rule in our jurisdiction. Its seedbed was laid down by Mr. Justice Brennan in his concurring opinion in the 1962 case of *Manual Enterprise v. Day*.^[31] By 1965, the US Supreme Court in *Freedman v. Maryland*^[32] was ready to hold that "the teaching of cases is that, because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint."^[33]

While the thesis has a lot to commend itself, we are not ready to hold that it is unconstitutional for Congress to grant an administrative body quasi-judicial power to preview and classify TV programs and enforce its decision subject to review by our courts. As far back as 1921, we upheld this set-up in *Sotto vs. Ruiz*,^[34] viz.:

"The use of the mails by private persons is in the nature of a privilege which can be regulated in order to avoid its abuse. Persons possess no absolute right to put into the mail anything they please, regardless of its character.

On the other hand, the exclusion of newspaper and other publications from the mails, in the exercise of executive power, is extremely delicate in nature and can only be justified where the statute is unequivocally applicable to the supposed objectionable publication. In excluding any publication for the mails, the object should be not to interfere with the freedom of the press or with any other fundamental right of the people. This is the more true with reference to articles supposedly libelous than to other particulars of the law, since whether an article is or is not libelous, is fundamentally a legal question. In order for there to be due process of law, the action of the Director of Posts must be subject to revision by the courts in case he had abused his discretion or exceeded his authority. (Ex-parte Jackson [1878], 96 U.S., 727; Public Clearing House vs. Coyne [1903], 194 U.S., 497; Post Publishing Co. vs. Murray [1916], 23-Fed., 773)

As has been said, the performance of the duty of determining whether a publication contains printed matter of a libelous character rests with the Director of Posts and involves the exercise of his judgment and discretion. Every intendment of the law is in favor of the correctness of his action. The rule is (and we go only to those cases coming from the United States Supreme Court and pertaining to the United States Postmaster-General), that the courts will not interfere with the decision of the Director of Posts unless clearly of opinion that it was wrong. (Bates & Guild Co. vs. Payne [1904], 194 U.S., 106; Smith vs. Hitchcock [1912], 226 U.S., 63; Masses Pub. Co. vs. Patten [1917], 246 Fed., 24. But see David vs. Brown [1900], 103 Fed., 909, announcing a somewhat different doctrine and relied upon by the Attorney-General).

To be sure, legal scholars in the United States are still debating the proposition whether or not courts alone are competent to decide whether speech is constitutionally protected.^[35] The issue involves highly arguable policy considerations and can be better addressed by our legislators.

IN VIEW WHEREOF, the Decision of the respondent Court of Appeals dated March 24, 1995 is affirmed insofar as it sustained the jurisdiction of the respondent MTRCB to review petitioner's TV program entitled "Ang Iglesia ni Cristo," and is reversed and set aside insofar as it sustained the action of the respondent MTRCB x-rating petitioner's TV Program Series Nos. 115, 119, and 121. No costs.

SO ORDERED.

Regalado, Davide, Jr., Romero, Francisco, and Torres, Jr., JJ., concur.

Padilla, Melo, and Kapunan, JJ., see concurring and dissenting opinion.

Hermosisima, Jr., J., joins the concurring and dissenting opinion of J. Kapunan.

Panganiban, JJ., see separate concurring opinion.

Vitug, and Mendoza, JJ., see separate opinion.

Narvasa, C.J., in the result.

Bellosillo, J., on leave.

[1] A petition for certiorari, prohibition and injunction, the case was raffled to Br. 104, then presided by Judge, now Associate Justice of the Court of Appeals Maximiano Asuncion.

[2] Original Records, p. 24.

[3] Original Records, p. 25.

[4] Original Records, p. 27.

[5] Original Records, p. 28.

[6] Original Records, p. 29. The second review shows the following action of the respondent Board:

REMARKS:

An unbalanced interpretation of some parts of the bible regarding Christmas. They (The Iglesia ni Kristo) tackle/discuss only their own interpretations (and) while the sides of the Protestants and the Catholics who they pick on in this episode are not heard of.

We feel that this topic of the Iglesia ni Kristo which is (?) of attacking other religious beliefs does not merit public telecast.

(Original Records, p. 30)

[7] Original Records, pp. 21-22.

[8] Original Records, p. 23.

[9] Original Records, pp. 121-120; pp. 144-149.

[10] Original Records, pp. 219-220.

[11] Original Records, pp. 223-230.

[12] Original Records, pp. 233-242.

[13] Original Records, pp. 245-250.

[14] Original Records, pp. 379-381.

[15] Tenth Division with Associate Justice Antonio P. Solano (ponente), Associate Justice Alfredo Benipayo (chairman) and Associate Justice Ricardo Galvez (member).

[16] Victoriano v. Elizalde Rope Worker Union, L-25246, September 12, 1974 per Mr. Justice Calixto Zaldivar.

[17] Cruz, Constitutional Law, 1991 ed., pp. 176-178.

[18] Original Records, p. 30.

[19] Near v. Minnesota, 283 US 697 (1931); Bantam Books Inc. v. Sullivan, 372 US 58 (1963); New York Times v. United States, 403 US 713 (1971).

[20] 310 US 296.

[21] Sec. 4. Governing Standard. " a) the Board shall judge the motion pictures and television programs and publicity materials submitted to it for review, using as standard contemporary Filipino cultural values, to abate what are legally objectionable for being immoral, indecent, contrary to law, and good customs x x x such as but not limited:

xxx xxx xxx

vii. Those which clearly constitute an attack against any race, creed, or religion as distinguished from individual members thereof."

[22] 101 Phil. 386.

[23] 59 SCRA 54, 58.

[24] 249 US 47,63 Led 470 (1919).

[25] *Bridges v. California*, 314 US 252, 262 where J. Black observed that the test "has afforded a practical guidance in a variety of cases in which the scope of constitutional protections of freedom of expression was an issue."

[26] *Thornhill v. Alabama*, 310 US 88 (1940).

[27] 341 US 494 (1951).

[28] *Id.*, at p. 510.

[29] Gunther, Learned Hand and the Origins of Modern First Amendment Doctrine, Some Fragments of History, 27 *Stan L. Rev.* 719 (1975).

[30] Hentoff, Speech, Harm and Self Government: Understanding the Ambit of the Clear and Present Danger Test, 91 *Col. Law Rev.* No. 6, p. 1453 (1991).

[31] 370 US 478 (1962).

[32] 380 US 51 (1965).

[33] *Id.*, at p. 58.

[34] 41 *Phil.* 468 (1921) per Justice Malcolm.

[35] See Hunter, Toward a Better Understanding of the Prior Restraint Doctrine, A Reply to Prof. Mayton, 67 *Cornell L. Rev.* 283 (1982) for the view that courts are no better than administrative agencies in protecting First Amendment rights.

SEPARATE OPINION

MENDOZA, J.:

I concur in the decision to allow the showing of certain video tapes of petitioner's program, "Ang Iglesia Ni Cristo," and for this purpose to reverse the contrary ruling of the Court of Appeals. I am constrained to file this separate opinion, however, because, while the majority opinion invokes general principles of free speech and religion to which I subscribe, it regrettably fails to apply these principles to the law (P.D. No. 1986 and its implementing rules) under which the Board has acted.

My position will be spelled out presently but, in brief, it is this: Censorship may be allowed only in a narrow class of cases involving pornography, excessive violence, and danger to national security. Even in these cases, only courts can prohibit the showing of a film or the broadcast of a program. In all other cases, the only remedy against speech which creates a clear and present danger to public interests is through subsequent punishment. Considering the potentiality for harm which motion pictures and TV programs may have especially on the young, all materials may validly be required to be submitted for review before they may be shown or broadcast. However, the final determination of the character of the materials cannot be left to an administrative agency. That judicial review of administrative action is available does not obviate the constitutional objection to censorship. For these reasons, I would hold §3(b) of P.D. No. 1986, which gives to the Board limited time for review, to be valid, while finding §3(c), under which the Board acted in this case in censoring petitioner's materials, to be, on its face and as applied, unconstitutional.

I. "At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship or punishment. There is to be . . . no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings, unless there be a clear and present danger of substantive evil that Congress has a right to prevent." [1] "Because of the preferred character of the constitutional rights of freedom of speech and expression, a weighty presumption of invalidity vitiates measures of prior restraint upon the exercise of such freedoms." [2]

Authoritative interpretations of the free speech clause consider as invalid two types of prior restraints, namely, those which are imposed prior to the dissemination of any matter and those imposed prior to an adequate determination that the expression is not constitutionally protected. As the Wisconsin Supreme Court put the matter, "[A] prohibited 'prior restraint' is not limited to the suppression of a thing before it is released to the public. Rather, an invalid prior restraint is an infringement upon the constitutional right to disseminate matters that are ordinarily protected by the first amendment without there first being a judicial determination that the material does not qualify for first amendment protection." [3]

Our own cases furnish illustrations of these types of prior restraints. In *Ayer Productions Pty. Ltd. v. Capulong*, [4] we held that an injunction stopping the production of a documentary film was an invalid prior restraint on freedom of speech and of expression. In *Mutuc v. COMELEC*, [5] we struck down, also as an invalid prior restraint, a COMELEC rule prohibiting the use in political campaigns of taped jingles blared through loudspeakers which were mounted on mobile units. "[T]he constitutional guarantee is not to be emasculated by confining it to a speaker having his say, but not perpetuating what is uttered by him through tape or other mechanical contrivances." [6]

On the other hand, the fact that the material may have seen print or been taped, as in the case of the TV series in question, cannot justify restriction on its circulation in the absence of a judicial determination that the material does not constitute protected expression. In *Sotto v. Ruiz*, [7] we denied finality, to the authority of the Director of Posts to exclude newspapers and other publications from the mails "since whether an article is or is not libelous, is fundamentally a legal question. In order for there to be due process of law, the action of the Director of Posts must be subject to revision by the courts in case he has abused his discretion or exceeded his authority." [8]

II. P.D. No. 1986, § 3(b) requires motion pictures, television programs and publicity materials to be submitted to the Board for review, while § 7 makes it unlawful for any person or entity to exhibit or cause to be exhibited in any moviehouse, theater or public place or by television any motion picture, television program or publicity material unless it has been approved by the Board. Anyone who violates the prohibition is liable to prosecution and, in case of conviction, to punishment by imprisonment ranging from 3 months and 1 day to 1 year, plus a fine of not less than P50,000.00 but not more than P100,000.00. In addition, the moviehouse, theater or television station violating the provision faces a revocation of its license. [9]

In *Burstyn v. Wilson*, [10] it was held that expression by means of motion pictures -- and, it may be added, by means of television broadcasts is included in the free speech and free press guarantee of the Constitution. This ruling is now part of our constitutional law, which has assimilated into the constitutional guarantee not only motion pictures but also radio and television shows because of the importance of movie, radio and television both as a vehicle of communication and as a medium of expression. [11]

Does § 3(b) impermissibly impose a prior restraint because of its requirement that films and TV programs must be submitted to the Board for review before they can be shown or broadcast? In my view it does not. The *Burstyn* case, in declaring motion pictures to be protected under the free expression clause, was careful to add: "It does not

follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems." [12] With reference to television, this Court is on record that "a less liberal approach calls for observance. This is so because unlike motion pictures where patrons have to pay their way, television reaches every home where there is a [TV] set. Children then will likely be among the avid viewers of programs therein shown. . . . [T]he State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young." [13]

While newspapers may not be required to submit manuscripts for review as a condition for their publication, except during wartime, such a requirement is justified when applied to motion pictures or television programs (other than newsreels and commentaries) because of unique considerations involved in their operation. "First, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion picture theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out." [14] The State may thus constitutionally require the advance submission of all films and TV programs as a means of enabling it effectively to bar the showing of unprotected films and TV programs. [15]

For these reasons, I hold § 3(b) to be a valid exercise of the State's power to protect legitimate public interests. The purpose of this restraint -- temporary in character -- is to allow the Board time to screen materials and to seek an injunction from the courts against those which it believes to be harmful.

III. I reach a different conclusion, however, with respect to §3(c). This provision authorizes the Board to prohibit, among other things, the exhibition or broadcast of motion pictures, television programs and publicity materials which, in its opinion, are "immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or [which have] a dangerous tendency to encourage the commission of violence or of a wrong or crime," such as the following:

- i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;
- ii) Those which tend to undermine the faith and confidence of the people in their government and/or the duly constituted authorities;
- iii) Those which glorify criminals or condone crimes;
- iv) Those which serve no other purpose but to satisfy the market for violence or pornography;
- v) Those which tend to abet the traffic in and use of prohibited drugs;
- vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; and
- vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are subjudice in nature.

Under this authority, the Board can determine what can be shown or broadcast and what cannot. It is not true, as the Board claims, that under P.D. No. 1986 its power is limited to the classification of motion pictures and TV programs. The power to classify includes the power to censor. The Board can x-rate films and TV programs and thus ban their public exhibition or broadcast. And once it declares that a motion picture or television program is,

for example, indecent or contrary to law, as in the case of the INC program in question, its declaration becomes the law. Unless the producer or exhibitor is willing to go to court, shouldering not only the burden of showing that his movie or television program is constitutionally protected but also the cost of litigation, the ban stays.[16] This is censorship in its baldest form. This is contrary to the fundamental tenet of our law that until and unless speech is found by the courts to be unprotected its expression must be allowed.

In an effort to save this provision from constitutional attack, it is alleged that the TV program in question was disallowed pursuant to the rules of the Board which prohibit the showing of motion pictures or TV programs containing "malicious attack[s] against any race, creed or religion." It is contended that this rule impermissibly broadens the prohibition in §3(c), because this ground ("malicious attack[s] against any race, creed or religion") is not among those provided therein.

However, §3(c) gives the Board authority to stop the showing of motion pictures, television programs and publicity materials which are "contrary to law," and Art. 201 (2) (b) (3) of the Revised Penal Code makes it a crime for anyone to exhibit "shows which offend any race or religion." It is true that Art. 201(2) (b) (3) refers to subsequent punishment, whereas we are dealing here with prior restraint. However, by authorizing the censorship of materials which in the opinion of the Board are "contrary to law," § 3(c) makes what is only a ground for subsequent punishment also a ground for prior restraint on expression. It is §3(c) of P.D. No. 1986, and not only the rules implementing it, which is unconstitutional.[17]

While I think the Board may be granted the power to preview materials, it is only for the purpose of enabling the Board to decide whether to seek their prohibition by the court in the interest of safeguarding morality, good order and public safety, considering the pervasive influence of broadcast media compared to that of the print media. But concern with possible deleterious effects of movies and television shows cannot and should not be allowed to overshadow the equally important concern for freedom of expression and blind us to the danger of leaving the ultimate determination of what expression is protected and what is not to a board of censors. The protection of the youth should be in the first place the concern of parents, schools and other institutions. I do not think that society is so morally impoverished that we have to draw on a group of censors for ultimate moral lesson and leading.

If we have to call on the assistance of any agency at all, it must be the courts.[18] There are many reasons why a system of prior restraint (in those cases where it may validly be imposed) may only be administered by judges. First is that the censor's bias is to censor. Second is that "only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression." [19] As has been observed, "Central to the first amendment due process is the notion that a judicial rather than an administrative determination of the character of the speech is necessary. . . . [C]ourts alone are competent to decide whether speech is constitutionally protected." [20] Third, the members of the Board do not have the security of tenure and of fiscal autonomy necessary to secure their independence.

Indeed, I cannot understand why, after ruling that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies,[21] this Court should be willing to leave the valuation of that priceless commodity -- expression, whether by means of motion picture or television -- to administrative agencies with only occasional review by the courts. The trend may be toward greater delegation of judicial authority to administrative agencies in matters requiring technical knowledge and as a means of relieving courts of cases which such agencies can very well attend to.[22] There is no justification, however, for such delegation in the area of our essential freedoms, particularly freedom of expression, where "only a judicial determination in an adversary proceeding [can] ensure the necessary sensitivity to freedom of expression." [23]

We have witnessed such distinct possibility in the past to need any more lesson in the future to make us realize the

danger of leaving freedom of expression and religion -- the essential freedom of the mind -- in the care of an administrative agency.

To the extent therefore that P.D. No. 1986, §3 (c) vests in the Board the final authority to determine whether expression by motion picture or television is constitutionally protected, I find it unconstitutional.

IV. The majority limit themselves to a determination of the correctness of the Board's finding that the video tapes in question contain attacks on the Catholic religion. I find it difficult to pass upon this question because the contents of the tapes are not in the record of this case.[24] The trial court ruled that the tapes contain no attack against any religion but only a discussion of the doctrines which the Iglesia Ni Cristo believes embody "superior and self evident truth." On the other hand, the Court of Appeals, in reversing the trial court, found that the tapes "offend by verbal abuse other religions" and are for that reason "indecent and contrary to good customs" within the meaning of P.D. No. 1986, §3(c). Neither court, however, had any evidence to support its conclusions, because this case was submitted by the parties solely on the basis of memoranda. What the majority of this Court call facts (pp. 16-17) are simply the opinions of members of the Board that the video tapes contain attacks on the Catholic religion.

There are no facts on which to base judgment on this question. Even if there are, the clear and present danger test is inapplicable. To be sure, in *Gonzales v. Kalaw Katigbak* this Court said:

[W]here the movies, theatrical productions, radio scripts, television programs, and other such media of expression are concerned -- included as they are in freedom of expression -- censorship, especially so if an entire production is banned, is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, public morals, public health or any other legitimate public interest.[25]

The clear and present danger test has been devised for use in criminal prosecutions for violations of laws punishing certain types of utterances.[26] While the test has been applied to the regulation of the use of streets and parks[27]-- surely a form of prior restraint -- its use in such context can be justified on the ground that the content of the speech is not the issue. But when the regulation concerns not the time, place or manner of speech but its content (i.e., it is content- based) the clear and present danger test simply cannot be applied. This is because a determination whether an utterance has created a clear and present danger to public interests requires a factual record.

The test itself states that the question in every case is "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent." [28] However it may have been reformulated in later cases, the test essentially requires that the causal connection between the speech and the evil apprehended be evident.[29] But how can this be shown unless the speech is first allowed? It is not enough that the tapes have been made and only their broadcast banned. What about the audience reaction to the tapes? Even if we know what the tapes in this case contain, we cannot determine whether their public broadcast would create a clear and present danger to public interest. The censorship board, trying to determine whether to issue a permit, must necessarily speculate on the impact which the words will have since the context in which they will be uttered -- the audience, the occasion, and the place -- is totally lacking in the record. It is then forced to apply a lesser standard of proof in deciding whether to impose a restraint on speech.

The majority claim that there is no need for a factual record in order to find that the Board in this case exceeded its powers in disallowing the TV series in question. They argue that "acts of prior restraint are hobbled by the presumption of invalidity and should be greeted with furrowed brows. It is the burden of the respondent Board to overthrow this presumption. If it fails to discharge this heavy burden, its act of censorship will be struck down. . .

. In the case at bar, respondent board did nothing to rebut the presumption." (p. 17)

That, however, is precisely the problem with the censorship law. It in effect places on the producer or exhibitor the burden of going to court and of showing that his film or program is constitutionally protected. To paraphrase *Sotto v. Ruiz*, which the majority cite as authority for sustaining the validity of §3(c), "Every intendment of the law is in favor of the correctness of [the agency's] action." [30] The Board would have this burden of justification if, as I believe it should, it is made to go to court instead and justify the banning of a film or TV program. That is why §3(c) should be invalidated. One cannot defend the validity of the law and at the same time contend that in any court proceeding for the review of the Board's decision the burden of justifying the ban should be on the Board.

The teaching of *Gonzales v. Kalaw Katigbak* simply comes down to this: that the standard for judging the validity of prior restraint on political expression is stricter than that for adjudging restraints on materials alleged to be obscene, but not that the test of clear and present danger is applicable in determining whether or not a permit may be granted.

In *Gonzales v. Kalaw Katigbak* [31] this Court echoed Justice Douglas's plea that "every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the censor." For indeed the full flowering of local artistic talents and the development of the national intelligence can take place only in a climate of free expression. A film producer, faced with the prospect of losing on his investment as a result of the banning of his movie production, may well find himself compelled to submit to the wishes of the Board or practice self-censorship. The expression of unpopular opinions, whether religious, political or otherwise is imperilled under such a system.

We have long ago done away with controls on print media, it is time we did the same with the control on broadcast media, which for so long has operated under restraints, [32] leaving the punishment for violations of laws to be dealt with by subsequent prosecution.

For the foregoing reasons, I vote to declare §3 (c) of P.D. No. 1986 unconstitutional and to reverse the decision of the Court of Appeals, except in so far as it sustains the grant of power to the Board to preview materials for showing or broadcast, consistent with my view that §3(b) is valid.

[1] *Gonzales v. COMELEC*, 27 SCRA 835, 856 (1969); accord, *Reyes v. Bagatsing*, 125 SCRA 553 (1983); *Gonzales v. Kalaw-Katigbak*, 137 SCRA 717 (1985).

[2] *Ayer Productions Pty. Ltd. v. Capulong*, 160 SCRA 861, 873 (1988).

[3] *State v. I, a Woman -- Part II*, 53 Wis. 102, 191 N.W. 2d 897, 902-903 (1971); see also LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1041-42 (1988).

[4] 160 SCRA 861 (1988).

[5] 36 SCRA 228 (1970).

[6] *Id.*, at 234.

[7] 41 Phil. 468 (1921).

[8] *Id.* at 470.

[9] § 11.

- [10] 343 U.S. 495, 96 L. Ed. 1098 (1952).
- [11] See *Ayer Productions Pty. Ltd. v. Capulong*, 160 SCRA at 869; *Gonzales v. Kalaw-Katigbak*, 137 SCRA at 723; *Eastern Broadcasting Corp. (DYRE) v. Dans, Jr.*, 137 SCRA 628, 635 (1985).
- [12] *Burstyn v. Wilson*, 343 U.S. at 502-503, 96 L.Ed. at 1106.
- [13] *Gonzales v. Kalaw Katigbak*, 137 SCRA at 729.
- [14] *Eastern Broadcasting Corp. (DYRE) v. Dans, Jr.*, 137 SCRA at 635.
- [15] *Freedman v. Maryland*, 380 U.S. 51, 13 L.Ed. 2d 649 (1965).
- [16] PAUL A. FREUND, *THE SUPREME COURT OF THE UNITED STATES* 66 (1961).
- [17] Thanks to Rule 4(VII) of the Board, "shows which offend any race or religion," as a ground for prosecution, is translated into "clearly . . . malicious attack against a race, creed or religion," as a ground for censorship, thus limiting the Board's discretion in censoring films and TV programs. This does not of course make the grant of censorial powers to the Board any less invalid. There was a time when I thought that the problem was with overboard standards. I am now convinced that the problem is with censorship per se.
- [18] See *Freedman v. Maryland*, 380 U.S. 51, 13 L.Ed. 2d 649 (1965); *Teitel Film Corp. v. Cusak*, 390 U.S. 139, 19 L.Ed. 2d 966 (1968); *Blount v. Rizzi*, 400 U.S. 410, 428 L.Ed. 2d 498 (1971).
- [19] *Freedman v. Maryland*, 380 U.S. at 58, 13 L.Ed. 2d at 654. For a discussion of the "vices" of administrative censorship as opposed to judicial determination, see generally John Jeffries, Jr., *Rethinking Prior Restraint*, 92 *YALE L.J.* 409, 421-426 (1983).
- [20] Henry Monaghan, *First Amendment "Due Process,"* 83 *HARV. L. REV.* 518, 520 (1970).
- [21] *EPZA v. Dulay*, 149 SCRA 305 (1987); *Sumulong v. Guerrero*, 154 SCRA 461 (1987).
- [22] E.g., *Antipolo Realty v. NHA*, 153 SCRA 399 (1987); *Tropical Homes, Inc. v. NHA*, 152 SCRA 540 (1987).
- [23] *Freedman v. Maryland*, 380 U.S. at 58, 13 L. Ed. 2d at 654.
- [24] Compare the following: "Knowledge is essential to understanding; and understanding should precede judging," *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 520, 68 L. Ed. 813, 829 (1924) (Brandeis, J., dissenting), which Professor Freund says was central to the thought of Justice Brandeis. *ON UNDERSTANDING THE SUPREME COURT* 50 (1949).
- [25] 137 SCRA at 725.
- [26] See, e.g., *Schenck v. United States*, 249 U.S. 47, 63 L.Ed. 470 (1919); *Primicias v. Fugoso*, 80 Phil. 71 (1948); *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *Vera v. Arca*, 28 SCRA 351 (1969).
- [27] E.g., *Reyes v. Bagatsing*, 125 SCRA 553 (1983); *Navarro v. Villegas*, 31 SCRA 731 (1970); see also the Public Assembly Act of 1985 (B.P. Blg. 880), §6(a) of which makes it mandatory for mayors to grant permits for the use of parks and streets unless there is "clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health."
- [28] *Schenck v. United States*, 249 U.S. at 52, 63 L.Ed. at 473-74.
- [29] ENRIQUE M. FERNANDO, *CONSTITUTION OF THE PHILIPPINES* 569 (1977).
- [30] 41 Phil. at 470.

[31] 137 SCRA at 725, quoting Justice Douglas's concurring opinion in *Superior Films v. Department of Education*, 346 U.S. 587, 58998 L.Ed. 330, 331 (1954).

[32] The first film censorship law, Act No. 3582 of the Philippine Legislature, was enacted on November 29, 1929.

CONCURRING AND DISSENTING OPINION

KAPUNAN, J.:

While I concur in the result of the majority's decision reversing that of the Court of Appeals insofar as it set aside the action of respondent MTRCB x-rating petitioner's TV Program Series Nos. 115, 119 and 121, with due respect, I cannot agree with its opinion that respondent Board of Review for Motion Pictures and Television (now MTRCB) has the power to review petitioner's TV program "Ang Iglesia ni Cristo." The religious TV program enjoys the Constitution's guarantee of freedom of religion,[1] and of speech and expression,[2] and cannot be subject to prior restraint by the Board by virtue of its powers and functions under Section 3 of P.D. 1986 which provides as follows:

Sec. 3. Powers and Functions. - The BOARD shall have the following functions, powers and duties:

xxx xxx xxx

b) To screen, review and examine all motion pictures as herein defined, television programs, including publicity materials such as advertisements, trailers and stills, whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution, for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or for export.

c) To approve or disapprove, delete objectionable portion from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the BOARD applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime, such as but not limited to:

i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;

ii) Those which tend to undermine the faith and confidence of the people, their government and/or duly constituted authorities;

iii) Those which glorify criminals or condone crimes;

iv) Those which serve no other purpose but to satisfy the market for violence and pornography;

v) Those which tend to abet the traffic in and use of prohibited drugs;

vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; and,

vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are subjudice in nature.

Under the aforequoted provisions, the MTRCB, while nominally a classification board, is granted the power not only to classify, but also to approve or disapprove/prohibit exhibition of film or television broadcasts of motion pictures and TV programs.

The freedom to disseminate religious information is a right protected by the free exercise clause of the Constitution. It encompasses a wide range of ideas and takes many forms. In the process of enlightening the adherents or convincing non-believers of the truth of its beliefs, a religious sect or denomination is allowed the free choice of utilizing various media, including pulpit or podium, print, television film, and the electronic mail.

The broad latitude of freedom afforded by the free exercise clause is a historic outgrowth of our country's twin colonial experiences: our forefathers' aversion against the Spanish colonial government's interference with religious belief and practice and the transplantation of American Constitutional thinking into the mainstream of our political life, which brought with it the ideas of Protestant dissent and humanistic rationalism dominant in the debates of the American Constitutional Convention. These two poles conjoined to place the individual conscience beyond the coercive power of government. Involving as it does the relationship of man to his Creator, respect for the inviolability of conscience lay at the core of the free exercise clauses in our Constitutions from 1935 to 1987.[3]

It is, therefore, settled that religious freedom is a fundamental right entitled to the highest priority and amplest protection among human rights. Because of its exalted position in our hierarchy of civil rights, the realm of religious belief is generally insulated from state action, and state interference with such belief is allowed only in extreme cases.

Free exercise encompasses all shades of expression of religious belief. It includes the right to preach, proselyte and to perform other similar functions.[4] As oftentimes these aspects of the free exercise clause fall within areas affected by government regulation, the importance of religious freedom is such that the state must make special provisions to relieve religious liberty from restrictions imposed by generally legitimate government regulations.[5] Commenting on religious freedom and other freedoms of conscience, this Court held in *Reyes v. Bagatsing*[6] that:

[O]n the judiciary - even more so than on the other departments - rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course dispense with what has been felicitously termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights.[7]

Even before film and television achieved the power and influence it has gained in the last few decades, the U.S. Supreme Court, in the case of *Burtsyn v. Wilson*,[8] conceded that movies were a significant medium for the dissemination of ideas, affecting "public attitudes and behavior in a variety of ways, ranging from the direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes artistic expression." [9] The U.S. Supreme Court emphasized that the significance of motion pictures as an organ of public opinion is not diluted by the fact that films are "designed to entertain as well as to inform,"[10] thus, recognizing that motion pictures fell within the sphere of constitutionally protected speech and expression. Responding to the question of censorship in the context of film as protected expression, the U.S. Supreme Court, in the case of *Freedman v. Maryland*[11] held that:

The administration of a censorship system for motion pictures presents peculiar dangers to constitutionally protected speech. Unlike a prosecution for obscenity, a censorship proceeding puts the initial burden on the exhibitor or distributor. Because the censor's business is to censor, there is an inherent danger that he may be less responsive than a court - part of an independent branch of government - to constitutionally protected interests in free expression.[12]

In *American Bible Society v. City of Manila*,[13] this Court held that any restraint on the right to disseminate

religious information "can only be justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of any substantive evil which the State has the right to prevent." [14] Affirming the use of this "clear and present danger" standard in cases involving religious freedom and worship, the late Chief Justice Claudio Teehankee warned that "[t]he sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a grave and present danger of a character both grave and imminent of a serious evil to public safety, public morals, public health or any other legitimate public interest, that the State has a right (and duty) to prevent." [15]

Religious freedom is not of course an absolute right. However, given its exalted position in our hierarchy of civil rights, the essence of all that has been said and written about the subject is that only those interests of the highest order and those not otherwise served can overbalance claims to free exercise of religion. [16] In a highly sensitive constitutional area, only the gravest situation endangering paramount governmental interests give occasion for permissible limitation. And even in such rare cases, government may justify an inroad into religious liberty only by showing that it is the least restrictive means of achieving the compelling state interest. A facially neutral regulation apparently evenhandedly applied to all religious sects and denominations would be constitutionally suspect when it imposes an undue burden on the exercise of religious freedom. "Rules are rules" is not by itself a sufficient justification for infringing religious liberty. [17]

It is my submission that the government, under the guise of its regulatory powers in the censorship law (P.D. 1986 and its corresponding implementing rules and regulations), does not have the power to interfere with the exercise of religious expression in film or television by requiring the submission of the video tapes of petitioner's religious program before their public viewing, absent a showing of a compelling state interest that overrides the constitutional protection of the freedom of expression and worship. Even if government can demonstrate a compelling state interest, it would only burden such fundamental right like the free exercise of religion by the least intrusive means possible. [18] There is no demonstration here of any sufficient state interest to justify the infringement.

In any case, petitioner's religious programs, which in their very essence and characterization are the exercise of religious freedom, cannot possibly come under the category of the objectionable matters enumerated in Section 3(c) of P.D. 1986 or analogous thereto. It is not likely that propagation of religion which has been spoken of as "a profession of faith that binds and elevates man to his Creator" [19] will involve pornography, excessive violence or danger to national security.

Significantly, the enumeration in Section 3(c) does not include the standard "attack against any religion" as among those considered objectionable and subject to censorship. Respondents justify this omission by stating that any form of expression "contrary to law" could be subject to regulation because the enumeration is in any case not exclusive, and that the phrase "contrary to law" should, in the Solicitor General's words in behalf of respondents, be construed "in relation to Article 201 of the Revised Penal Code which proscribes the exhibition of shows that 'offend any race or religion.'" [20] Respondents moreover argue that the Rules and Regulations of the MTRCB issued pursuant to P.D. 1986 in any case explicitly furnish the standard left out in the enumeration when it provides:

SECTION 4. GOVERNING STANDARD. - a) The BOARD shall judge the motion pictures and television programs and publicity materials submitted to it for review, using as standard contemporary Filipino cultural values to abate what are legally objectionable for being immoral, indecent, contrary to law and good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime such as but not limited to:

xxx

vii) Those which clearly constitute an attack against any race, creed, or religion as distinguished from individual members thereof; x x x.

There are several reasons why I cannot agree with respondent Board's contention that it may add the standard "attack against any religion" among those enumerated by P.D. 1986. While the law's enumeration is concededly not exclusive, inclusion of other standards should be made in the strict context of the words "immoral, indecent, contrary to law and/or good customs." Specific standards following a general enumeration cannot go beyond the scope of the latter.

In the first place, the word "indecent" in censorship law has a narrow meaning, confined to obscenity regulation.[21] It cannot be conveniently employed as a catch-all term embracing all forms of expression considered noxious by the Board. On the other hand, "contrary to law," had particular significance in the old censorship laws because those laws explicitly included anything "offensive to other religions" among their enumerated standards. In the light of what the Solicitor General describes as the "transitional" nature of P.D. 1986, the better view would be that the omission of "attack against any religion" among the enumerated standards was intentional and part of the evolving process of fashioning a system of strict classification of films and television programs as opposed to censorship. As this phrase was ubiquitous in the old censorship laws (particularly E.O. 868 and E.O. 876), its elimination in P.D. 1986 expresses the manifest intention of the law-making authority to do away with the standard. This view is supported by the Executive Branch itself, through the Opinion of then Minister of Justice Neptali Gonzales who stated, when the case came up before his office for review, that:

[T]he question whether the BRMPT (now MTRCB) may preview and censor the subject television program of INC should be viewed in the light of the provision of Section 3, paragraph (c) of P.D. 1986, which is substantially the same as the provision of Section 3, paragraph (c) of E.O. No. 876-A, which prescribes the standards for censorship, to wit: 'immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with dangerous tendency to encourage the commission of violence, or a wrong' as determined by the Board, 'applying contemporary Filipino cultural values as standard.' As stated, the intention of the Board to subject the INC's television program to 'previewing and censorship is prompted by the fact that its religious program' makes mention of beliefs and practices of other religion.' On the face of the law itself, there can conceivably be no basis for censorship of said program by the Board as much as the alleged reason cited by the Board does not appear to be within the contemplation of the standards of censorship set by law.[22]

Additionally, the phrase "contrary to law" cannot and should not be understood to refer to Article 201[23] of the Revised Penal Code, as respondents mistakenly suggest. Article 201 deals with the subject of subsequent punishment; P.D. 1986 clearly treats with an altogether different matter - prior restraint and censorship. The two laws stand at opposite poles in the continuum of regulation and punishment.

Thus, the censor's cut poses a peculiar danger because it altogether skirts time-honored judicial tests and standards utilized in determining those forms of expression that fall within the area of protected speech or expression, and because, as between prior restraints and the subsequent sanctions meted after proof of violation of specific penal statutes, the former prevents the speech or expression from entering the marketplace of ideas.[24] That is exactly the effect of the orders assailed by petitioner in the instant case. More significantly, under the specific facts and circumstances of the case confronting us, what is sought to be kept out of the marketplace of ideas is not only ordinary speech or expression, two constitutional values which already enjoy primacy among our civil rights, but also religious speech or expression utilizing the medium of television.

It is claimed that the provisions of P.D. 1986 in any case provide for a neutral standard applicable to all religious

sects and denominations. I cannot agree. The "neutrality" standard has been raised in numerous free exercise cases before the courts, the most recent having been the Flag Salute cases.[25] However, a regulation neutral on its face poses free exercise problems when it creates or has the potential of imposing undue burdens on religion. "Democratic government acts to reinforce the generally accepted values of a given society and not merely the fundamental ones which relate to its political structure." [26] Facially neutral standards are a facet of prevailing consensus. The old flag salute cases are testaments to the natural preference for the prevailing political and social morality over the religious liberty of minorities. The prevalent view tends to impose its idea of what is religious and what is not over and above the protests of the other religions, sects and denominations.[27] Applying "contemporary Filipino standards" and values (the general test in P.D. 1986) to religious thought and expression allows an "overarching" into a constitutionally protected area and potentially would simply provide the Board with a veiled excuse for clamping down against unorthodox religious thought and expression. Measured in terms of the historic purpose of the guarantee, the free exercise provision in our Constitution not only insulates religion against governmental power, but when taken together with the Establishment clause, affords protection to religious minorities by preventing the use of that power in imposing the majority's will.

We are faced with a case of censorship and restraint which, I stated earlier, touches upon one of the most private and sensitive of domains: the realm of religious freedom, thought and expression. In this domain, sharp differences may arise such that the tenets of one individual may seem the "ranked error" to his neighbor.[28] In the process of persuading others about the validity of his point of view, the preacher sometimes resorts to exaggeration and vilification. However, the determination of the question as to whether or not such vilification, exaggeration or fabrication falls within or lies outside the boundaries of protected speech or expression is a judicial function which cannot be arrogated by an administrative body such as a Board of Censors.[29] Even if the exercise of the liberties protected by the speech, expression and religion clauses of our Constitution are regarded as neither absolute nor unlimited, there are appropriate laws which deal with such excesses. The least restrictive alternative would be to impose subsequent sanctions for proven violations of laws, rather than inflict prior restraints on religious expression.

Our penal law punishes libel, or acts or speeches offensive to other religions, and awards damages whenever warranted. In our legal scheme, courts essentially remain the arbiters of the controversies affecting the civil and political rights of persons. It is our courts which determine whether or not certain forms of speech and expression have exceeded the bounds of correctness, propriety or decency as to fall outside the area of protected speech. In the meantime, the liberties protected by the speech and expression and free exercise clauses are so essential to our society that they should be allowed to flourish unobstructed and unmolested.[30]

The majority opinion professes fealty to freedom of religion which, it openly admits, has been accorded a preferred status by the framers of our fundamental laws, and affirms that "(D)eeply enshrined in our fundamental law is its hostility against all prior restraints on speech, including religious speech." [31] The majority then adds pointedly that "acts of prior restraint are hobbled by the presumption of invalidity and should be greeted with furrowed brows. It is the burden of the respondent Board to overthrow this presumption. If it fails to discharge this heavy burden, its acts of censorship will be struck down. It failed in the case at bar." [32]

And yet, the majority at the same time would grant MTRCB the power to review the TV religious programs because "with its expertise," it "can determine whether its sulphur will bring about the substantive evil feared by the law." [33] The majority thus would uphold the power of the Board as an administrative body with quasi-judicial power to preview and classify TV programs, citing with favor the 1921 decision of this Court in *Sotto vs. Ruiz* [34] wherein it was held that:

As has been said, the performance of the duty of determining whether a publication contains printed matter of

a libelous character rests with the Director of Posts and involves the exercise of his judgment and discretion. Every intendment of the law is in favor of the correctness of his action. The rule is (and we go only to those cases coming from the United States Supreme Court and pertaining to the United States Postmaster-General), that the courts will not interfere with the decision of the Director of Posts unless clearly of opinion that it was wrong.

I share with Justice Mendoza's view that the majority's pronouncement would in effect place on the producer or exhibitor the burden of going to court and of showing that his film or program is constitutionally protected. This throws overboard the fundamental tenet that any act that restrains speech is presumed invalid and it is the burden of the censor to overthrow this presumption. In the context of the present case, if the Board disapproves a TV religious program or deletes a portion thereof, it is the exhibitor or producer who will go to court to prove that the Board is wrong and the court will not interfere with the Board's decision unless it can be clearly shown that it is wrong, following the ruling in *Sotto vs. Ruiz*.

The majority's ruling, I am afraid, constitutes a threat to constitutionally protected speech and expression and supplants a judicial standard for determining constitutionally protected speech and expression with the censor's standard. The heavy burden on the imposition of prior restraints is shifted away from the state by imposing upon the exhibitor the obligation of proving that the religious programs fall within the realm of protected expression. This leaves the exhibitor with only two unwanted options: either 1) he himself deletes the portions which he anticipates the Board might possibly object to prior to submission to that body and thereby obtains the censor's nod, or 2) submits the Video tapes in their entirety and risks disapproval or deletion, in which case he may go to court and show that the Video tapes contain constitutionally protected speech and expression. In the first situation, the message loses its essence and substance. The second scenario may entail tremendous amount of money, time and effort in a prolonged litigation. Either case constitutes grievous assault on the freedom of speech and religion.

The ruling in *Sotto vs. Ruiz* cannot be invoked as authority to allow MTRCB to review petitioner's TV programs. In that case, the Court held that the Acting Director of the Bureau of Posts is vested with authority to determine what mail matter is obscene, lewd, filthy or libelous, pursuant to Section 1954 of the old Administrative Code which provides, among others, that no lewd, lascivious, filthy, indecent or libelous character shall be deposited in, or carried by, the mails of the Philippine Island, or be delivered to its addressee by any officer or employee of the Bureau of Posts. Petitioner's programs which are televised in the exercise of freedom of worship cannot be placed in the category of the printed matter proscribed in the old Administrative Code. Freedom of worship is such a precious commodity in our hierarchy of civil liberties that it cannot be derogated peremptorily by an administrative body or officer who determines, without judicial safeguards, whether or not to allow the exercise of such freedom.

The rights of free expression and free exercise of religion occupy a unique and special place in our constellation of civil rights. The primacy our society accords these freedoms determines the mode it chooses to regulate their expression. But the idea that an ordinary statute or decree could, by its effects, nullify both the freedom of religion and the freedom of expression puts an ominous gloss on these liberties. Censorship law as a means of regulation and as a form of prior restraint is anathema to a society which places high significance to these values.

WHEREFORE, premises considered, I vote to grant the petition.

[1] CONST., Art. III, Sec. 5.

[2] CONST., Art. III, Sec. 4.

[3] The 1987 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 retains the wording of both the 1935 and 1973 Constitution.

[4] *McDaniel v. Patty*, 435 U.S. 618, 626 (1998); "Clearly, freedom of belief protected by the free exercise clause embraces freedom to profess or practice that belief.- *Id.*, at 631 (Brennan, J., concurring).

[5] *Sherbert v. Vener*, 374, U.S. 398 (1963).

[6] 125 SCRA 553 (1983).

[7] *Id.*, at 570.

[8] 343 U.S. 495 (1952).

[9]*Id.*, at 501.

[10] *Id.*

[11] 380 U.S. 51 (1965).

[12] *Id.*, at 57.

[13] 101 Phil. 386 (1957).

[14] *Id.*, at 398.

[15] *Supra*, note 11, at 534. (Dissenting).

[16] The dichotomy between the freedom to believe and the freedom to act upon one's beliefs was succinctly summed up by this Court in its flag ceremony decision, See *Ebralinag v. Division Superintendent of Schools of Cebu*, 219 SCRA 270 (1993).

[17] *Goldman v. Weinberger*, 54 LW 4298 (1986).

[18] *Sherbert v. Verner*, 374 U.S. 333 [1963].

[19] *Aglipay v. Ruiz*, 64 Phil. 201.

[20] *Rollo*, p. 130.

[21] See *Miller v. California*, 413 U.S. 15 (1973); *Roth v. U.S.*, 354 U.S. 476 (1957); *Memoirs v. Massachusetts*, 383 U.S. 413 (1966).

[22] *Rollo*, p. 42. (Italics supplied).

[23] Article 201 provides:

ART. 201. Immoral doctrines, obscene publications and exhibitions, and indecent shows. The penalty of prison mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon.

[24] See *Near v. Minnesota*, 283 U.S. 697 (1931).

[25] *Supra*, note 15. See also Motion for Reconsideration, G.R. No. 95770, December 29, 1995.

[26] Gianella, Religious Liberty, Nonestablishment and Doctrinal Development: Part I The Religious Liberty Guarantee, 80 Harvard L.R. 1381 (1967).

[27] In any society, the most acculturated religion is that which exists in full harmony with society's values and institutions. Normally, the acculturated religion rarely comes at odds with society's legal norms in as much as those norms themselves are directly or indirectly influenced by the acculturated or dominant religion. The thorniest legal issues arise when a particular religion or sect advocates ideas separate from mainstream culture, or urges a radical deviation from dominant thought which clashes with orthodox norms or expectations. Notwithstanding the "acceptable" variety of expression which falls under the rubric of bona fide religious dogma, cross-cultural religious clashes are bound to be mediated from the standpoint of the dominant religion. See, H. RICHARD NEIBHUR, CHRIST AND CULTURE (1951).

[28] *Cantwell v. Connecticut*, 310 U.S. 296, at 310 (1939).

[29] Whether or not administrative bodies might be more effective (and as suggested "liberal" as opposed to the traditional "conservatism of courts") in this regard or in terms of protecting the constitutional rights of speech and expression, the process of assaying the constitutional validity of the Board's acts with respect to these guarantees is a function ultimately reposed by the Constitution in the courts.

[30] *Id.*, at 310.

[31] Majority opinion, pp. 13, 19.

[32] *Id.*, at 17.

[33] *Id.*, at 24.

[34] 41 Phil. 468.

CONCURRING AND DISSENTING OPINION

MELO, J.:

The enjoyment of the freedom of religion is always coupled with the freedom of expression. For the profession of faith inevitably carries with it, as a necessary appendage, the prerogative of propagation. The constitutional guaranty of free exercise and enjoyment of religious profession and worship thus denotes the right to disseminate religious information (*American Bible Society vs. City of Manila*, 101 Phil. 386 [1957]). Any prior restriction upon a religious expression would be a restriction on the right of religion. We recognize the role and the deep influence that religion plays in our community. No less than the fundamental law of the land acknowledges the elevating influence of religion by imploring the aid of almighty God to build a just and humane society. Any restriction that is to be placed upon this right must be applied with greatest caution.

Judicial notice must be taken of the fact that the Iglesia ni Cristo as an established religious organization has been well with us for almost a century, with several millions of following, quite a number of imposing and elegantly constructed cathedrals and hundreds of chapels spread in many parts of the country, injecting profound influence not only in the social and political aspect of the community but upon its moral values as well. Respect must be afforded a well-established church, especially on matters concerning morality and decency lest no concept of morality could ever be accepted with deference. Such pre-eminence in the community deserves no less than the confident expectation that it will act in accordance with its avowed mission of promoting religious guidance and enlightenment. Its religious programs must be accorded the presumption that the same will instill moral values that would be beneficial to its adherents and followers, and perhaps to the community in general. The contrary

must not be presumed. Its television programs, therefore should not be equated with ordinary movies and television shows which MTRCB is bound by the law to monitor for possible abuse. One must recognize the power of State to protect its citizenry from the danger of immorality and indecency motivated by the selfish desire of media entrepreneurs to accumulate more wealth, or of bogus religious groups, for that matter, to mislead and beguile the unlettered and uninformed. But considering all these circumstances, I see no cogent reason for the application of such power to the present case.

Freedom of religion and expression is the rule and its restriction, the exception. Any prior restriction on the exercise of the freedom to profess religious faith and the propagation thereof will unduly diminish that religion's authority to spread what it believes to be the sacred truth. The State can exercise no power to restrict such right until the exercise thereof traverses the point that will endanger the order of civil society. Thus we have ruled in the case of *Ebralinag vs. The Division Superintendent of Schools of Cebu* (219 SCRA 270 [1993]):

The sole justification for a given restraint or limitation on the exercise of religious freedom is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest that the state has the right and duty to prevent.

Correspondingly, the MTRCB has no authority to use as standard, the dangerous tendency rule, which we have long abandoned, and for which reason, the dangerous tendency standard under Subparagraph C, Section 3 of Presidential Decree No. 1986 has no place in our statute books.

I, therefore, vote to grant the petition.

CONCURRING AND DISSENTING

PADILLA, J.:

I concur with the majority opinion insofar as it removes the ban against the showing of petitioner's TV Program Series Nos. 115, 119 and 121. However, I disagree with that part of the majority opinion which upholds the power of respondent Board to subject to prior restraint petitioner's religious television programs.

It should by now be undisputably recognized and firmly rooted in this country that there can be no prior restraints on the exercise of free speech, expression or religion, unless such exercise poses a clear and present danger of a substantive evil which the State has the right and even the duty to prevent. The ban against such prior restraints will result, as it has resulted in the past, in occasional abuses of free speech and expression but it is immeasurably preferable to experience such occasional abuses of speech and expression than to arm a governmental administrative agency with the authority to censor speech and expression in accordance with legislative standards which albeit apparently laudable in their nature, can very well be bent or stretched by such agency to convenient latitudes as to frustrate and eviscerate the precious freedoms of speech and expression.

Besides, any person who may feel aggrieved by the exercise of free speech, expression and religion, is afforded, under our system, the remedy of redress in the courts of law, justice and equity.

In short, it is far better for the individual to live in a climate of free speech and free expression, devoid of prior restraints, even at the risk of occasional excesses of such freedoms than to exist in an ambiance of censorship which is always a step closer to autocracy and dictatorship.

SEPARATE (CONCURRING) OPINION

PANGANIBAN, J.:

I think the basic issues in this case are:

A. What is the statutory extent and the constitutional limitation of the powers of the Movies and Television

Review and Classification Board (MTRCB)? More specifically, does the MTRCB have the power to prohibit/censor television shows?

B. In banning the television showing of the Iglesia ni Cristo videotape series, did the respondent Board exercise its powers correctly and properly?

The first question deals with the general legal concepts and principles underlying the functions and prerogatives of the MTRCB while the second calls for a juridical evaluation of the specific act of the Board in classifying as "X" (or not for public viewing) specific pre-taped or canned programs, identified as Series 115, 119, and 121 and 128, for the reason that they allegedly constituted an "attack against another religion." The first involves doctrine; the second application.

A. EXTENT AND LIMIT OF MTRCB'S POWERS

The statutory powers of the MTRCB are set forth in Sec. 3 of P.D. No. 1986.[1]

In implementing P.D. No. 1986 the MTRCB issued its own Rules and Regulations. At issue in this case is Section 4[2] of such Rules.

On the other hand, these statutory powers and internally generated regulations are limited by the Bill of Rights. Art. III of the 1987 Constitution, particularly the rights to free speech and religion.[3]

Mr. Justice Mendoza connects the above constitutional rights with the present controversy by saying that "expression x x x by means of television broadcast is included in the free speech and free press guarantee of the Constitution" and by Mr. Justice Kapunan by writing that this "case uniquely interphases questions of religious expression and censorship laws in the context of the constitution's guarantees of freedom of religion and of speech and expression."

Here before us therefore is a classic constitutional law case wherein the inherent power of the state to safeguard the peace, well-being and general welfare of the people collide and clash with the constitutional rights of individuals and religious institutions to evangelize, preach, promote, teach, and even prosedytize.

Religious Freedom -- A Cherished Right

FIRST, I agree with the ponencia that "(f)reedom of religion has been accorded a preferred status by the framers of our fundamental laws, past and present.-- Religious freedom is absolute when it is confined within the realm of thought to a private, personal relationship between a man's conscience and his God, but it is subject to regulation when religious belief is transformed into external acts that affect or afflict others. The mere invocation of religious freedom will not stalemate the State and ipso facto render it incompetent in preserving the rights of others and in protecting the general welfare.

MTRCB's Power to Review and to Censor is Valid

SECOND, I believe that as an agency of the State created to promote the general welfare, the MTRCB under P.D. No. 1986 has the basic initiatory authority and power to --

"approve or disapprove,

delete objectionable portion from

and/or prohibit

the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast" of pre-taped or canned (as contra-distinguished from "live") video-audio/film/television programs and publicity materials. I regret I cannot go along with Mr. Justice Mendoza's avante garde thesis that Section 3-c of P.D. No.

1986, from where the above-quoted words were taken, is "upon its face and as applied, unconstitutional." I note the extensive materials particularly from American cases, buttressing his cogent stand, but, after reflection, prayer and discernment. I am thoroughly convinced that the situation in our country, particularly the totality of our cultural and religious milieu, is far different from that in America.

Petitioner INC contends that the MTRCB's authority extends only to non-religious video materials but not to religious programs, particularly those of INC, which it claims are neither "immoral" nor "indecent." This position presents more problems than solutions. For who will determine whether a given canned material is religious or not, and therefore whether it can be publicly exhibited or not without its passing through the Board? I would prefer that the State, which is constitutionally mandated to be neutral, continue to exercise the power to make such determination, rather than leave it up to the producer, maker or exhibitor of such material, who/which, because of vested interests would, in the normal course, be understandably biased in his/its own favor. I feel less discomfort with the idea of maintaining the censors' quasi-judicial authority to review such film materials, subject to appeal to the proper courts by aggrieved parties, than with the prospect and consequences of doing away with such power altogether. I agree with Mr. Justice Vitug in finding "it more prudent to have a deferment of an exhibition that may be perceived (by the Board) to be contrary to decency, morality, good custom or the law until, at least, the courts are given an opportunity to pass upon the matter x x x." A contrary ruling would most regrettably remove meaningful and necessary safeguards against a veritable floodtide of prurient, violence-prone and values-eroding television shows and programs.

In *Gonzales vs. Kalaw Katigbak*[4] and *Eastern Broadcasting Corp. (DYRE) vs. Dans, Jr.*,[5] this Court early on acknowledged the uniquely pervasive presence of broadcast and electronic media in the lives of everyone, and the easy accessibility of television and radio to just about anyone, especially children. Everyone is susceptible to their influence, even "the indifferent or unwilling who happen to be within reach of a blaring radio or television set." [6] And these audiences have less opportunity to cogitate, analyze and reject the utterances, compared to readers of printed materials.[7] It is precisely because the State as *parens patriae* is "called upon to manifest an attitude of caring for the welfare of the young"[8] that I vote for the retention of the State's power of review and prohibition via the MTRCB. High-minded idealism in the staunch defense of the much-vaunted freedoms cannot but be admired. Yet, no matter how devoutly we may wish it, not all the people share the same mindset and views nor, needless to say, the same viewpoint, i.e., the ivory tower window. Hence, we must prudently anticipate that abuses against the public weal are likely to be committed where absolute permissiveness is the norm. Would that, with the total absence of censorship or review, there occur a significant increase in religious, spiritual or morally uplifting prime-time programming! But realistically and pragmatically speaking, we see mostly the prospect of more explicit sex-oriented advertising, unadulterated violence and outright pandering to phone-sex addicts and the simply curious. The fact that even the Net is not free of pornographic slime is no excuse to let down all reasonable barriers against broadcast media offerings of muck, moral depravity and mayhem. And definitely, there is no good and sensible reason for the State to abdicate its vital role as *parens patriae*, in the guise of copying American constitutional precedents, which I respectfully submit, are inapplicable in our factual context and time.

MTRCB Must Use Constitutional Standard

THIRD. In exercising its prerogatives, the MTRCB cannot act absolutely or whimsically. It must act prudently. And it can do so ONLY if it exercises its powers of review and prohibition according to a standard and/or a limit.

I believe that the phrase "with a dangerous tendency" in Sec. 3-c of P.D. No. 1986 should be struck down as an unconstitutional standard. This is martial law vintage and should be replaced with the more libertarian "clear and present danger rule" which is eloquently explained by JJ., Kapunan, Puno and Mendoza (and which explanation I shall not repeat here).

Having said that, may I respectfully point out however that there is an even more appropriate standard in the Philippine context proffered by the law itself, and that is "contemporary Philippine cultural values." This standard under the law, should be used in determining whether a film or video program is "(a) immoral, (b) indecent, (c) contrary to law and/or good custom, and (d) injurious to the prestige of the Republic of the Philippines or its people." On the other hand, when the question is whether the material being reviewed "encourages the commission of violence or of a wrong or crime" per the enumeration contained in Sec. 3-c, the "clear and present danger" principle should be applied as the standard in place of the "dangerous tendency" rule.

Just a word edgewise about cultural values. Our cultural ideals and core values of *galang*, *pagbabahala*, *pananagutan*, *balikatan*, *malasakit*, *asal*, *halaga*, *diwa*, *damdamin*, *dangal*, *kapwa*, *pakikitungo*, *hiya*, *delikadesa*, *awa*, *tiwala*, *maka-Diyos*, *maka-tao*, *maka-buhay* and so forth, define us as a people, as Filipinos. We are who and what we are because of these values and ideals. They delimit the areas of individual and social behavior and conduct deemed acceptable or tolerable, and ultimately they determine the way we as individuals uniquely conduct our relationships and express ourselves. According to Mr. Justice Kapunan, applying contemporary Filipino values to religious thought and expression will permit an "overarching" into a constitutionally protected area, and provides the MTRCB with a veiled excuse for clamping down against unorthodox religious thought and expression. But such fear is highly speculative and totally unsupported by empirical evidence. I would like to add that where a mode of religious expression runs counter to such core values, serious questions have to be raised about the ultimate redeeming worth of such expression. An example is in order. Not too long ago, the so-called "Children of God" blew into town, and, under the guise of proselytizing, practised "flirty-fishing" (free sex). I wonder how many of us will simply sit on our hands if these "Children" were to telecast their religious programs for OUR children to watch, or conduct seminars over the airwaves on the hows of free sex . . . Another example: satanic cults involve blood sacrifices In brief, I am in agreement with the ponencia that the practice of religion cannot be totally abandoned to the market place and governed by the policy of *laissez faire*.

Validity of MTRCB's Internal Rule

FOURTH. Anent the validity of Sec. 4 of the Board's Rules and Regulation authorizing MTRCB to prohibit the showing of materials "which clearly constitute an attack against any race, creed or religion x x x," I agree with Mr. Justice Vitug that the phrase "contrary to law" in Sec. 3-c "should be read together with other existing laws such as, for instance, the provisions of the Revised Penal Code, particularly Article 201, which prohibit the exhibition of shows that 'offend another race or religion.'" Indeed, where it can be shown that there is a clear and present danger that a religious program could agitate or spark a religious strife of such extent and magnitude as to be injurious to the general welfare, the Board may "X-rate" it or delete such portions as may reasonably be necessary. The debilitating armed conflicts in Bosnia, Northern Ireland and in some Middle East countries due to exacerbated religious antagonisms should be enough lesson for all of us. Religious wars can be more ravaging and damaging than ordinary crimes. If it is legal and in fact praiseworthy to prevent the commission of, say, the felony of murder in the name of public welfare, why should the prevention of a crime punishable by Art. 201 of the Penal Code be any less legal and less praiseworthy."

I note, in this connection, the caveat raised by the ponencia that the MTRCB Rule bans shows which "attack" a religion, whereas Art. 201 merely penalizes those who exhibit programs which "offend" such religion. Subject to changing the word "attack" with the more accurate "offend." I believe Section 4 of the Rules can stand.

In sum, I respectfully submit (1) that P.D. No. 1986 is constitutional, subject to the substitution (or interpretation) of the words "dangerous tendency" with the phrase (or as meaning) "clear and present danger" in Sec. 3-c: and (2) that Sec. 4 of the Board's Rules would be likewise valid, provided the words "constitute an attack" are changed with "offend."

B. WAS THE BANNING OF THE IGLESIA PROGRAMS PROPER?

We now come to the immediate question: Did the respondent Board correctly apply Section 3 of P.D. No. 1986 in prohibiting the public telecasting of the Iglesia program? In short, did the INC series "offend" a religion? Juridically stated, did the respondent MTRCB use "contemporary Filipino cultural values" in determining that said series offended another religion such as to constitute a clear and present danger of a religions strife which is injurious to public welfare? [Note: I advisedly used both the "values" and "clear and present" standards in framing the question because the INC program was apparently "x-rated" for being both "contrary to law" and violative of Art. 201, a "crime."]

Unfortunately, we cannot answer this question directly because the tape in question was never submitted to the Court for viewing. Neither was there a detailed description of its objectionable contents in the assailed Decision of the Court of Appeals or Regional Trial Court. Nor is there extant a detailed justification prepared by respondent Board on why it banned the program -- other than its bare conclusion that the material constituted an attack against the Catholic and Protestant religions.

In no wise can the "remarks" in the voting slips presented before the trial court be considered sufficient justification for banning the showing of any material.

In the face of such inadequacy of evidence and basis, I see no way that this Court could authorize a suppression of a species of the freedom of speech on the say-so of anyone -- not even of the MTRCB. Paraphrasing *People vs. Fernando*,^[9] the disputable presumption (which is of statutory origin; that official duties have been regularly performed must yield to the constitutionally enshrined freedoms of expression and of religion. If courts are required to state the factual and legal bases of their conclusions and judicial dispositions, with more reason must quasi-judicial officers such as censors, especially when they curtail a fundamental right which is "entitled to the highest priority and amplest protection."

FOR THIS REASON AND THIS REASON ALONE, i.e., that the respondent Board failed to justify its conclusion thru the use of the proper standards that the tapes in question offended another religion. I vote to GRANT the petition insofar as it prays for the showing of said programs. However, I vote to DENY the petition insofar as allowing the INC to show its pretaped programs without first submitting them for review by the MTRCB.

[1] Sec . 3. Powers and Functions. -- The BOARD shall have the following functions, powers and duties:

xxx xxx xxx

b) To screen, review and examine all motion pictures as herein defined, television programs, including publicity materials such as advertisements, trailers and stills, whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution, for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or for export.

c) To approve or disprove, delete objectionable portion from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the BOARD applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime, such as but not limited to:

i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;

- ii) Those which tend to undermine the faith and confidence of the people, their government and/or duly constituted authorities;
- iii) Those which glorify criminals or condone crimes;
- iv) Those which serve no other purpose but to satisfy the market for violence and pornography;
- v) Those which tend to abet the traffic in and use of prohibited drugs;
- vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; and,
- vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are subjudice in nature.--

[2] "Section 4. GOVERNING STANDARD. - a) The BOARD shall judge the motion pictures and television programs and publicity materials submitted to it for review, using as standard contemporary Filipino cultural values to abate what are legally objectionable for being immoral, indecent, contrary to law and good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime such as but not limited to:

xxx xxx xxx

vii) Those which clearly constitute an attack against any race, creed, or religion as distinguished from individual members thereof; x x x."

[3] "Sec. 4. No law shall be passed abridging the freedom of speech, of expression x x x.

"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. x x x"

xxx xxx xxx

[4] 137 SCRA 717 (July 22, 1985)

[5] 137 SCRA 628 (July 19, 1985).

[6] Eastern, supra, at p. 636.

[7] Id.

[8] Gonzales, supra, at p. 729.

[9] 145 SCRA 151, 159 (October 24, 1986).

SEPARATE OPINION

VITUG, J.:

I agree with those who support the view that religious freedom occupies an exalted position in our hierarchy of rights and that the freedom to disseminate religious information is a constitutionally-sanctioned prerogative that allows any legitimate religious denomination a free choice of media in the propagation of its credo. Like any other right, however, the exercise of religious belief is not without inherent and statutory limitations.

The Board disapproved the exhibition of a series of television programs of petitioner on the ground that they tend to "offend and constitute an attack against other religions." An opinion has been expressed that the non-inclusion

in Section 3 of P.D. No. 1986 of an "attack against any religion," as a standard for classification, and so the deletion of the phrase "offensive to other religions" found in the old censorship law (Executive Order No. 876), should be clear enough to manifest a legislative intent "to do away with the standard." A reading of Section 3 of P.D. No. 1986 shows that the Board is empowered to "screen, review and examine all x x x television programs" and to "approve or disprove, delete objectionable portion from and/or prohibit the x x x television broadcast of x x x television programs x x x which, in the judgment of the BOARD (so) applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs x x x." I believe that the phrase "contrary to law" should be read together with other existing laws such as, for instance, the provisions of the Revised Penal Code, particularly Article 201, which prohibits the exhibition of shows that "offend another race or religion." I see in this provision a good and sound standard. Recent events indicate recurrent violent incidents between and among communities with diverse religious beliefs and dogma. The danger is past mere apprehension; it has become a virtual reality and now prevalent in some parts of the world.

In order not to infringe constitutional principles, any restriction by the Board must, of course, be for legitimate and valid reasons. I certainly do not think that prior censorship should altogether be rejected just because sanctions can later be imposed. Regulating the exercise of a right is not necessarily an anathema to it; in fact, it can safeguard and secure that right.

When I particularly ponder on the magnitude of the power of a television set, I find it more prudent to have a deferment of an exhibition that may be perceived to be contrary to decency, morality, good customs or the law until, at least, the courts are given an opportunity to pass upon the matter than rely merely on the availability of retribution for actual injury sustained. A delay is not too high a price to pay for a possible damage to society that may well turn out to be incalculable and lasting.

In this instance, I vote for the dismissal of the petition.

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